

2000 No. 2195

EDUCATION, ENGLAND

The Education (Change of
Category of Maintained
Schools) (England)
Regulations 2000

Made - - - - - *9th August 2000*

Laid before Parliament *11th August 2000*

Coming into force *1st September 2000*



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In the exercise of the powers conferred on the Secretary of State by sections 35, 138(7) and (8) and 144 of, and paragraph 5(2) of Schedule 4, paragraphs 2, 3, 4, and 5 of Schedule 8, and paragraph 1(5) of Schedule 12 to, the School Standards and Framework Act 1998^(a) the Secretary of State for Education and Employment hereby makes the following Regulations:

Citation, commencement and application

1.—(1) These Regulations may be cited as the Education (Change of Category of Maintained Schools) (England) Regulations 2000.

(2) These Regulations shall come into force on 1st September 2000.

(3) These Regulations apply only in relation to England.

Interpretation

2.—(1) In these Regulations:

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

“governing body” means the governing body of the school in respect of which a change of category is proposed or, as the case may be, takes place;

“the implementation date” means the date approved or specified by the relevant school organisation committee or adjudicator under the modified Schedule 6 to the Act as the date on which it is intended that the change of category should take place or the date determined by the local education authority under the modified Schedule 6 to the Act as the date on which it is intended the change of category should take place;

“the modified Schedule 6 to the Act” means that Schedule as it has effect with modifications by virtue of Schedule 1 to these Regulations;

^(a) 1998 c. 31; by virtue of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) the powers conferred by these provisions (except section 144) are exercisable by the Secretary of State only in relation to England. For the meaning of “regulations” see section 142(1) of the Act.

“the modified Schedule 12 to the Act” means that Schedule as it has effect with modifications by virtue of Schedule 4 to these Regulations;

“proposals” means proposals published under paragraph 2 or 3 of Schedule 8 to the Act with any modifications made by the school organisation committee or adjudicator under paragraph 3 or 5 of the modified Schedule 6 to the Act;

“relevant school organisation committee” means the school organisation committee established for the area of the local education authority which maintains the school in question.

(2) In these Regulations, unless the context otherwise requires, a reference to a Schedule is a reference to a Schedule to these Regulations.

Breach of Prescribed Time Limits

3. A failure by a local education authority or a governing body to discharge any duty within a time limit prescribed by these Regulations shall not relieve the authority or the governing body of that duty.

Proposals

4.—(1) Where—

- (a) a local education authority propose under paragraph 2 of Schedule 8 to the Act that a community school should become a foundation school or that a community special school should become a foundation special school;
- (b) a governing body propose under paragraph 2 of Schedule 8 to the Act that a community, foundation, voluntary aided, or voluntary controlled school should become a school within another of those categories;
- (c) a governing body propose under paragraph 2 of Schedule 8 to the Act that a community special school should become a foundation special school or a foundation special school should become a community special school;
- (d) a governing body of a voluntary aided school are unable or unwilling to carry out their obligations under Schedule 3 to the Act and are required to publish proposals under paragraph 3 of Schedule 8 to the Act,

section 28(3), (5), (6), (8), (10) and (11) of, and Part I of Schedule 6 to, the Act shall apply to the proposals published under paragraph 2 or 3 of Schedule 8 to the Act and shall do so with the modifications set out in Schedule 1.

(2) The provisions of section 28 of, and Part 1 of Schedule 6 to, the Act so applied are set out as modified in Schedule 2.

Restrictions on Changing Category of School

5. A school may not change category to become a voluntary aided school unless the governing body of the school satisfy the relevant school organisation committee that the governing body (as the governing body of a voluntary aided school) will be able to carry out their obligations under Schedule 3 to the Act for a period of at least five years following the implementation date.

6. A school’s change of category under these Regulations shall not be taken as authorising a school to establish, join or leave a foundation body.

7. A foundation, voluntary aided or voluntary controlled school may not become a community school and a foundation special school may not become a community special school unless any transfer agreement required by (as the case may be) paragraph 6, 7, 9, or 12 of Schedule 6 has been entered into.

Voting of members of school organisation committees on proposals

8.—(1) In this regulation a reference to a group of members of a school organisation committee is a reference to a group of members of the committee appointed under a particular sub-paragraph of regulation 5(1) of the Education (School Organisation Committees) (England) Regulations 1999(a).

(a) S.I. 1999/700.

(2) Each group of members shall collectively have a single vote in relation to any decision of the committee as to whether or not—

- (a) to give any approval under paragraph 3 of the modified Schedule 6 to the Act;
- (b) to modify any proposals or specify a later date under paragraph 5(2)(a) or (b) of the modified Schedule 6 to the Act;
- (c) to make a determination under paragraph 5(3) of the modified Schedule 6 to the Act;
- (d) to consent under paragraph 3(9) of the modified Schedule 6 to the Act to the withdrawal of proposals; or
- (e) to defer consideration of whether to take any decision on any of the matters referred to in sub-paragraphs (a) to (d).

(3) All decisions on questions referred to in paragraph (2) shall be unanimous decisions of all those voting.

Implementation

9. On the implementation date the school shall change category in accordance with the proposal.

Transfer of Staff

10. Schedule 3 shall have effect in relation to the transfer of staff.

Instrument of Government

11.—(1) The governing body and the local education authority shall secure that by the end of the implementation period a new instrument of government is made for the school in accordance with the modified Schedule 12 to the Act.

(2) The implementation period is the period commencing—

- (a) on the date a proposal is approved under paragraph 3 of the modified Schedule 6 to the Act, or
- (b) on the date the local education authority determine to implement a proposal under paragraph 4 of the modified Schedule 6 to the Act,

and ending on the implementation date.

(3) The new instrument of government shall take effect from the date of making for the purpose of reconstituting the governing body but shall not affect the constitution of the governing body conducting the school pending the implementation date.

(4) For all other purposes, the new instrument of government shall take effect from the implementation date.

12.—(1) In the case of a school becoming a foundation school or a foundation special school—

- (a) the new instrument of government shall be made in the form set out in Part I of Schedule 4,
- (b) it shall be a sufficient compliance with sub-paragraph (a) if the instrument of government is in a form substantially to the like effect to the form set out in Part I of Schedule 4.

(2) In the case of a school becoming a voluntary aided school—

- (a) the new instrument of government shall be made in the form set out in Part II of Schedule 4, and
- (b) it shall be a sufficient compliance with sub-paragraph (a) if the instrument of government is in a form substantially to the like effect to the form set out in Part II of Schedule 4.

(3) In the case of a school becoming a voluntary controlled school—

- (a) the new instrument of government shall be made in the form set out in Part III of Schedule 4, and

- (b) it shall be a sufficient compliance with sub-paragraph (a) if the instrument of government is in a form substantially to the like effect to the form set out in Part III of Schedule 4.
- (4) In the case of a school becoming a community school—
- (a) the new instrument of government shall be made in the form set out in Part IV of Schedule 4, and
 - (b) it shall be a sufficient compliance with sub-paragraph (a) if the instrument of government is in a form substantially to the like effect to the form set out in Part IV of Schedule 4.
- (5) In the case of a school becoming a community special school—
- (a) the new instrument of government shall be made in the form set out in Part V of Schedule 4,
 - (b) it shall be a sufficient compliance with sub-paragraph (a) if the new instrument of government is in a form substantially to the like effect to the form set out in Part V of Schedule 4.

13.—(1) Schedule 12 to the Act shall apply to the new instruments of government referred to in regulation 12 with the modifications set out in Part VI of Schedule 4.

