

1999 No. 1502

EDUCATION, ENGLAND AND WALES

The Foundation Body Regulations 1999

<i>Made</i>	- - - -	<i>28th May 1999</i>
<i>Laid before Parliament</i>		<i>28th May 1999</i>
<i>Coming into force</i>		<i>22nd June 1999</i>

In exercise of the powers conferred on the Secretary of State by sections 21(5) and (6) and 138(7) of the School Standards and Framework Act 1998^(a), the Secretary of State for Education and Employment, as respects England, and the Secretary of State for Wales, as respects Wales, hereby make the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Foundation Body Regulations 1999 and shall come into force on 22nd June 1999.

(2) In these Regulations—

“the 1998 Act” means the School Standards and Framework Act 1998;

“community member” means a member of the foundation body nominated by the governing bodies of schools and appointed by the governor members of the foundation body under regulation 4(b) or 7(4);

“governor member” means a member of the foundation body appointed by the governing body of a school under regulation 7(1) or (3) or regulation 21(5);

“group” means the group of three or more schools for which a foundation body performs the following functions, namely—

(a) to hold property of those schools for the purposes of those schools, and

(b) to appoint foundation governors for those schools;

“implementation date” means the date, on which a group is to be formed, specified in writing by the Secretary of State under regulation 5(1); and

“initial governor member” shall be construed in accordance with regulation 3(4).

(3) Where any land is transferred to and vests in a foundation body in accordance with these Regulations, any rights or liabilities—

(a) enjoyed or incurred by the transferor in connection with the land; and

(b) subsisting immediately before the transfer of the land,

shall also be transferred to, and by virtue of these Regulations vest in, the foundation body.

(4) Expressions used in these Regulations set out in the first column of the following table shall have the meanings attributed to them by the provisions set out opposite thereto in the second column.

TABLE

financial year	section 579(1) of the Education Act 1996 ^(a)
foundation	section 21(3) of the 1998 Act
foundation body	section 21(4) of the 1998 Act
foundation governor	paragraph 2 of Schedule 9 to the 1998 Act.

(5) References to the Secretary of State in any provision of these Regulations conferring functions on the Secretary of State shall be read, in relation to Wales, in respect of any time on or after 1st July 1999, as references to the National Assembly for Wales^(b).

(6) References to a category in any provision of these Regulations is a reference to one of the categories set out in section 20(1) of the 1998 Act.

(7) Unless the context otherwise requires, a reference in these Regulations to a numbered regulation is a reference to the regulation so numbered in these Regulations.

Foundation bodies and groups

2.—(1) Subject to paragraph (2) below—

- (a) a school may only form part of a group; and
- (b) the governing body of a school may only apply to the Secretary of State for the establishment of a foundation body,

if that school is a foundation or voluntary school or if it is a grant-maintained or community school^(c) which the governing body propose should become a foundation or voluntary school.

(2) A school which has a foundation, other than a foundation body, may not form part of a group and its governing body may not propose the establishment of a foundation body.

(3) A foundation body may be established under section 21 of the 1998 Act before 1st September 1999 in relation to three or more grant-maintained schools which do not have foundations for the purpose of carrying out the functions set out in regulation 4.

Establishment of foundation bodies

3.—(1) A foundation body may only be established under section 21 of the 1998 Act in accordance with the following provisions of this regulation.

(2) The governing bodies of the three or more schools which wish a particular foundation body to be established and which propose to form the group for which the foundation body will act shall together apply to the Secretary of State for the establishment of that foundation body.

(3) The application shall contain—

- (a) a statement that the application has been agreed by the governing body of each school;
- (b) a draft instrument of government for the foundation body based on the model set out in Schedule 1 to these Regulations;
- (c) a statement containing—
 - (i) the names of the initial governor members of the foundation body to be appointed in accordance with regulation 7(1),
 - (ii) the proposed implementation date,
 - (iii) the category in which it is proposed that each school will enter the group or a statement that a particular school will enter in its existing category, and
 - (iv) an undertaking that the foundation body will appoint foundation governors to schools in the group in accordance with the instruments of government of the schools in question.

^(a) 1996 c. 56.

^(b) The National Assembly for Wales was established by section 1 of the Government of Wales Act 1998 (c. 38). All the functions of the Secretary of State relevant to these Regulations are transferred to the Assembly by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) with effect from 1st July 1999. Accordingly, in relation to Wales, references to the Secretary of State in the relevant sections and Schedules to the School Standards and Framework Act 1998 are to be construed as being, or including, a reference to the Assembly *see* section 43 of the Government of Wales Act 1998.

