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STATUTORY INSTRUMENTS

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**1999 No. 362**

**The Education (Transition to New Framework) (New Schools, Groups and Miscellaneous) Regulations 1999**

**PART IV**

**GROUPED SCHOOLS**

**Transitional amendments to the 1996 Act**

**41.**—(1) No resolution made under section 89(1) of the 1996 Act shall take effect on or after 10th March 1999.

(2) Subject to this Part, any group established under section 89 of the 1996 Act for a specified period ending on or after 10th March 1999 shall continue after the end of that period.

(3) In relation to any time on or after 10th March 1999, section 89(4) of the 1996 Act shall have effect as if a group were treated for the purposes of Chapter IV of Part II of the 1996 Act as a school of the category which applied by virtue of section 89(4) of the 1996 Act on 9th March 1999, notwithstanding any subsequent changes to schools in the group<sup>(1)</sup>.

**Time limit for making the instrument of government**

**42.**—(1) A local education authority shall secure that, before the appointed day, an instrument of government has been made in accordance with Schedule 12 to the Act 1998<sup>(2)</sup> for each grouped school which will be maintained by them on the appointed day.

(2) Paragraphs (1), (4) and (5) of this regulation and regulations 43 to 48 and 51 to 56 do not apply in relation to a grouped school if—

- (a) proposals to discontinue the school have been approved under section 169 or 340 of the 1996 Act or under paragraph 3 or 8 of Schedule 6 to the 1998 Act, or
- (b) the local education authority have determined under section 170 of the 1996 Act or under paragraph 4 or 9 of the 1998 Act to implement the proposals to discontinue the school,

and in either case the date on which the proposals, as approved or determined, are to be implemented is on or before 1st January 2000.

(3) In paragraph (2) references to proposals are to proposals with any modifications made under section 169 or 340(4) of the 1996 Act or paragraph 3 or 8 of Schedule 6 to the 1998 Act (but disregarding any modifications made under section 171 or 340(5) of the 1996 Act or paragraph 5 or 10 of Schedule 6 to the 1998 Act).

- (a) (4) (a) The instrument of government shall take effect from the date of making for the purpose of constituting the governing body but shall not affect the constitution or name

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(1) The [School Standards and Framework Act 1998 \(Commencement No. 5 and Saving and Transitional Provisions\) Order 1999 \(1999 No. 120\(c.3\)\)](#) brings into force the repeal of sections 54(6)(c), 89(1) and (2), sections 90, 91, 92(1), (2) and (4), 94 and 95 of the 1996 Act from 10th March 1999.

(2) As modified by regulation 43.

of the governing body conducting the school pending constitution of the new governing body under the instrument of government.

- (b) For all other purposes, the instrument of government shall take effect—
- (i) if made before the appointed day, from the appointed day; or
  - (ii) if made (in default of the duty in paragraph (1)) on or after the appointed day, from the date of making.

(5) The grouped governing body shall exercise their functions under the 1998 Act and under these Regulations in a manner calculated to enable the local education authority to fulfil their duties under this regulation.

### **Modifications to the 1998 Act where the instrument of government is made before the appointed day**

**43.**—(1) Section 141 of, and Schedules 9 and 12 to, the 1998 Act shall apply with the following modifications to enable an instrument of government for a grouped school to be made before the appointed day.

(2) Paragraphs (2) and (3) of regulation 8 shall apply with the substitution of “grouped school” for “new LEA maintained school”, in each place where those words occur, and the omission of the words “or proposed school”.

(3) Paragraph (4) of regulation 8 shall apply with the substitution of “grouped governing body” for “temporary governing body”.

(4) Paragraph 1 of Schedule 12 to the 1998 Act shall have effect as if—

- (a) in sub-paragraph (1)(h) there were substituted for “the date”, the words “in accordance with sub-paragraph (2A), the dates”—

(b) after sub-paragraph (2) there were inserted the following sub-paragraph—

“(2A) Where an instrument of government is made before the appointed day for a school grouped under section 89 or 280 of the Education Act 1996, such instrument of government—

- (a) shall determine the constitution of the governing body and other matters relating to the school as a maintained school of the category to which it will belong under this Act;
- (b) shall include a description of the ethos of the school, if it is anticipated that the school will become a foundation or voluntary school with a religious character (provided that such description shall be of no effect if the school does not become a foundation or voluntary school with a religious character with effect from the appointed day);
- (c) shall take effect from the date of making for the purpose of constituting the governing body under the instrument of government but shall not affect the constitution or name of the governing body conducting the school pending constitution of the new governing body under the instrument of government; and
- (d) shall take effect from the appointed day for all other purposes.”