(2) The provisions of Schedule 12 to the Act so applied are set out as modified in Schedule 5.

Reconstitution of governing body

14.—(1) The governing body and the local education authority shall secure that as soon as reasonably practicable after the commencement of the implementation period (and in any event within a period of three months beginning on the implementation date) the governing body are reconstituted in accordance with the new instrument of government, and the modified Schedule 12 to the Act.

(2) The current governing body shall exercise their functions under the Act and these Regulations in a manner calculated to enable the local education authority to fulfil their duties under paragraph (1).

Current governors continuing in office

15.—(1) Paragraph (2) applies to any member of a current governing body in respect of which a new instrument of government has been made under these Regulations.

(2) Subject to regulation 16 a governor to whom this paragraph applies shall continue from the implementation date (or the making of the new instrument of government if later) as a governor of the corresponding category required by the new instrument of government (if any such category exists).

(3) A member of a current governing body who continues as a governor under paragraph (2) shall hold office for the remainder of the term for which he was originally appointed or elected.

(4) The proceedings of the governing body shall not be invalidated by the school having more governors of a particular category than are provided for by the new instrument of government, pending removal of the surplus governors pursuant to regulation 16.

Surplus governors

16.—(1) Where

- (a) on or after the implementation date a school has more governors of any of the categories of governors than are required as governors of the corresponding category by the new instrument of government; and
- (b) the excess is not eliminated by the required number of governors resigning,

such number of that category as is required to eliminate the excess shall cease to hold office in accordance with paragraphs (2) and (3).

(2) The governors who are to cease to hold office shall be determined on the basis of seniority, the governor whose current period of continuous service (whether as a governor of one or more than one category) is the shortest being the first to cease to hold office.

(3) Where it is necessary for the purposes of paragraph (2) to select one or more governors from a group of equal seniority, it shall be done by drawing lots.

(4) For the purposes of this regulation, additional co-opted governors nominated by a particular category of person are treated as if they constituted a separate category of governor.

(5) Any procedure set out in the new instrument of government for the removal of excess foundation governors shall not apply to the reconstitution of the governing body under these Regulations.

Transfer of Land

17. Schedule 6 shall have effect in relation to the transfer of land.

Transitional Provisions

18. Where a community or voluntary controlled school changes category to become a voluntary aided, or foundation school anything done before the implementation date by the local education authority as admission authority under any provision in Chapter I of Part III of the Act (admission arrangements) shall from the implementation date have effect as if done by the governing body.

19. Where a foundation or voluntary aided school changes category to become a community or voluntary controlled school anything done before the implementation date by the governing body as admission authority under any provision in Chapter 1 of Part III of the Act (admission arrangements) shall from the implementation date have effect as if done by the local education authority.

Revocation

20.—(1) The Education (Change of Category of Maintained Schools) (England) Regulations 1999^(a) (“the 1999 Regulations”) are hereby revoked.

(2) Any proposal published under paragraph 3 of Schedule 8 to the Act in accordance with the 1999 Regulations but not decided by the school organisation committee or adjudicator in accordance with the 1999 Regulations shall be treated as having been published in accordance with these Regulations.

(3) Any proposal published under paragraph 3 of Schedule 8 to the 1999 Regulations approved by the school organisation committee or adjudicator in accordance with the 1999 Regulations which had not been implemented on the date these Regulations came into force shall be treated as having been approved under these Regulations.

9th August 2000

Jacqui Smith
Parliamentary Under Secretary of State,
Department for Education and Employment

(a) S.I. 1999/2259.

PROVISIONS OF SECTION 28 OF, AND SCHEDULE 6 TO THE ACT HAVING EFFECT
IN RELATION TO PROPOSALS MENTIONED IN REGULATION 4

The subsections of section 28 of, and the paragraphs in Part I of Schedule 6 to, the Act specified in the left hand column of the table below shall have effect in relation to proposals mentioned in regulation 4 with the modifications specified in the right hand column of the table.

TABLE

Provision	Modification
Section 28(3)	<p>That subsection shall have the effect as if—</p> <ul style="list-style-type: none"> (a) for “under this section” there were substituted “under paragraph 2 or paragraph 3 of Schedule 8”; and (b) for paragraphs (a) and (b) and the words “as may be prescribed.” there were substituted— <ul style="list-style-type: none"> “(a) contain the following information— <ul style="list-style-type: none"> (i) the name of the relevant body publishing the proposal; (ii) the date on which it is proposed that the change of category should take place; (iii) a statement explaining the effect of paragraph 2 of Schedule 6 including the date by which objections should be sent to the local education authority and the address of that authority or to the relevant school organisation committee and the address of that committee; (iv) a statement that it is proposed to change the category of the school stating the current category of school and the proposed new category of school; (v) the rationale of the proposal; (vi) a statement identifying the admission authority for the school after the change of category has taken place and stating the proposed change (if any) in admission authority; <p><i>(if the new category of school is a voluntary school)</i></p> <ul style="list-style-type: none"> (vii) a statement that it is proposed that the school will— <ul style="list-style-type: none"> (a) have or continue to have a foundation established otherwise than under this Act; or (b) belong or continue to belong to a group of schools for which a foundation body acts; <p><i>(if the new category of school is a foundation school)</i></p> <ul style="list-style-type: none"> (viii) a statement that the school will— <ul style="list-style-type: none"> (a) have or continue to have a foundation established otherwise than under this Act; or

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(b) belong or continue to belong to a group of schools for which a foundation body acts; or

(c) be a foundation school not falling within either of subparagraphs (viii)(a) or (b) above;

(if the new category of school is a foundation special school)

(ix) a statement that it is proposed the school will have a foundation established otherwise than under this Act;

(if it is proposed that the school will have or continue to have a foundation other than by belonging to a group of schools for which a foundation body acts)

(x) the identity of that foundation;

(if it is proposed that the school will belong or continue to belong to a group of schools for which a foundation body acts)

(xi) the identity of that body and the identity of the other schools in the group for which the foundation body performs or will perform the functions set out in section 21(4);

(if at the time the proposal is published section 15 applies to the school)

(xii) a statement that section 15 applies to the school by virtue of section 15(1), 15(4) or 15(6) as the case may be, and

(if at the time the proposal is published Schedule 15 applies to the governing body)

(xiii) a statement that the local education authority have given notice of their intention to suspend, or have suspended, the governing body's right to a delegated budget, by virtue of Schedule 15; and

(b) shall be published—

(i) by being posted in a conspicuous place in the area served by the school;

(ii) in at least one newspaper circulating in the area served by the school, and

(iii) by being posted at or near the main entrance to the school or, if there is more than one main entrance, all of them.”

Section 28(5)

That subsection shall have effect as if for “under this section” there were substituted “under paragraph 2 or paragraph 3 of Schedule 8”, and the words “or promoters” were deleted on both occasions on which they occur.