^(c) A community school may not become a foundation or voluntary school until after the end of the period prescribed for the purposes of section 35(2) of the 1998 Act. At the date these Regulations are made no such period has been prescribed.

(4) If the Secretary of State approves the application, a foundation body shall be established as a body corporate under section 21 of the 1998 Act on a date specified by him in writing. On the date of establishment, the initial governor members specified in the application, subject to any changes agreed by the Secretary of State with the governing body or bodies in question, shall be the initial governor members of the foundation body.

4. After establishment of the foundation body and before the implementation date, the initial governor members shall—

- (a) adopt the instrument of government in the form approved by the Secretary of State;
- (b) appoint community members from those nominated in accordance with regulation 7(2); and
- (c) select persons to be appointed as foundation governors to schools in the group,

and the foundation body may only exercise its powers before that date for or in connection with those purposes.

5.—(1) If the Secretary of State is satisfied that the membership of the foundation body has been properly constituted, that the instrument of government has been adopted and that the schools have or will on entering the group become schools of the category specified in the application then he shall by notice in writing provide that—

- (a) the foundation body shall perform the functions conferred on it by these Regulations for the schools in the group as from a date specified by him;
- (b) the schools specified in the application shall on that date form the group for which the foundation body is to act; and
- (c) any land, other than land held on trust, which immediately before that date is held by the governing body for the purposes of the school shall on that date be transferred to, and by virtue of these Regulations vest in, the foundation body for the purposes of the schools comprising the group for which that body acts.

(2) If the Secretary of State is not so satisfied within what is, in his opinion, a reasonable time in all the circumstances he may dissolve the foundation body by notice in writing.

(3) The Secretary of State's notice under paragraph (1) above shall constitute the Secretary of State's written consent to the disposal of land referred to in sub-paragraph (c) of that paragraph as required by paragraph 1(2) of Schedule 22 to the 1998 Act.

6. The governing body of a school in or to be in the group shall notify the local education authority that the instrument of government for the school should identify the foundation body as the appointing body for the purpose of appointing foundation governors.

Membership of foundation bodies

7.—(1) The governing body of each school which proposes the establishment of the foundation body shall appoint a member of the governing body to be a governor member of that foundation body.

(2) The governing bodies of the schools which propose the establishment of the foundation body shall nominate persons to be community members.

(3) If a governor member ceases to hold office then—

- (a) the clerk shall notify all the governing bodies of schools in the group; and
- (b) the governing body who appointed that governor member shall appoint a new governor member at their next full meeting.

(4) If a community member ceases to hold office or there is a need to appoint a new community member because a school has joined the group, the clerk shall notify the governing bodies of all schools in the group. The governor members of the foundation body shall appoint a replacement or a new community member on the basis of nominations made by the governing bodies of schools in the group.

8.—(1) The quorum for a decision of the governing body of a school under regulation 7 shall be two-thirds (rounded up to a whole number) of the governors in post who are entitled to vote.

(2) The term of office of a member of a foundation body shall be four years but a member may be re-appointed.

(3) A person may not vote for his own appointment or re-appointment as a member of a foundation body.

(4) Vacancies must be filled by the next meeting of the foundation body or the meeting after if the vacancy arises less than three months before the next meeting.

(5) If a vacancy of a member is not filled then the Secretary of State may dissolve the foundation body.

Eligibility and disqualification

9.—(1) A foundation governor who has been appointed to a school in the group by a foundation body may not be a governor member of that foundation body and may not vote on appointments to the foundation body.

(2) A community member must—

- (a) have interests in business or the local community or both;
- (b) not be a parent of a registered pupil, a member of the governing body, teaching or non-teaching staff or a registered pupil, at any school in the group;
- (c) not be an elected member of a local education authority which maintains any school in the group or a person employed by such an authority in their capacity as a local education authority; and
- (d) have attained the age of 18 years at the date of his appointment.

(3) A governor member of the foundation body shall cease to hold office on ceasing to be a member of the governing body of the school which appointed him.

(4) A member of the foundation body may not be an employee of that body.

Disqualification for holding office

10. Schedule 2 to these Regulations shall have effect in relation to the disqualification of a person for holding, or for continuing to hold, office as a member of a foundation body.

Removal from office

11.—(1) A member may be removed from office by the members of the foundation body if he fails to attend two consecutive meetings.

(2) A governor member may be removed from office by the governing body which appointed him.

(3) A member may not vote in connection with a proposal that he be removed from office.

