



Education Act 1993

1993 CHAPTER 35

PART II

GRANT-MAINTAINED SCHOOLS

CHAPTER V

GOVERNMENT, CONDUCT ETC. OF GRANT-MAINTAINED SCHOOLS

Schools acquiring grant-maintained status: determination etc. of initial governors

71 Determination of initial parent and teacher governors

- (1) Where proposals are required to be published under section 32 of this Act in respect of a school, this section applies for the purpose of determining the persons who are to be named in the proposals as proposed initial governors of any elected category.
- (2) The authority responsible for election arrangements under the Education (No. 2) Act 1986 shall secure that—
 - (a) any election or appointment required for filling any vacancy on the existing governing body occurring before the date of publication of the proposals (including any vacancy arising by virtue of section 72(1) of this Act), and
 - (b) any election or appointment required by subsection (7) below,is held or made if possible before that date, and otherwise as soon as possible afterwards.
- (3) Subject to subsection (4) below, any person who on the date of publication of the proposals is an eligible governor of an elected category on the existing governing body shall be named in the proposals as published as a proposed initial governor of that category.
- (4) If the number of governors of any elected category to be specified in the proposals is less than the number which, on the date of publication of the proposals, will be the

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number of eligible governors of that category on the existing governing body, such of the eligible governors of that category as may before the date of publication of the proposals be determined—

- (a) by agreement between them, or
- (b) in default of agreement, by drawing lots,

shall be named in the proposals as published as the proposed initial governors of that category.

- (5) The existing governing body shall secure that any persons required to be named in the proposals in accordance with subsection (4) above are determined before the date of publication of the proposals.
- (6) Subsection (7) below applies if the number which is, or is to be, specified in the proposals of governors of any elected category is greater than the complement of eligible governors of that category on the existing governing body on the date of publication of the proposals; and for those purposes that complement is—
 - (a) the number (if any) of eligible governors of that category on the existing governing body, plus
 - (b) the number (if any) of outstanding vacancies for governors of that category on the existing governing body.
- (7) The authority responsible for election arrangements under the Education (No. 2) Act 1986 shall secure that such number of persons are elected or appointed by the procedure applicable under that Act to hold office on the proposed governing body as governors of that category as is required to make up the difference between the number specified or to be specified in the proposals and the complement of eligible governors of that category on the existing governing body.
- (8) In a case to which subsection (7) above applies, the persons to be named in the proposals as published as the proposed initial governors of the category concerned shall be—
 - (a) any eligible governor of that category, and
 - (b) any person elected or appointed under subsection (7) above as an initial governor of that category before the date of publication of the proposals.

72 Section 71: supplementary provisions

- (1) Subject to subsection (2) below, where the members of the existing governing body of a school to which section 71 of this Act applies include a person—
 - (a) who holds office as a governor of an elected category, and
 - (b) whose term of office is due to come to an end before the date of implementation of the proposals or at any time within the period of six months beginning with that date,

the governing body may by notice in writing to that person terminate his term of office on a date specified in the notice.
- (2) The governing body may only terminate a person's term of office under subsection (1) above if—
 - (a) his term of office is due to come to an end after the proposed date of publication of the proposals, or
 - (b) it would not in their view be reasonably practicable, in the time available between the date on which his term of office is due to come to an end and

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the proposed date of publication of the proposals, to fill the vacancy by the procedure applicable under the Education (No. 2) Act 1986.

- (3) Without prejudice to section 8(2) of that Act (instrument of government for county, controlled or maintained special school to provide for four year term of office for governors other than ex officio governors), the term of office of a person elected or appointed in accordance with the requirements of that Act and any requirements of the instrument of government of the school to fill a vacancy arising by virtue of subsection (1) above shall be four years.
- (4) Where any such election or appointment as is referred to in section 71(2) of this Act is held or made on or after the date of publication of the proposals, the existing governing body shall publish at such time and in such manner as may be prescribed notice of the election or appointment.