Provision	Modification
Section 28(6)	<p>That subsection shall have effect as if—</p> <ul style="list-style-type: none"> (a) for “under this section” there were substituted “under paragraph 2 or paragraph 3 of Schedule 8”; (b) the words “or proposed school” were omitted; (c) the words “or promoters” were omitted, and (d) for paragraph (b) and the words following that paragraph there were substituted— <ul style="list-style-type: none"> “(b) the information specified in subsection (6A), to the school organisation committee for the area of the local education authority who maintain the school. <p>(6A) The information referred to in subsection (6)(b) is—</p> <ul style="list-style-type: none"> (a) evidence of consultation before the proposals were published including— <ul style="list-style-type: none"> (i) copies of the consultation documents, and (ii) the views and responses from the persons consulted; (b) a map showing the location of the school and all other maintained schools within a radius of 3.218688 kilometres (2 miles), where the school is a primary school and 4.828032 kilometres (3 miles) where the school is a secondary school; (c) the following information relating to the school for the school year in which the proposals were published and (except for the information specified in sub-paragraph (i)), the previous school year— <ul style="list-style-type: none"> (i) the lower and upper age limits of the pupils attending the school; (ii) the capacity of the school or, in the case of a special school the number of pupils for whom the school is organised to make provision; (iii) the number of pupils at the school, and a forecast of the matters specified in subparagraphs (ii) and (iii) for each of the subsequent five years; (d) a list of all the maintained schools within the radius of the school mentioned in paragraph (b) above stating which schools are maintained by different local education authorities together with the information referred to in paragraph (c) in respect of each such school; <p><i>(where the school is a community special school or a foundation special school)</i></p> (e) <ul style="list-style-type: none"> (i) details of the special educational needs of pupils for whom the school is organised to make provision; (ii) details of the information referred to in subparagraph (i) in respect of each community special or foundation special

- school within the radius of the school mentioned in paragraph (b), and
- (iii) details of all local education authorities which maintain statements of special educational need for pupils at the school;
- (f) a breakdown of any costs involved in the change of category;
- (g) whether the school is a day or boarding school or a school taking both day and boarding pupils;
- (h) a statement as to whether the school has been inspected under section 10 of the School Inspections Act 1996^(a) during the period starting three years before the date of the publication of the proposals and, where the school has been inspected during that period, the date of the inspection and details of the outcome of the inspection;
- (if the school is a voluntary or foundation school with a religious character)*
- (i) a statement as to whether the school has been inspected under section 23 of the Schools Inspection Act 1996 during the period starting three years before the date of the publication of the proposals and, where the school has been so inspected during that period, the date of the inspection and details of the outcome of the inspection;
- (if the proposal is that a school should become a voluntary aided school)*
- (j) (i) an estimate of the probable expenses of the school for the five years commencing on the implementation date for which the governing body will be liable under Schedule 3; and
- (ii) a statement that the governing body for a period of at least five years commencing on the implementation date will be willing and able to carry out their obligations under Schedule 3;
- (iii) for the purposes of the statement in subparagraph (ii) the governing body shall assume a grant will be made to them under paragraph 5 of Schedule 3 of 85 per cent of qualifying expenditure;
- (k) details of the exercise in relation to the school of any power granted to the local education authority or to the Secretary of State under Part 1 Chapter IV, during the period starting three

^(a) 1996 c. 57. Section 10 was amended by paragraph 6 of Schedule 6 to the Education Act 1997 (c. 44) and paragraph 191 of Schedule 30 to the Act.

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	<p>years before the date of the publication of the proposal;</p> <p>(l) details of the exercise in relation to the governing body of any power granted to the local education authority or to the Secretary of State under Schedule 15, during the period starting three years before the date of the publication of the proposal;</p> <p>(m) details of the tenure (freehold or leasehold) on which the site of the school is held and, if the premises are held on a lease, details of the lease;</p> <p>(n) details of any trusts on which the school premises are held or it is proposed will be held or any proposed trusts on which it is proposed the school premises will be held;</p> <p>(o) details of the body or authority to whom, on the date on which it is proposed that the school change category, it is proposed that land should be transferred in accordance with regulations.”</p>
Section 28(8)	That subsection shall have effect as if it were omitted and the following substituted “Schedule 6 shall have effect in relation to the procedure for dealing with proposals under paragraph 2 or paragraph 3 of Schedule 8.”
Section 28(10)	That subsection shall have effect as if the words from “or promoters” in the first place where they occur to the end of the subsection were omitted and the following were substituted “means, in the case of proposals published by a local education authority, the authority and, in the case of proposals published by a governing body, the governing body.”
Section 28(11)	That subsection shall have effect as if paragraph (a) were omitted.
Schedule 6	
Paragraph 1	<p>That paragraph shall have effect as if—</p> <p>(a) in sub-paragraph (1) for “section 28, 29 or 31” there were substituted “paragraph 2 or paragraph 3 of Schedule 8” and the words “or proposed school” were omitted;</p> <p>(b) in sub-paragraph (2) the words “or (in the case of a new school) who it is proposed should maintain the school” were omitted.</p>
Paragraph 2	<p>That paragraph shall have effect as if—</p> <p>(a) in sub-paragraph (1) for “section 28, 29 or 31” there were substituted “paragraph 2 or paragraph 3 of Schedule 8”;</p> <p>(b) for sub-paragraph (2) there were substituted—</p> <p>“(2) Where the proposals were published by the local education authority any objections under this paragraph shall be sent to the local education authority within</p>

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	<ul style="list-style-type: none"> (a) two months after the date of the publication of the proposals except where sub-paragraph (b) applies; and (b) one month after the date of publication of the proposals where the proposals are in respect of a school to which section 15 applies. <p>(2A) The local education authority shall send to the relevant committee copies of all objections made (and not withdrawn in writing) together with the authority's observations on them within—</p> <ul style="list-style-type: none"> (a) one month after the end of the objection period except where the proposals fall within subparagraph (2)(b), and (b) two weeks after the end of the objection period where the proposals fall within subparagraph (2)(b). <p>(2B) Where the proposals were published by the governing body any objections under this paragraph shall be sent to the relevant committee within—</p> <ul style="list-style-type: none"> (a) two months after the date of the publication of the proposals except where subparagraph (b) applies, and (b) one month after the date of the publication of the proposals where the proposal is in respect of a school to which section 15 applies.”, and <p>(c) sub-paragraph (3) were omitted.</p>
Paragraph 3	<p>That paragraph shall have effect as if—</p> <ul style="list-style-type: none"> (a) In sub-paragraph (1) for “section 28, 29 or 31” there were substituted “paragraph 2 or paragraph 3 of Schedule 8”; (b) in sub-paragraph (1)(b) the words “or promoters” were omitted; (c) in sub-paragraph (2)(c) for “such persons or bodies as may be prescribed” there were substituted “the local education authority and the governing body”; (d) for sub-paragraph (3) there were substituted <p>“(3) Any approval given under this paragraph may be expressed to take effect only if—</p> <ul style="list-style-type: none"> (a) a scheme relating to any charity connected with the school is made by a date specified in the approval, (b) the Secretary of State gives notice under regulation 5(1) of the Foundation Body Regulations 1999^(a) (that a foundation body shall become operative and that the school shall form part of a group for which the foundation shall act) by a date specified in the approval, or (c) the Secretary of State makes a declaration (that the school shall form part of a group for which a foundation body acts) under regulation 21(2) of

(a) S.I. 1999/1502.