(5) References in paragraph 3 of Schedule 12 to the 1998 Act to—

- (a) “the governing body” shall be treated as references to the grouped governing body;
- (b) “foundation governors” shall be treated as references to members of the grouped governing body who are foundation governors; and
- (c) “the category of school to which the school belongs” shall be treated as references to the category of school to which the school will belong when it is a maintained school.

### **Modifications to the 1998 Act where the instrument of government is made on or after the appointed day**

44.—(1) Schedules 9 and 12 to the 1998 Act shall apply with the following modifications to enable the instrument of government for a grouped school to be made on or after the appointed day.

(2) In paragraph 15(1) of Schedule 9 to the 1998 Act, the reference to “If the governing body of any maintained school so determine”, shall be treated as if it were a reference to “If the grouped transitional governing body so determine”.

(3) Paragraph 1 of Schedule 12 to the 1998 Act shall have effect as if—

- (a) in sub-paragraph (1)(h) there were substituted for “the date”, the words “in accordance with sub-paragraph (2A), the date”; and
- (b) after sub-paragraph (2) there were inserted the following sub-paragraph—

“(2A) Where an instrument of government is made on or after the appointed day for a school grouped under section 89 or 280 of the Education Act 1996 immediately before the appointed day, such instrument of government shall take effect from the date of making for all purposes (including for the purpose of constituting the governing body under the instrument of government) except that it shall not affect the constitution or name of the governing body conducting the school pending constitution of the new governing body under the instrument of government.”.

(4) References in paragraph 3 of Schedule 12 to the 1998 Act to—

- (a) “the governing body”, shall be treated as references to the grouped transitional governing body; and
- (b) “foundation governors” shall be treated as references to members of the grouped transitional governing body who were when appointed foundation governors within the meaning of the 1996 Act.

### **Additional co-opted governors and substitutes for ex officio foundation governors**

45. Regulations 10 and 11 and Schedule 1 shall apply.

### **Instrument of government**

46.—(1) The instrument of government shall be made in the form and in accordance with the directions set out in Schedule 2 which are relevant to the category of maintained school to which the grouped school will belong or belongs.

(2) It shall be a sufficient compliance with paragraph (1) if the instrument of government is in a form substantially to the like effect to the relevant form set out in Schedule 2.

(3) The grouped governing body or the grouped transitional governing body, as the case may be, shall not delegate decisions relating to the contents or preparation of the instrument of government, the appointment of governors required by the instrument of government, or the date when the governing body are constituted under the instrument of government.

### **Constitution of the governing body under the instrument of government**

47.—(1) Any reference in regulation 47(2) to 48 to the grouped governing body shall be construed as a reference to the grouped transitional governing body at any time on or after the appointed day.

(2) In relation to each grouped school, the grouped governing body shall notify in writing to the local education authority a date after 30th August 1999, but before 1st January 2000, which shall be the incorporation date.

(3) The grouped governing body shall secure that appointments or elections of governors required by the instrument of government for a grouped school take place before the incorporation date with effect from—

- (a) midnight on the incorporation date; or
- (b) midnight on the actual incorporation date if the grouped governing body notify such governors and the local education authority that (in default) the actual incorporation date falls after the incorporation date.

(4) The date on which the governing body of a grouped school are constituted under the instrument of government, and incorporated under section 36(1) of the 1998 Act, is referred to in this Part as the actual incorporation date.

### **New governors**

**48.**—(1) Regulations 15 to 18 shall apply in relation to each grouped school as if—

- (a) “regulation 47(3)” were substituted for “regulation 14(3)”;
- (b) “grouped governing body” were substituted for “temporary governing body”;
- (c) “grouped school” were substituted for “new LEA maintained school”;
- (d) “co-opted governors” were substituted for “temporary co-opted governors”; and
- (e) “(after the school’s opening date)” were omitted;

wherever those expressions occur.

(2) Without prejudice to paragraph (1), regulation 16 shall apply as if—

- (a) the following paragraph were inserted after paragraph (4)—
  - “(4A) Any partnership governor shall be a person nominated as a partnership governor, and appointed as such, in accordance with Schedule 5.”;
- (b) in paragraph (7), “partnership governors,” were inserted before “parent governors”.