12. A member may resign at any time by notice in writing to the Clerk.

Restrictions

13. A member of a foundation body shall receive no payment, other than reasonable and necessary out-of-pocket expenses, and may take no direct or indirect benefit from any contracts entered into by the foundation body or have any interest in any land held by the foundation body.

Clerk

14.—(1) The foundation body shall appoint a person to be the clerk to the foundation body.

(2) A member of a foundation body may not act as clerk except that, where the clerk fails to attend a meeting, the foundation body may appoint a member to be the clerk for the purposes of that meeting (but without prejudice to his position as a member).

Conduct and meetings

15. The foundation body shall—

- (a) elect a member as chairman who shall be elected (or re-elected) at the first ordinary meeting of each year;
- (b) define a quorum which cannot be less than half (rounded up to the nearest whole number) the total number of members of the foundation body when complete; and

- (c) keep minutes of the proceedings of meetings and make them available to the governing bodies of schools in the group on request.

Annual Report and records

16.—(1) The foundation body shall publish an annual report of its activities for the information of the governing bodies of the schools in the group setting out—

- (a) the names of each member, including any changes since the last annual report and identifying the Chairman;
- (b) a summary of the decisions and actions of the foundation body since the last annual report unless minutes of the foundation body's meetings are issued separately;
- (c) a statement of any income and expenditure showing the balance as at the end of each financial year falling within the period of the report; and
- (d) a statement of any significant disposals, purchases or gifts and of any outstanding liabilities at the end of each financial year falling within the period of the report.

(2) The first report shall be issued within two years of the implementation date and may deal with a period longer than a year.

(3) Following the first report, annual reports must be issued no later than the next meeting after the end of the year being reported on.

Accounts

17.—(1) The foundation body shall maintain accounts and ensure that they are audited by independent external auditors. The foundation body shall publish in each financial year a copy of the accounts for the previous financial year as audited together with a statement that they have been audited.

(2) The foundation body shall comply within 2 months with a written request from any person that he be supplied with a copy of the body's most recent accounts.

Information and records

18.—(1) The foundation body shall provide the Secretary of State with such information as he requests from time to time.

(2) The foundation body shall keep all records for at least 6 years.

Functions of foundation bodies

19. Foundation bodies shall have the following functions—

- (a) to hold land and other property of schools in the group for the purposes of those schools;
- (b) to appoint foundation governors to every school in the group; and
- (c) to promote co-operation between schools in the group.

Additional powers

20.—(1) Foundation bodies may in connection with their functions—

- (a) borrow such sums as the foundation body thinks fit and in connection with such borrowing, grant any mortgage, charge or other security over any land or other property of the foundation body;
- (b) accept gifts of money, land or other property, and apply it or hold it on trust for the purposes of the schools in the group;
- (c) engage in fund raising so far as is compatible with their charitable status;
- (d) acquire and dispose of any land or property;
- (e) enter into contracts including contracts of employment;
- (f) make standing orders for the management of the foundation body and any committees and for the conduct of their business;

- (g) appoint committees;
- (h) delegate the exercise of any powers to individual members or to committees, except those relating to the appointment of foundation governors, the granting of any security or the disposal of any land; and
- (i) employ such staff (who cannot be members) as are necessary and to make all necessary provisions for those staff.

(2) The power to borrow sums and grant security or to dispose of any land mentioned above may only be exercised with the written consent of the Secretary of State.

Joining a group after the initial establishment of the foundation body

21.—(1) A school may only join a group with the agreement of the governing bodies of all the schools already in the group.

(2) An application to the Secretary of State must be made jointly in writing by the governing body of the school seeking to join the group and the foundation body and must indicate that the governing bodies of all the schools in the group agree to the school joining the group. The Secretary of State shall, if he considers it appropriate, declare in writing that the school forms part of the group as from such date and on satisfaction of such conditions as he specifies.

(3) The foundation body shall seek approval from the Secretary of State to the modification of the instrument of government.

(4) On the date specified in paragraph (2) above, in the case of a school which joins the group and does not change category in accordance with Schedule 8 to the 1998 Act, any land, other than land held on trust, which immediately before that date is held by the governing body for the purposes of the school shall on that date be transferred to, and by virtue of these Regulations vest in, the foundation body for the purposes of the schools comprising the group for which that body acts.

(5) On that date the governing body of the school joining the group shall appoint a member of their governing body to be a governor member of the foundation body.

(6) The governing body of the school shall apply to the local education authority for that authority to revise or replace the instrument of government for the school so as to name the foundation body as the appointing body for the purpose of appointing foundation governors and the local education authority shall do so in order that the appointment of foundation governors can take effect from the date that the school joins the group.