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	<p>the Foundation Body Regulations 1999 by a date specified in the approval.”;</p> <p>(e) for sub-paragraph (5) there were substituted—</p> <p>“(5) If—</p> <p>(a) after two months from—</p> <p>(i) the end of the period within which objections must be sent to the relevant committee in accordance with paragraph 2(2A) or (2B), or</p> <p>(ii) if later, the date on which the committee receive the information specified in section 28(6A), the committee have not voted on the question whether to give any approval under this paragraph; and either</p> <p>(b) the local education authority have published the proposals and request the committee to refer the proposals to the adjudicator, or</p> <p>(c) the governing body have published the proposals and request the committee to refer the proposals to the adjudicator,</p> <p>they shall refer the proposals to the adjudicator”;</p> <p>(f) in sub-paragraph (6) the words “(in accordance with regulations under paragraph 5 of Schedule 4)” were omitted;</p> <p>(g) for sub-paragraph (8) there were substituted—</p> <p>“(8) Sub-paragraph (1) does not prevent the governing body or local education authority by whom any proposals have been published under paragraph 2 of Schedule 8 from withdrawing such proposals by notice in writing given to the relevant committee at any time before the proposals are determined under this paragraph.”, and</p> <p>(h) after sub-paragraph (8) there were added the following sub-paragraph—</p> <p>“(9) Sub-paragraph (1) does not prevent the governing body by whom proposals have been published under paragraph 3 of Schedule 8 from withdrawing such proposals with the consent in writing of the relevant committee at any time before the proposals are determined under this paragraph.”</p>
Paragraph 4	<p>That paragraph shall have effect as if—</p> <p>(a) in sub-paragraph (1) for “section 28, 29 or 31” there were substituted “paragraph 2 of Schedule 8”;</p> <p>(b) in sub-paragraph (2) the words “(as determined in accordance with regulations)” were omitted and after the words “relevant committee” the words “, the governing body of the school which is the subject of the proposal and the Secretary of State” were added, and</p> <p>(c) at the end of sub-paragraph (3)(d) there were added the following sub-paragraphs—</p>

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Modification

Provision	Modification
Paragraph 5	<p>“(e) any undetermined proposals published under paragraph 2 or paragraph 3 of Schedule 8 to change the category of schools in the area of the local education authority, or</p> <p>(f) the establishment of a foundation body or the joining of a group of schools for which a foundation body performs the functions set out in section 21(4).”.</p> <p>That paragraph shall have effect as if—</p> <p>(a) in sub-paragraph (1) for “Section 28, 29 or 31” there were substituted “paragraph 2 or paragraph 3 of Schedule 8”, and for “in accordance with Part III of this Schedule” there were substituted “in accordance with regulations made under paragraph 5 of Schedule 8.”;</p> <p>(b) for sub-paragraph (2) there were substituted—</p> <p>“(2) In the case of proposals published by the governing body at the request of the governing body or in the case of proposals published by the local education authority at the request of the local education authority, the relevant committee—</p> <p>(a) may modify the proposals after consulting</p> <p>(i) in the case of proposals made by the local education authority the governing body,</p> <p>(ii) in the case of proposals made by the governing body the local education authority, and</p> <p>(b) where any approval under paragraph 3 was given in accordance with sub-paragraph (3) of that paragraph, may specify a later date by which the events in question must occur.”;</p> <p>(c) sub-paragraph (4) were omitted;</p> <p>(d) for sub-paragraph (5) there were substituted—</p> <p>“(5) If—</p> <p>(a) the matter to be determined is a request for a modification of proposals under sub-paragraph (2)(a) and after one month from the date which the committee notify bodies whom they consult (pursuant to sub-paragraph (2)(a)) is to be the date by which responses to consultation must be received, the committee have not voted on the matter; or</p> <p>(b) the matter to be determined is a request to specify a later date under sub-paragraph (2)(b) and after one month from the date of the request the committee have not voted on the matter; and</p> <p>(c) (in either case) the body which published the proposal request the committee to refer that matter to the adjudicator,</p> <p>they shall refer the matter to the adjudicator”;</p> <p>(e) in sub-paragraph (6)(a) the words “(in accordance with regulations under paragraph 5 of Schedule 4)” were omitted, and</p>

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- (f) in sub-paragraph (7)(b) for “sub-paragraphs (2) to (4)” there were substituted “sub-paragraphs (2) and (3)”, and
- (g) the following were added after paragraph 5—

“6.—(1) The school organisation committee shall, within two weeks of the date on which such proposals were sent to them, send to the Secretary of State a copy of all proposals published under paragraph 2 or 3 of Schedule 8 and sent to them under section 28.

(2) The school organisation committee shall notify the following persons of each decision taken under paragraph 3(2), 5(2) or (3)—

- (a) the body who published the proposals;
- (b) (if different) the local education authority who maintain the school;
- (c) (if different) the governing body of the school to which the proposals relate;
- (d) subject to paragraph (7), each objector; and
- (e) the Secretary of State.

(3) The school organisation committee shall notify the persons referred to in sub-paragraphs (a) to (c) and (e) of sub-paragraph (2) if they refer any proposal to the adjudicator under paragraph 3(5) or (6) or paragraph 5(5) or (6).

(4) The adjudicator shall notify the persons referred to in sub-paragraph (2) of any decision taken under paragraph 3(2) or 5(2) or (3).

(5) Where, pursuant to sub-paragraph (2), the school organisation committee notify the persons referred to in sub-paragraphs (a) to (e) of sub-paragraph (2) of a decision they shall also give reasons for that decision.

(6) Where, pursuant to sub-paragraph (4) the adjudicator notifies the persons referred to in sub-paragraph (2) of a decision he shall also give reasons for that decision.

(7) Where objections to a proposal take the form of a petition (that is to say a document containing the text of one objection signed by more than one objector) the school organisation committee or adjudicator may comply with sub-paragraph (2) or (4) as the case may be by—

- (a) notifying the person (if any) who appears to them to have arranged for the petition to be sent to the local education authority or the school organisation committee; or
- (b) if there is no such person, notifying the objector whose name appears first on the petition.

(8) Where proposals (“proposals A”) have been sent to the school organisation committee under section 28(6), and subsequently further proposals are sent to the committee under that section or section 29(5) or 31(5) or paragraph 5(3) of Schedule 7, which in the opinion of the committee are related to proposals A, the school organisation committee shall notify the body who published proposals A of that fact.”

PROVISIONS OF SECTION 28 OF, AND PART I OF SCHEDULE 6 TO, THE ACT
APPLIED BY SCHEDULE 1, AS MODIFIED

Section 28

(3) Proposals under paragraph 2 or paragraph 3 of Schedule 8 shall—

(a) contain the following information—

- (i) the name of the relevant body publishing the proposal;
- (ii) the date on which it is proposed that the change of category should take place;
- (iii) a statement explaining the effect of paragraph 2 of Schedule 6 including the date by which objections should be sent to the local education authority and the address of that authority or to the relevant school organisation committee and the address of that committee;
- (iv) a statement that it is proposed to change the category of the school stating the current category of school and the proposed new category of school;
- (v) the rationale of the proposal;
- (vi) a statement identifying the admission authority for the school after the change of category has taken place and stating the proposed change (if any) in admission authority;

(if the new category of school is a voluntary school)

(vii) a statement that it is proposed that the school will—

- (a) have or continue to have a foundation established otherwise than under this Act; or
- (b) belong or continue to belong to a group of schools for which a foundation body acts;

(if the new category of school is a foundation school)

(viii) a statement that the school will—

- (a) have or continue to have a foundation established otherwise than under this Act; or
- (b) belong or continue to belong to a group of schools for which a foundation body acts; or
- (c) be a foundation school not falling within either of sub-paragraphs (viii)(a) or (b) above;

(if the new category of school is a foundation special school)

(ix) a statement that it is proposed the school will have a foundation established otherwise than under this Act;

(if it is proposed that the school will have or continue to have a foundation other than by belonging to a group of schools for which a foundation body acts)

(x) the identity of that foundation;

(if it is proposed that the school will belong or continue to belong to a group of schools for which a foundation body acts)

(xi) the identity of that body and the identity of the other schools in the group for which the foundation body performs the functions set out in section 21(4);

(if at the time the proposal is published section 15 applies to the school)

(xii) a statement that section 15 applies to the school by virtue of section 15(1), 15(4) or 15(6) as the case may be; and

(if at the time the proposal is published Schedule 15 applies to the governing body)

- (xiii) a statement that the local education authority have given notice of their intention to suspend, or have suspended, the governing body's right to a delegated budget, by virtue of Schedule 15, and

(b) shall be published—

- (i) by being posted in a conspicuous place in the area served by the school;
- (ii) in at least one newspaper circulating in the area served by the school, and
- (iii) by being posted at or near the main entrance to the school or, if there is more than one main entrance, all of them.