### **The grouped transitional governing body**

**49.**—(1) In any case where the governing body of a maintained school which is a grouped school are not constituted under the instrument of government before the appointed day, the grouped governing body shall continue from that day as constituted immediately before that day, subject to and in accordance with this regulation and regulation 57(3).

(2) In this regulation, “the relevant provisions” means—

- (a) the provisions in of the 1996 Act relating to the composition and name of grouped governing bodies, disqualification for office of members of such governing bodies and instruments of government for grouped schools;
- (b) any regulations and instruments of government in force under those provisions (or as if made under those provisions) immediately before the appointed day.

(3) The relevant provisions shall have effect for the purpose of determining the composition and name of the grouped transitional governing body and the circumstances in which a person is disqualified for office as a member of the grouped transitional governing body, but subject to the modifications in paragraph (4).

(4) For this purpose the relevant provisions shall have effect as set out in this paragraph.

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(3) If new governing bodies for all the schools in the group are constituted under instruments of government before the appointed day, the grouped governing body continues until dissolved under regulation 50.

- (a) The relevant provisions shall have effect as if any such instrument of government were required to provide and did provide for the local education authority to appoint the number of governors specified in sub-paragraph (a)(i) or (ii) below (as the case may be) if that is more than the number of governors appointed by the local education authority required by such instrument of government.
    - (i) Where the governing body of only one school in the group is not constituted under the instrument of government before the appointed day, the number specified is the minimum number of governors required to be appointed by the local education authority by Schedule 9 to the 1998 Act for a school of the category to which the school is allocated by Schedule 2 to the 1998 Act (taking account of whether the school is a primary, secondary or special school and the number of pupils registered at the school).
    - (ii) Where the governing body of more than one school in the group is not constituted under the instrument of government before the appointed day, the number specified is the number of governors that would be required to be appointed by the local education authority by sub-paragraph (i) above if the school requiring the smallest number of LEA governors were the only school in the group for which the governing body was not constituted under the instrument of government before the appointed day.
  - (b) The relevant provisions shall have effect as if, subject to any appointments required by sub-paragraph (a), they provided that no new appointments shall be made of governors under those provisions.
- (5) Members of the grouped transitional governing body shall continue in office, even if the term of office for which they were originally appointed has expired.
- (6) For the purposes of this Part the grouped governing body as constituted under this regulation from the appointed day shall be referred to as the grouped transitional governing body.
- (7) The grouped transitional governing body—
- (a) shall continue in existence as a body corporate; and
  - (b) shall so continue in existence as if, in relation to each grouped school, from the appointed day until the constitution of the governing body under the instrument of government or the discontinuance of the school if earlier, it were the governing body incorporated under section 36(1) of the 1998 Act, except that—
    - (i) subject to these Regulations, provisions made by or under the 1998 Act relating to instruments of government, composition of governing bodies and disqualification of governors, and paragraphs 2(1) and 4 of Schedule 10 to the 1998 Act, shall not apply to the grouped transitional governing body; and
    - (ii) for the purposes of their meetings and proceedings, the grouped transitional governing body may treat one or more grouped schools (for which no governing body has been constituted under an instrument of government) as a single school.

### **Dissolution of grouped governing body or grouped transitional governing body**

**50.—**(1) The grouped governing body shall notify the Secretary of State and the local education authority when—

- (a) they have fulfilled all their obligations under this Part;
- (b) any transfers required by regulations 54 and 55 have been completed; and
- (c) they no longer conduct any, grouped school, employ any staff at such a school, have any legal proceedings or applications pending by or against them, or have any property, rights or liabilities.

- (2) The grouped governing body are dissolved by virtue of this regulation—
- (a) on the date 3 months after the notification referred to in paragraph (1) is received by the Secretary of State; or
  - (b) if, prior to the date referred to in sub-paragraph (a), the Secretary of State has informed the grouped governing body that he is not satisfied as to any of the matters set out in the notification, such later date as may be specified in a written notice from the Secretary of State to the grouped governing body.
- (3) References in this regulation to the grouped governing body include a grouped transitional governing body.