73 Determination of initial first or foundation governors

- (1) Where proposals are required to be published under section 32 of this Act in respect of a county school, the existing governing body shall select the persons who are to be the initial first governors.
- (2) Where proposals are required to be published under section 32 of this Act in respect of a voluntary school, the person or persons named in the school's instrument of government as being entitled to appoint foundation governors (within the meaning of the Education Act 1944) to the existing governing body shall select the persons who are to be the initial foundation governors.
- (3) The duties under subsections (1) and (2) above are to be complied with, if possible, before the date of publication of the proposals and otherwise as soon as possible after that date.
- (4) Any person selected under subsection (1) or (2) above shall, if possible, be named in the proposals as published as a proposed initial first or, as the case may be, foundation governor.
- (5) In the case of any person so selected who is not named in the proposals as published, the existing governing body shall—
 - (a) give the Secretary of State notice in writing of the relevant particulars in respect of the person selected before such date as may be specified in directions given by the Secretary of State, and
 - (b) publish at such time and in such manner as may be prescribed notice of his selection.
- (6) Where the Secretary of State is notified of any particulars under subsection (5) above, he shall modify the proposals by including in them the particulars notified to him.
- (7) The existing governing body shall secure that any selection required by subsection (2) above is carried out in accordance with that subsection.
- (8) Where any selection falls in accordance with subsection (2) above to be made by two or more persons, it shall be made by those persons acting jointly; and if they fail to agree on the selection, it shall be made by the Secretary of State or in accordance with directions given by him.
- (9) Before selecting, or giving any direction as to the selection of, an initial foundation governor in a case where religious education in accordance with the tenets of a

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particular religion or religious denomination is given to pupils at the school in pursuance of section 27 or 28 of the Education Act 1944 (religious education at voluntary schools), the Secretary of State shall consult the persons appearing to him to be the appropriate authority of the religion or denomination concerned.

74 Replacement of proposed initial parent and teacher governors before incorporation

- (1) This section applies where proposals published under section 32 of this Act are pending in respect of a school.
- (2) If a person named in the proposals as a proposed governor of an elected category who was elected under section 71 of this Act or this section—

- (a) dies,
- (b) becomes prospectively disqualified for holding office as such a governor on the proposed governing body, or
- (c) notifies the existing governing body that he is no longer willing to serve on the proposed governing body,

then, subject to subsection (3), below the authority responsible for election arrangements under the Education (No. 2) Act 1986 in relation to the school shall secure that a person is elected or appointed by the procedure applicable under that Act to hold office on the proposed governing body in his place.

- (3) Where in a case to which subsection (2) above applies the Secretary of State is satisfied that it would not be reasonably practicable to hold an election or make an appointment in accordance with that subsection in the time available, he shall modify the proposals by including in them (in substitution, where appropriate, for any particulars they supersede) the relevant particulars in respect of a person nominated by the existing governing body.
- (4) If at any time a person named in the proposals as a proposed governor of an elected category who was so named by virtue of being an eligible governor of that category—
- (a) ceases to hold office on the existing governing body,
 - (b) becomes prospectively disqualified for holding office as such a governor on the proposed governing body, or
 - (c) notifies the existing governing body that he is no longer willing to serve on the proposed governing body,

the Secretary of State shall modify the proposals by including in them (in substitution, where appropriate, for any particulars they supersede) the relevant particulars in respect of a person nominated by the existing governing body who is at that time an eligible governor of that category who is neither named in the proposals nor prospectively disqualified as mentioned in paragraph (b) above.

- (5) Where in a case to which subsection (4)(a) above applies—
- (a) there is no such eligible governor at the time in question, and
 - (b) the Secretary of State is satisfied that it would not be reasonably practicable in the time available before he determines the proposals to fill the vacancy on the existing governing body by the procedure applicable under the Education (No. 2) Act 1986,

the Secretary of State shall modify the proposals by including in them (in substitution, where appropriate, for any particulars they supersede) the relevant particulars in respect of a person nominated by the existing governing body.

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- (6) Where in a case to which subsection (4)(b) or (c) above applies there is no such eligible governor at the time in question, subsection (2) above shall apply as if the former proposed governor had been elected under section 71 of this Act.
- (7) If a person named in the proposals as a proposed governor of an elected category who was nominated by the existing governing body under this section—
- (a) dies,
 - (b) becomes prospectively disqualified for holding office as such a governor on the proposed governing body, or
 - (c) notifies the existing governing body that he is no longer willing to serve on the proposed governing body,
- the Secretary of State shall modify the proposals by including in them (in substitution, where appropriate, for any particulars they supersede) the relevant particulars in respect of a person nominated by the existing governing body.
- (8) References in this section to a person named in the proposals include any person required to be so named.
- (9) The existing governing body shall—
- (a) give the Secretary of State notice in writing of the occurrence of any event within subsection (2), (4) or (7) above,
 - (b) make any nomination required for the purposes of this section, and
 - (c) give the Secretary of State notice in writing of the relevant particulars in respect of any person nominated by them under this section.