(5) Before publishing any proposals under paragraph 2 or 3 of Schedule 8, the relevant body shall consult such persons as appear to them to be appropriate; and in discharging their duty under this subsection the relevant body shall have regard to any guidance given from time to time by the Secretary of State.

(6) Where any proposals published under paragraph 2 or 3 of Schedule 8 relate to a school in England, the relevant body shall send—

- (a) a copy of the published proposals, and
- (b) the information specified in subsection (6A),

to the school organisation committee for the area of the local education authority who maintain the school.

(6A) The information referred to in subsection (6)(b) is—

- (a) evidence of consultation before the proposals were published including—
 - (i) copies of the consultation documents, and
 - (ii) the views and responses from the persons consulted;
- (b) a map showing the location of the school and all other maintained schools within a radius of 3.218688 kilometres (2 miles), where the school is a primary school and 4.828032 kilometres (3 miles) where the school is a secondary school;
- (c) the following information relating to the school for the school year in which the proposals were published and (except for the information specified in sub-paragraph (i)), the previous school year—
 - (i) the lower and upper age limits of the pupils attending the school;
 - (ii) the capacity of the school or, in the case of a special school the number of pupils for whom the school is organised to make provision;
 - (iii) the number of pupils at the school,and a forecast of the matters specified in sub-paragraphs (ii) and (iii) for each of the subsequent five years;
- (d) a list of all the maintained schools within the radius of the school mentioned in paragraph (b) above stating which schools are maintained by different local education authorities together with the information referred to in paragraph (c) in respect of each such school;

(where the school is a community special school or a foundation special school)

- (e)
 - (i) details of the special educational needs of pupils for whom the school is organised to make provision;
 - (ii) details of the information referred to in subparagraph (i) in respect of each community special or foundation special school within the radius of the school mentioned in paragraph (b), and
 - (iii) details of all local education authorities which maintain statements of special educational need for pupils at the school;
- (f) a breakdown of any costs involved in the change of category;
- (g) whether the school is a day or boarding school or a school taking both day and boarding pupils;

- (h) a statement as to whether the school has been inspected under section 10 of the School Inspections Act 1996^(a) during the period starting three years before the date of the publication of the proposals and, where the school has been inspected during that period, the date of the inspection and details of the outcome of the inspection;
(if the school is a voluntary or foundation school with a religious character)
- (i) a statement as to whether the school has been inspected under section 23 of the Schools Inspection Act 1996 during the period starting three years before the date of the publication of the proposals and, where the school has been so inspected during that period, the date of the inspection and details of the outcome of the inspection;
(if the proposal is that a school should become a voluntary aided school)
- (j)
 - (i) an estimate of the probable expenses of the school for the five years commencing on the implementation date for which the governing body will be liable under Schedule 3, and
 - (ii) a statement that the governing body for a period of at least five years commencing on the implementation date will be willing and able to carry out their obligations under Schedule 3;
 - (iii) for the purposes of the statement in sub-paragraph (ii) the governing body shall assume a grant will be made to them under paragraph 5 of Schedule 3 of 85 per cent of qualifying expenditure;
- (k) details of the exercise in relation to the school of any power granted to the local education authority or to the Secretary of State under Part 1 Chapter IV, during the period starting three years before the date of the publication of the proposal;
- (l) details of the exercise in relation to the governing body of any power granted to the local education authority or the Secretary of State under Schedule 15 during the period starting three years before the date of the publication of the proposal;
- (m) details of the tenure (freehold or leasehold) on which the site of the school is held and, if the premises are held on a lease, details of the lease;
- (n) details of any trusts on which the school premises are held or it is proposed will be held or any proposed trusts on which it is proposed the school premises will be held;
- (o) details of the body or authority to whom, on the date on which it is proposed that the school change category, it is proposed that land should be transferred in accordance with regulations.

(8) Schedule 6 shall have effect in relation to the procedure for dealing with proposals under paragraph 2 or paragraph 3 of Schedule 8.

(10) In this section “the relevant body” means, in the case of proposals published by a local education authority, the authority and, in the case of proposals published by a governing body, the governing body.

(11) In this Part “area” (without more) means a local education authority area.

Schedule 6: PART I

1.—(1) This Part of this Schedule applies to proposals published under paragraph 2 or paragraph 3 of Schedule 8 which relate to a school in England.

(2) In this Part of this Schedule “the relevant committee” means the school organisation committee for the area of the local education authority who maintain the school.

Objections

2.—(1) Any person may make objections to any proposals published under paragraph 2 or paragraph 3 of Schedule 8.

(2) Where the proposals were published by the local education authority any objections under this paragraph shall be sent to the local education authority within—

^(a) 1996 c. 57. Section 10 was amended by paragraph 6 of Schedule 6 to the Education Act 1997 (c. 44) and paragraph 191 of Schedule 30 to the Act.

- (a) two months after the date of the publication of the proposals except where sub-paragraph (b) applies; and
- (b) one month after the date of publication of the proposals where the proposals are in respect of a school to which section 15 applies.

(2A) The local education authority shall send to the relevant committee copies of all objections made (and not withdrawn in writing) together with the authority's observations on them within—

- (a) one month after the end of the objection period except where the proposals fall within sub-paragraph (2)(b), and
- (b) two weeks after the end of the objection period where the proposals fall within sub-paragraph (2)(b).

(2B) Where the proposals were published by the governing body any objections under this paragraph shall be sent to the relevant committee within—

- (a) two months after the date of the publication of the proposals except where sub-paragraph (b) applies, and
- (b) one month after the date of the publication of the proposals where the proposal is in respect of a school to which section 15 applies.

Approval of proposals

3.—(1) Proposals published under paragraph 2 or paragraph 3 of Schedule 8 require approval under this paragraph if—

- (a) the proposals were published by a local education authority and either—
 - (i) objections to the proposals have been made in accordance with paragraph 2 and any of them have not been withdrawn in writing within the objection period; or
 - (ii) such approval is required by virtue of paragraph 4(5); or
- (b) the proposals were published by a governing body.

(2) Where any proposals require approval under this paragraph, they shall be considered in the first instance by the relevant committee, who may—

- (a) reject the proposals,
- (b) approve them without modification, or
- (c) approve them with such modifications as the committee think desirable after consulting the local education authority and the governing body.

(3) Any approval given under this paragraph may be expressed to take effect only if—

- (a) a scheme relating to any charity connected with the school is made by a date specified in the approval,
- (b) the Secretary of State gives notice under regulation 5(1) of the Foundation Body Regulations 1999^(a) (that a foundation body shall become operative and that the school shall form part of a group for which a foundation body shall act) by a date specified in the approval, or
- (c) the Secretary of State makes a declaration that the school shall form part of a group for which a foundation body acts) under regulation 21(2) of the Foundation Body Regulations 1999 by a date specified in the approval.

(4) When deciding whether or not to give any approval under this paragraph the committee shall have regard to—

- (a) any guidance given from time to time by the Secretary of State, and
- (b) the school organisation plan for the committee's area;

and the committee shall not give any such approval unless they are satisfied that adequate financial resources will be available to enable the proposals to be implemented.