### **Elections**

**51.** Regulation 19 applies in relation to the election of governors referred to in regulation 47(3) but in that regulation for this purpose—

- (a) paragraph (1) shall be omitted;
- (b) there shall be substituted for paragraph (2);
  - “(2) Subject to paragraph (4), in this regulation, “appropriate authority” means
    - (a) in relation to a grouped school which will be or is from the appointed day a community, community special or voluntary controlled school, the local education authority; and
    - (b) in relation to a grouped school which will be or is from the appointed day a voluntary aided, foundation or foundation special school, the grouped governing body before the appointed day and the grouped transitional governing body on and after that day.”;
- (c) In paragraph (4), for “the temporary governing body or the transitional governing body” there shall be substituted “the grouped governing body or the grouped transitional governing body”.
- (d) there shall be substituted for paragraph (11)—
  - “(11) Where a local education authority are the appropriate authority that authority shall exercise their functions under this regulation in a manner calculated to enable the grouped governing body or the grouped transitional governing body, as the case may be, to fulfil their respective duties under regulation 47(3).”

### **Tenure of office**

**52.** Regulation 20 shall apply, except that for each reference to a new LEA maintained school there shall be substituted a reference to a grouped school.

### **Qualifications and disqualifications**

**53.** Schedule 6 sets out the circumstances in which a person is qualified or disqualified for holding or continuing in office, or for being elected, appointed or nominated, as a governor of a grouped school required by an instrument of government or treated as if provided for by such an instrument of government by virtue of regulation 57.

### **Transfer of property**

**54.**—(1) Subject to paragraphs (2), (4) and (5), in the case of each grouped school, on the transfer date—

- (a) all land or other property which, immediately before the transfer date, was property of the grouped governing body held or used for the purposes of the school; and
- (b) all rights and liabilities of the grouped governing body subsisting immediately before that date which were acquired or incurred for those purposes,

shall be transferred to and, by virtue of this regulation, vest in either—

- (i) the governing body of the school constituted under the instrument of government, in the case of a grouped school which on or after the appointed day becomes a foundation or voluntary aided school, or
- (ii) the local education authority, in the case of a grouped school which on or after the appointed day becomes a community, community special or voluntary controlled school.

(2) Subject to paragraph (5), on the first transfer date, any property, rights and liabilities of a grouped governing body held or used or subsisting for the purposes of more than one school in the group shall, where the nature of the property, right or liability permits, be divided or apportioned between the schools, in such proportions as may be appropriate.

(3) Where any estate or interest in land falls to be divided in accordance with paragraph (2)—

- (a) any rent payable under a lease in respect of that estate or interest; and
- (b) any rent charged on that estate or interest;

shall be correspondingly divided or apportioned so that each part is payable in respect of, or charged on, only one part of the estate or interest and the other part or parts are payable in respect of, or charged on, only the other part or parts of the estate or interest.

(4) Subject to paragraph (5), any such property, right or liability as is mentioned in paragraph (2), the nature of which does not permit its division or apportionment as so mentioned, shall be transferred either to the governing body of any one or other of the schools in the group which on or after the appointed day becomes a foundation or voluntary aided school or to the local education authority in the case of any school in the group which on or after the appointed day becomes a community, community special or voluntary controlled school, according to—

- (a) in the case of an estate or interest in land, whether on the first transfer date one or other of the schools appears to be in greater need of the security afforded by that estate or interest or, where none of them appears to be in greater need of that security, which of them appears on that date to be likely to make use of the land to the greater extent; or
- (b) in the case of any other property or any right or liability, which of them appears on the first transfer date to be likely to make use of the property or (as the case may be) to be affected by the right or liability to the greater extent;

subject (in either case) to such arrangements for the protection of the other school or schools concerned as may be appropriate.

(5) Paragraphs (1), (2) and (4) shall not apply to—

- (a) rights and liabilities under any contract of employment; or
- (b) any land or other property vested in the grouped governing body as trustees.

(6) (a) Section 198(3) of and paragraphs 2 to 10 of Schedule 10 to the Education Reform Act 1988 (which make further provision in relation to transfers of property, rights and liabilities) shall apply to transfers under this regulation with the following modifications.