75 Replacement of proposed initial first or foundation governors before incorporation

- (1) Where proposals published under section 32 of this Act are pending in respect of a county school and a person selected under section 73(1) of this Act to be a first governor—
- (a) dies,
 - (b) becomes prospectively disqualified for holding office as such a governor on the proposed governing body, or
 - (c) notifies the existing governing body that he is no longer willing to serve on the proposed governing body,
- the Secretary of State shall modify the proposals by including in them (in substitution, where appropriate, for any particulars they supersede) the relevant particulars in respect of a person nominated by the existing governing body.
- (2) Where proposals published under section 32 of this Act are pending in respect of a voluntary school and a person selected under section 73(2) of this Act to be a foundation governor—
- (a) dies,
 - (b) becomes prospectively disqualified for holding office as such a governor on the proposed governing body, or
 - (c) notifies the existing governing body that he is no longer willing to serve on the proposed governing body,
- the Secretary of State shall modify the proposals by including in them (in substitution, where appropriate, for any particulars they supersede) the relevant particulars in respect of a person nominated by the person or persons named in the school's

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instrument of government as being entitled to appoint the foundation governors (within the meaning of the Education Act 1944) to the existing governing body.

- (3) Subsections (8) and (9) of section 73 of this Act apply for the purposes of subsection (2) above as they apply for the purposes of that section, but as if references to selection were to nomination.
- (4) The existing governing body shall—
 - (a) give the Secretary of State notice in writing of the occurrence of any event within subsection (1) or (2) above,
 - (b) make or secure the making of any nomination required for the purposes of this section, and
 - (c) give the Secretary of State written notification of the relevant particulars in respect of any person nominated under this section.

76 Elections and appointments required for determining initial governors of an elected category: supplementary provisions

- (1) Section 15(2) to (6) of the Education (No. 2) Act 1986 shall apply in relation to the election of a person under section 71 or 74 of this Act to hold office as an initial parent governor or an initial teacher governor as it applies in relation to the election of a parent governor or teacher governor to the existing governing body.
- (2) Where the authority responsible for election arrangements under the Education (No. 2) Act 1986 in relation to a school to which section 71 of this Act applies is the local education authority, the existing governing body shall give notice in writing to the authority of the proposed date of publication of the proposals for acquisition of grant-maintained status for the school.
- (3) Where the authority responsible for election arrangements under the Education (No. 2) Act 1986 in relation to a school to which section 71 or 74 of this Act applies is the local education authority, the existing governing body shall notify the authority in writing—
 - (a) of any election or appointment which appears to them to be required under section 71 or 74 of this Act in relation to the proposed governing body, and
 - (b) if the number of eligible governors of any category on the existing governing body is for the time being less than the proposed number of initial governors of that category, of any vacancy on the existing governing body for a governor of that category.
- (4) Where an election or appointment required for determining a proposed initial governor of any category is held or made at a time when proposals published under section 32 of this Act are pending in respect of the school, the existing governing body shall give the Secretary of State notice in writing of the relevant particulars in respect of the person elected or appointed.
- (5) Where the Secretary of State is notified of any particulars under subsection (4) above, he shall modify the proposals by including in them the particulars notified to him (in substitution, where appropriate, for any particulars they supersede).
- (6) For the purposes of subsection (4) above, an election or appointment is required for determining a proposed initial governor of any category if—
 - (a) it is required under section 71 or 74 of this Act, or
 - (b) it is required for filling a vacancy on the existing governing body for a governor of that category and the number of eligible governors of that

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category on the existing governing body is for the time being less than the proposed number of initial governors of that category.

77 Initial sponsor governors

- (1) In relation to any governing body to be incorporated under Chapter II in pursuance of proposals for acquisition of grant-maintained status which give the name of a sponsor of the school, regulations shall make provision—
 - (a) for the determination of the persons who are to be the initial sponsor governors, and
 - (b) for the persons so determined to be named in the proposals, whether as published or as modified in pursuance of the regulations.
- (2) The regulations may in particular make provision corresponding to any of the provisions of sections 71 to 76 of this Act.