^(a) S.I. 1999/1502.

(5) If—

(a) after two months from—

(i) the end of the period within which objections may be sent to the relevant committee in accordance with paragraph 2(2A) or (2B), or

(ii) if later, the date on which the committee receive the information specified in section 28(6A), the committee have not voted on the question whether to give any approval under this paragraph; and

(b) the local education authority have published the proposals and request the committee to refer the proposals to the adjudicator, or

(c) the governing body have published the proposals and request the committee to refer the proposals to the adjudicator,

they shall refer the proposals to the adjudicator.

(6) If the committee—

(a) have voted on any matter which falls to be decided by them under this paragraph by a unanimous decision, but

(b) have failed to reach such a decision on that matter,

they shall refer the proposals to the adjudicator.

(7) Where any proposals are referred to the adjudicator under sub-paragraph (5) or (6)—

(a) he shall consider the proposals afresh; and

(b) sub-paragraphs (2) to (4) shall apply to him in connection with his decision on the proposals as they apply to the committee.

(8) Sub-paragraph (1) does not prevent the governing body or local education authority by whom any proposals have been published under paragraph 2 of Schedule 8 from withdrawing those proposals by notice in writing given to the relevant committee at any time before the proposals are determined under this paragraph.

(9) Sub-paragraph (1) does not prevent the governing body by whom proposals have been published under paragraph 3 of Schedule 8 from withdrawing such proposals with the consent in writing of the relevant committee at any time before the proposals are determined under this paragraph.

Determination by LEA whether to implement proposals

4.—(1) Where any proposals have been published by a local education authority under paragraph 2 of Schedule 8 and either—

(a) no objections were made in accordance with paragraph 2, or

(b) all objections so made were withdrawn in writing within the objection period,

then (subject to the following provisions of this paragraph) the authority shall determine whether the proposals should be implemented.

(2) Any determination under sub-paragraph (1) must be made within the period of four months beginning with the date of publication of the proposals and the authority shall notify the relevant committee, the governing body of the school which is the subject of the proposal and the Secretary of State of any determination made by them under sub-paragraph (1).

(3) The requirement to make a determination under sub-paragraph (1) in the case of any proposals only applies if, at the time when the authority's determination falls to be made under that sub-paragraph, they are satisfied that the proposals are not related to any of the following, namely—

(a) any undetermined proposals published under section 28(2) to establish a new foundation or voluntary school in the area of the authority;

(b) any undetermined proposals published under section 28(2), 29(2) or 31(2) by the governing body of a foundation, voluntary or foundation special school in the area of the authority;

- (c) any undetermined proposals published by the authority which, by virtue of sub-paragraph (1)(a) of paragraph 3, require approval under that paragraph;
 - (d) any order under paragraph 2(2) or 3(2) of Schedule 7;
 - (e) any undetermined proposals published under paragraph 2 or paragraph 3 of Schedule 8 to change the category of schools in the area of the local education authority, or
 - (f) the establishment of a foundation body or the joining of a group of schools for which a foundation body performs the functions set out in section 21(4).
- (4) For the purposes of sub-paragraph (3) proposals are “undetermined” if they have not been withdrawn and—
- (a) they have not been approved or rejected under paragraph 3 or under paragraph 8 or 9 of Schedule 7, or
 - (b) the authority have not determined under this paragraph whether to implement them,
- as the case may be; and when deciding under sub-paragraph (3) whether any proposals are related to other proposals the authority shall have regard to any guidance given from time to time by the Secretary of State.
- (5) Where, in the case of any proposals within sub-paragraph (1)—
- (a) the authority fail to make a determination under that sub-paragraph within the period mentioned in sub-paragraph (2), or
 - (b) the requirement to make such a determination does not apply by virtue of sub-paragraph (3),
- the proposals require approval under paragraph 3.

Requirement to implement proposals

5.—(1) Where—

- (a) any proposals published under paragraph 2 or paragraph 3 of Schedule 8 have been approved under paragraph 3, or
- (b) a local education authority have determined under paragraph 4 to implement any such proposals,

then (subject to the following provisions of this paragraph) the proposals shall be implemented, in the form in which they were so approved or determined in accordance with regulations made under paragraph 5 of Schedule 8.

(2) In the case of proposals published by the governing body at the request of the governing body or in the case of proposals published by the local education authority at the request of the local education authority, the relevant committee—

- (a) may modify the proposals after consulting—
 - (i) in the case of proposals made by the local education authority the governing body,
 - (ii) in the case of proposals made by the governing body the local education authority, and
- (b) where any approval under paragraph 3 was given in accordance with sub-paragraph (3) of that paragraph, may specify a later date by which the events in question must occur.

(3) If the relevant committee are satisfied—

- (a) that implementation of the proposals would be unreasonably difficult, or
- (b) that circumstances have so altered since approval was given under paragraph 3 that implementation of the proposals would be inappropriate,

the committee may determine that sub-paragraph (1) shall cease to apply to the proposals.

(5) If—

- (a) the matter to be determined is a request for a modification of proposals under sub-paragraph (2)(a) and after one month from the date which the committee notify bodies whom they consult (pursuant to sub-paragraph (2)(a)) is to be the date by which

responses to consultation must be received, the committee have not voted on the matter;
or

- (b) the matter to be determined is a request to specify a later date under sub-paragraph (2)(b) and after one month from the date of the request the committee have not voted on the matter; and
- (c) (in either case) the body which published the proposal request the committee to refer that matter to the adjudicator,

they shall refer the matter to the adjudicator.

(6) If the committee—

- (a) have voted on any matter which falls to be decided by them under this paragraph by a unanimous decision, but
- (b) have failed to reach such a decision on that matter,

they shall refer that matter to the adjudicator.

(7) Where any matter is referred to the adjudicator under sub-paragraph (5) or (6)—

- (a) he shall consider the matter afresh; and
- (b) such of the provisions of sub-paragraphs (2) and (3) as are relevant shall apply to him in connection with his decision on that matter as they apply to the committee.

(8) Where—

- (a) any approval under paragraph 3 was given in accordance with sub-paragraph (3) of that paragraph, and
- (b) the event specified in that sub-paragraph does not occur by the date in question (whether as specified under that sub-paragraph or as specified under sub-paragraph (2)(b) above),

sub-paragraph (1) above shall cease to apply to the proposals.

(9) Where, by virtue of sub-paragraph (3) or (8), sub-paragraph (1) ceases to apply to any proposals shall be treated for the purposes of this Schedule as if they had been rejected under paragraph 3.

6.—(1) The school organisation committee shall, within two weeks of the date on which such proposals were sent to them, send to the Secretary of State a copy of all proposals published under paragraph 2 or 3 of Schedule 8 and sent to them under section 28.

(2) The school organisation committee shall notify the following persons of each decision taken under paragraph 3(2), 5(2) or (3)—

- (a) the body who published the proposals;
- (b) (if different) the local education authority who maintain the school;
- (c) (if different) the governing body of the school to whom the proposals relate;
- (d) subject to paragraph (7), each objector; and
- (e) the Secretary of State.

(3) The school organisation committee shall notify the persons referred to in sub-paragraphs (a) to (c) and (e) of sub-paragraph (2) if they refer any proposal to the adjudicator under paragraph 3(5) or (6) or paragraph 5(5) or (6).

(4) The adjudicator shall notify the persons referred to in sub-paragraph (2) of any decision taken under paragraph 3(2) or 5(2) or (3).