(b) Paragraph 2(1) of Schedule 10 shall apply subject to—

- (i) the reference to “paragraph 1(4) above” shall be treated as a reference to “paragraph (4) of regulation 54 of the Education (Transition to New Framework) (New Schools, Groups and Miscellaneous) Regulations 1999”;

- (ii) in sub-paragraph 1(a) the substitution of “other school or schools concerned” for “transferor”; and
- (iii) in sub-paragraph 1(b) the substitution of “other school or schools concerned” for “transferor” in the last place where that word occurs.
- (c) References in section 198(3) and in the said paragraphs of Schedule 10, as they apply for the purposes of this regulation, to the transfer date are to the transfer date as it is defined for the purposes of this regulation.
- (a) (7) (a) In this regulation, “first transfer date” means the transfer date of the first school in the group to have a governing body constituted under the instrument of government and “transfer date”, in relation to a grouped school, means the appointed day or the day after the actual incorporation date, if different.
- (b) References in this regulation to the grouped governing body include a grouped transitional governing body.
- (c) References in this regulation to a school or schools in the group shall include a school or schools which were in the group immediately before the first transfer date.

### **Transfer of staff**

**55.**—(1) Subject to paragraph (2), this regulation shall apply to any person who immediately before the transfer date is employed by the grouped governing body of—

- (a) a grouped school which is an aided school, (or which, immediately prior to the appointed day, was an aided school); or
- (b) a grouped school which is a grant-maintained school (or which, immediately prior to the appointed day, was a grant-maintained school).

(2) This regulation shall not apply to any person whose contract of employment terminates on the day immediately preceding the transfer date.

(3) A person who before the transfer date in relation to a grouped school within paragraph (1)(a) or (b) has been appointed by the grouped governing body of that school to work at the school as from the transfer date shall be treated for the purposes of this regulation as if he had been employed by the grouped governing body immediately before that day to do such work at the school as he would have been required to do on or after that day under his contract of employment with the grouped governing body.

(4) The contract of employment between a person to whom this regulation applies and his former employer shall have effect from the transfer date as if originally made between him and his new employer.

(5) Without prejudice to paragraph (4)—

- (a) all the former employer’s rights, powers, duties and liabilities under or in connection with the contract of employment shall by virtue of this regulation be transferred to the new employer on the transfer date; and
- (b) anything done before that date by or in relation to the former employer in respect of that contract or the employee shall be deemed from that day to have been done by or in relation to the new employer.

(6) Paragraphs (4) and (5) are without prejudice to any right of an employee to terminate his contract of employment if a substantial change is made to his detriment in his working conditions, but no such right shall arise by reason only of the change in employer effected by this regulation.

(7) In this regulation—

“aided school” has the meaning in the 1996 Act;



“first transfer date” means the transfer date of the first school in the group to have a governing body constituted under the instrument of government;

“the former employer” means the grouped governing body;

“the new employer”—

- (a) in the case of a person who, immediately before the transfer date in relation to a school within paragraph (1)(a) above, was employed by the grouped governing body to work solely at that school, means the governing body of that school constituted under the instrument of government;
- (b) in the case of a person who, immediately before the first transfer date in relation to a school within paragraph 1(a) above, was employed by the grouped governing body to work at more than one school in the group, shall be determined by the grouped governing body before the first transfer date and shall be either the governing body of one of the grouped schools constituted under an instrument of, subject to paragraph (9), government or the local education authority, provided that the authority has given its prior consent to becoming the employer;
- (c) in the case of a person who, immediately before the transfer date in relation to a school within paragraph (1)(b) above, was employed by the grouped governing body to work solely at that school means;
  - (i) where on the appointed day the school becomes a foundation or voluntary aided school, the governing body of that school constituted under the instrument of government; and
  - (ii) where on the appointed day the school becomes a community or voluntary controlled school, the local education authority; and
- (d) in the case of a person who, immediately before the first transfer date in relation to a school within paragraph (1)(b) above, was employed by the grouped governing body to work at more than one school in the group, shall be determined by the grouped governing body before the first transfer date and shall be either;
  - (i) the governing body constituted under an instrument of government of one of the grouped schools, which on the appointed day becomes a foundation or voluntary aided school, or
  - (ii) the local education authority, in the case of a grouped school which on the appointed day becomes a voluntary controlled or community school or (provided that the authority has given its prior consent to becoming the employer and subject to paragraph (9)) in the case of a grouped school which on the appointed day becomes a foundation or voluntary aided school; and

“transfer date” in relation to a grouped school means the appointed day or the day after the actual incorporation date, if different.

(8) References in this regulation to the grouped governing body include a grouped transitional governing body.

(9) A local education authority may only become the new employer of a person employed to work at a foundation or voluntary aided school under this regulation where that person is employed to work in a non-teaching post.

### **Modification of section 73 of the 1998 Act**

**56.** Section 73 of the 1998 Act shall not apply to the transfers of staff from a grouped governing body.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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