Resolution of disputes

22. Where there is a dispute between the governing bodies of schools in the group or between the governing body of one or more schools in the group and the foundation body then one of the parties to that dispute can apply in writing to the Secretary of State for him to determine the matter.

Use of land

23. The transfer of land to a foundation body under these Regulations shall not affect the rights of the governing body in relation to that land under Schedule 13 to the 1998 Act.

27th May 1999

Andrew Smith
Minister of State,
Department for Education and Employment

28th May 1999

Jon Owen Jones
Parliamentary Under Secretary of State,
Welsh Office

SCHEDULE 1

Regulation 3

INSTRUMENT OF GOVERNMENT

The instrument of government for adoption by the foundation body shall state—

- (a) the name of the foundation body;
- (b) the names of the schools in the group;
- (c) the composition consisting of—
 - (i) one governor member appointed by each school in the group, and
 - (ii) a number of community members equal to one less than the total number of governor members;
- (d) provisions as to meetings (the first meeting shall be held within twelve months from the implementation date and with no more than 13 months between each meeting);
- (e) any particular character, mission or ethos for the group accepted by its members.

SCHEDULE 2

Regulation 10

DISQUALIFICATION FOR HOLDING OFFICE

Bankruptcy

1. A person shall be disqualified for holding, or continuing to hold, office as a member of a foundation body if—

- (a) he has been adjudged bankrupt or sequestration of his estate has been awarded and (in either case) he has not been discharged;
- (b) he has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it.

Disqualification of company directors

2. A person shall be disqualified for holding, or for continuing to hold, office as a member of a foundation body at any time when he is subject to a disqualification order under the Company Directors Disqualification Act 1986^(a) or to an order made under section 429(2)(b) of the Insolvency Act 1986^(b) (failure to pay under county court administration order).

Disqualification of charity trustees

3. A person shall be disqualified for holding, or for continuing to hold, office as a member of a foundation body if—

- (a) he has been removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commissioners or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity for which he was responsible or to which he was privy, or which he by his conduct contributed to or facilitated; or
- (b) he has been removed, under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990^(c) (powers of Court of Session to deal with management of charities), from being concerned in the management or control of any body.

Criminal convictions

4.—(1) Subject to sub-paragraph (5) below, a person shall be disqualified for holding, or for continuing to hold, office as a member of a foundation body where any of sub-paragraphs (2) to (4) or (6) below apply to him.

^(a) 1986 c. 46.

^(b) 1986 c. 45.

^(c) 1990 c. 40.

- (2) This sub-paragraph applies to a person if–
- (a) within the period of five years ending with the date immediately preceding the date on which his appointment would otherwise have taken effect;
 - (b) since his appointment,

he has been convicted, whether in the United Kingdom or elsewhere, of any offence and has had passed on him a sentence of imprisonment (whether suspended or not) for a period of not less than three months without the option of a fine.

(3) This sub-paragraph applies to a person if within the period of 20 years ending with the date immediately preceding the date on which his appointment would otherwise have taken effect, he has been convicted as aforesaid of any offence and has had passed on him a sentence of imprisonment for a period of not less than two and a half years.

(4) This sub-paragraph applies to a person if he has at any time been convicted as aforesaid of any offence and has had passed on him a sentence of imprisonment for a period of not less than five years.

(5) For the purposes of sub-paragraphs (2) to (4) above, there shall be disregarded any conviction by or before a court outside the United Kingdom of an offence which, if the facts giving rise to the offence had taken place in any part of the United Kingdom, would not have constituted an offence under the law in force in that part of the United Kingdom.

- (6) This sub-paragraph applies to a person if–
- (a) within the period of five years ending with the date immediately preceding the date on which his appointment would otherwise have taken effect; or
 - (b) since his appointment,

he has been convicted under section 547 of the Education Act 1996 (nuisance and disturbance on school premises) and has been sentenced to a fine.

Notice to clerk

5. Where, by virtue of this Schedule a member becomes disqualified for holding, or for continuing to hold, office as a member, he shall give written notice of that fact to the clerk.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for and in connection with the establishment, membership and functions of foundation bodies and the steps to be taken in connection with schools joining a group of schools for which a foundation body acts.

A foundation body is a body corporate established under section 21 of the School Standards and Framework Act 1998 to perform in relation to three or more schools (“the group”) each of which is either a foundation or a voluntary school, the following functions, namely–

- (a) to hold property for those schools for the purposes of the schools;
- (b) to appoint foundation governors for those schools; and
- (c) to promote co-operation between schools in the group.

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