(5) Where, pursuant to sub-paragraph (2), the school organisation committee notify the persons referred to in sub-paragraphs (a) to (e) of sub-paragraph (2) of a decision they shall also give reasons for that decision.

(6) Where, pursuant to sub-paragraph (4) the adjudicator notifies the persons referred to in sub-paragraph (2) of a decision he shall also give reasons for that decision.

(7) Where objections to a proposal take the form of a petition (that is to say a document containing the text of one objection signed by more than one objector) the school organisation committee or adjudicator may comply with sub-paragraph (2) or (4) as the case may be by—

- (a) notifying the person (if any) who appears to them to have arranged for the petition to be sent to the local education authority or the school organisation committee; or
- (b) if there is no such person, notifying the objector whose name appears first on the petition.

(8) Where proposals (“proposals A”) have been sent to the school organisation committee under section 28(6), and subsequently further proposals are sent to the committee under that section or section 29(5) or 31(5) or paragraph 5(3) of Schedule 7, which in the opinion of the committee are related to proposals A, the school organisation committee shall notify the body who published proposals A of that fact.

SCHEDULE 3

Regulation 10

PART I

1.—(1) Where—

- (a) a community or voluntary controlled school changes category to become a foundation or voluntary aided school; or
 - (b) a community special school changes category to become a foundation special school,
- the contract of employment between a person to whom this paragraph applies and the local education authority shall have effect from the implementation date as if originally made between him and the governing body.

2. Without prejudice to paragraph 1—

- (a) all the local education authority’s rights, powers, duties and liabilities under or in connection with the contract of employment shall by virtue of this paragraph be transferred to the governing body on the implementation date; and
- (b) anything done before that date by or in relation to the local education authority in respect of that contract or the employee shall be deemed from that date to have been done by or in relation to the governing body.

3. Subject to paragraph 4, paragraph 1 shall apply to any person who immediately before the implementation date is employed by the local education authority to work solely at the school which is the subject of a proposal.

4. Paragraph 1 shall not apply to—

- (a) any person whose contract of employment terminates on the day immediately preceding the implementation date; or
- (b) any person employed by the local education authority to work at the school solely in connection with the provision of meals.

5. A person who before the implementation date has been appointed by the local education authority to work at the school as from the implementation date or a date thereafter shall be treated for the purposes of paragraph 3 as if he had been employed by the local education authority immediately before the implementation date to do such work at the school as he would have been required to do on or after that date under his contract of employment with the local education authority.

6. Paragraphs 1 and 2 are without prejudice to any right of an employee to terminate his contract 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 these Regulations.

PART II

7.—(1) Where—

- (a) a foundation or voluntary aided school changes category to become a community or voluntary controlled school; or
- (b) a foundation special school changes category to become a community special school,

the contract of employment between a person to whom this paragraph applies and the governing body shall have effect from the implementation date as if originally made between him and the local education authority.

8. Without prejudice to paragraph 7—

- (a) all the governing body's rights, powers, duties and liabilities under or in connection with the contract of employment shall by virtue of this paragraph be transferred to the local education authority on the implementation date; and
- (b) anything done before that date by or in relation to the governing body in respect of that contract or the employee shall be deemed from that date to have been done by or in relation to the local education authority.

9. Subject to paragraph 10, paragraph 7 shall apply to any person who immediately before the implementation date is employed by the governing body to work at the school which is the subject of a proposal.

10. This paragraph shall not apply to any person whose contract of employment terminates on the day immediately preceding the implementation date.

11. A person who before the implementation date has been appointed by the governing body to work at the school as from the implementation date or a date thereafter shall be treated for the purposes of paragraph 9 as if he had been employed by the governing body immediately before the implementation date to do such work at the school as he would have been required to do on or after that date under his contract of employment with the governing body.

12. Paragraphs 7 and 8 are without prejudice to any right of an employee to terminate his contract 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 these regulations.

PART III

13.—(1) This paragraph applies where a voluntary controlled school or foundation school with a religious character changes category to become a voluntary aided school with a religious character.

(2) Where immediately before the implementation date a teacher at a voluntary controlled or foundation school enjoyed, by virtue of section 60(2) of the Act, rights not conferred on him on or after the implementation date by section 60 as a teacher at a voluntary aided school, he shall continue to enjoy those rights until he ceases to be employed as a teacher at the voluntary aided school.

SCHEDULE 4

Regulations 12 and 13

PART I

Instrument of Government: Foundation Schools and Foundation Special Schools

- 1 The name of the school is
- 2 The category to which the school belongs is
- 3 The name of the governing body is

4 The governing body shall consist of:

(a) x parent governors;

(b) x LEA governors;

(c) x teacher governors;

(if applicable)

(d) one staff governor;

(if applicable)

(e) x foundation governors;

(if applicable)

(f) x partnership governors;

(g) x co-opted governors (including any governors referred to in paragraph 6 or 7 below);

(h) the head teacher (except at any time when he has given written notice to the clerk to the governing body of the school that he chooses not to be a governor).

5 Total number of governors (except at any time when the head teacher has given notice as above that he chooses not to be a governor, when the total number of governors will be).

(if applicable)

6 x co-opted governor[s] will be [a] governor[s] for whose appointment nominations are to be sought from the sponsor or from amongst the sponsors of the school.

(if applicable)

7 One co-opted governor will be governor for whose appointment nominations are to be sought from the Education Action Forum for the Education Action Zone in relation to which the school is a participating school.

(Where the school is to have foundation governors)

8 Subject to regulation 15 of the Education (Change of Category of Maintained Schools) (England) Regulations 2000, which provides for the continuation of certain governors, set out the name of any foundation body or person entitled to appoint foundation governors. If there is more than one such person set out the basis on which such appointments are made both on the change of category and thereafter when there are vacancies to be filled.

(if applicable)

9 (a) The holder of the following office shall be a foundation governor ex-officio:

name of office

(b) [or and jointly] shall appoint a foundation governor to act in the place of the ex-officio foundation governor whose governorship derives from the office named in (a) above, in the event that the ex-officio foundation governor is unable or unwilling to act as a foundation governor, or there is a vacancy in the office by virtue of which his governorship exists.

Repeat 9(a) and (b) as necessary where there is to be more than one ex-officio foundation governorship.)

10 Set out procedure for eliminating any excess in the number of foundation governors.

(Under regulation 16 of the Education (Change of Category of Maintained Schools) (England) Regulations 2000, this procedure will not apply on the reconstitution of the governing body).

11 *If the school has a religious character, describe the ethos of the school.*

12 Subject to regulation 11(3) of the Education (Change of Category of Maintained Schools) (England) Regulations 2000, this instrument of government comes into effect on the *[insert implementation date]*.

13 This instrument was made by order of Local Education Authority on

PART II

Instrument of Government: Voluntary Aided Schools

- 1 The name of the school is
- 2 The school is a voluntary aided school.
- 3 The name of the governing body is
- 4 The governing body shall consist of:
 - (a) x foundation governors (except at any time when the head teacher has given notice that he chooses not to be a governor, when the number of foundation governors will be x);
 - (b) x parent governors;
 - (c) x LEA governors;
 - (d) x teacher governors;
 - (if applicable)*
 - (e) one staff governor;
 - (if applicable)*
 - (f) x co-opted governors (*insert total number of governors referred to in paragraphs 6, 7 or 8 below, if any*);
 - (g) the head teacher (except at any time when he has given written notice to the clerk to the governing body of the school that he chooses not to be a governor).
- 5 Total number of governors (except at any time when the head teacher has given notice as above that he chooses not to be a governor, when the total number of governors will be).

(if applicable)
- 6 One co-opted governor will be a governor for whose appointment nominations are to be sought from the minor authority or (as the case may be) from one or more of the minor authorities in relation to the school).

(if applicable)
- 7 x co-opted governor[s] will be [a] governor[s] for whose appointment nominations are to be sought from the sponsor or from amongst the sponsors of the school.)

(if applicable)
- 8 One co-opted governor will be governor for whose appointment nominations are to be sought from the Education Action Forum for the education action zone in relation to which the school is a participating school.
- 9 Subject to regulation 15 of the Education (Change of Category of Maintained Schools) (England) Regulations 2000, which provides for the continuation in office of certain governors, set out the name of any foundation body or person entitled to appoint foundation governors. If there is more than one such person set out the basis on which such appointments are made both on transition to the new framework and thereafter when there are vacancies to be filled.

(if applicable)
- 10 (a) The holder of the following office shall be a foundation governor ex-officio:
name of office
- (b) [or and jointly] shall appoint a foundation governor to act in the place of the ex-officio foundation governor whose governorship derives from the office named in (a) above, in the event that the ex-officio foundation governor

is unable or unwilling to act as a foundation governor, or there is a vacancy in the office by virtue of which his governorship exists.

Repeat 10(a) and (b) as necessary where there is more than one ex-officio foundation governorship.)

11 Set out procedure for eliminating any excess in the number of foundation governors. *(Under regulation 16 of the Education (Change of Category of Maintained Schools) (England) Regulations 2000 this procedure will not apply to the reconstitution of the governing body).*

12 If the school has a religious character, describe the ethos of the school.

13 Subject to regulation 11(3) of the Education (Change of Category of Maintained Schools) (England) Regulations 2000, this instrument of government comes into effect on the *[insert implementation date]*.

14 This instrument of government was made by order of
Local Education Authority on

PART III

Instrument of Government: Voluntary Controlled Schools

1 The name of the school is

2 The school is a voluntary controlled school.

3 The name of the governing body is

4 The governing body shall consist of:

(a) parent governors;

(b) LEA governors;

(c) teacher governors;

(if applicable)

(d) one staff governor;

(e) foundation governors;

(f) co-opted governors *(including any governors referred to in paragraph 6, 7 or 8 below)*;

(g) the head teacher (except at any time when he has given written notice to the clerk to the governing body of the school that he chooses not to be a governor).

5 Total number of governors (except at any time when the head teacher has given notice as above that he chooses not to be a governor, when the total number of governors will be).

(if applicable)

6 One co-opted governor will be a governor for whose appointment nominations are to be sought from the minor authority or (as the case may be) from one or more minor authorities in relation to the school).

(if applicable)

7 co-opted governor[s] will be [a] governor[s] for whose appointment nominations are to be sought from the sponsor or from amongst the sponsors of the school.)

(if applicable)

8 One co-opted governor will be a governor for whose appointment nominations are to be sought from the Education Action Forum for the Education Action Zone in relation to which the school is a participating school.)

9 Subject to regulation 15 of the Education (Change of Category of Maintained Schools) (England) Regulations 2000, which provides for the continuation in office of certain governors, set out the name of any foundation body or person entitled to appoint foundation governors. If there is more than one such person set out the basis on which such appointments are made both on transition to the new framework and thereafter when there are vacancies to be filled.

(if applicable)

10 (a) The holder of the following office shall be a foundation governor ex-officio:
name of office

(b) [or and jointly] shall appoint a foundation governor to act in the place of the ex-officio foundation governor whose governorship derives from the office named in (a) above, in the event that that ex-officio foundation governor is unable or unwilling to act as a foundation governor, or there is a vacancy in the office by virtue of which his governorship exists.

Repeat 10(a) and (b) as necessary where there is more than one ex-officio foundation governorship.)

11 Set out the procedure for eliminating any excess in the number of foundation governors. *(Under regulation 16 of the Education (Change of Category of Maintained Schools) (England) Regulations 2000 this procedure will not apply to the reconstitution of governing bodies).*

12 If the school has a religious character describe the ethos of the school.

13 Subject to regulation 11(3) of the Education (Change of Category) (England) Regulations 2000 this instrument of government comes into effect on *[insert implementation date]*.

14 This instrument was made by order of Local Education Authority on

PART IV

Instrument of Government: Community Schools

1 The name of the school is

2 The school is a community school.

3 The name of the governing body is

4 The governing body shall consist of:

- (a) parent governors;
- (b) LEA governors;
- (c) teacher governors;

(if applicable)

(d) one staff governor;

(e) co-opted governors *(including any governors referred to in paragraph 6, 7 or 8 below)*;

(f) the head teacher (except at any time when he has given written notice to the clerk to the governing body of the school that he chooses not to be a governor).

5 Total number of governors (except at any time when the head teacher has given notice as above that he chooses not to be a governor, when the total number of governors will be).

(if applicable)

6 One co-opted governor will be a governor for whose appointment nominations are to be sought from the minor authority or (as the case may be) from one or more minor authorities in relation to the school.

(if applicable)

7 x co-opted governor[s] will be [a] governor[s] for whose appointment nominations are to be sought from the sponsor or from amongst the sponsors of the school.

(if applicable)

8 One co-opted governor will be a governor for whose appointment nominations are to be sought from the Education Action Forum for the Education Action Zone in relation to which the school is a participating school.

9 Subject to regulation 11(3) of the Education (Change of Category of Maintained Schools) (England) Regulations 2000, this instrument of government comes into effect on *(insert implementation date)*.

10 This instrument was made by order of Local Education Authority on

PART V

Instrument of Government: Community Special Schools

1 The name of the school is

2 The school is a community special school.

3 The name of the governing body is

4 The governing body shall consist of:

(a) x parent governors;

(b) x LEA governors;

(c) x teacher governors;

(if applicable)

(d) one staff governor;

(e) x co-opted governors *(including any governors referred to in paragraph 6, 7 or 8 below)*;

(f) the head teacher (except at any time when he has given written notice to the clerk to the governing body of the school that he chooses not to be a governor);

(if applicable)

(g) one representative governor appointed by [or and jointly].

5 Total number of governors (except at any time when the head teacher has given notice as above that he chooses not to be a governor, when the total number of governors will be).

(if applicable)

6 x co-opted governor[s] will be [a] governor[s] for whose appointment nominations are to be sought from the sponsor or from amongst the sponsors of the school.

(if applicable)

7 One co-opted governor will be governor for whose appointment nominations are to be sought from the Education Action Forum for the education action zone in relation to which the school is a participating school.

8 Subject to regulation 11(3) of the Education (Change of Category of Maintained Schools) (England) Regulations 2000, this instrument of government comes into effect on the *[insert implementation date]*.

9 This instrument was made by order of Local Education Authority on

PART VI

**PROVISIONS OF SCHEDULE 12 TO THE ACT HAVING EFFECT IN
RELATION TO INSTRUMENTS OF GOVERNMENT AS ARE MENTIONED IN
REGULATIONS 11 AND 12**

1. The paragraphs in Schedule 12 to the Act specified in the left hand column of the table mentioned below shall have effect in relation to instruments of government such as are mentioned in regulations 11 and 12 and, where modifications are specified in the right hand column of the table shall have effect with those modifications.

TABLE

Provision	Modification
Paragraph 1(2)	That paragraph shall have effect as if the words “in accordance with sub-paragraph (1)(d)” were deleted and the word “belongs” were substituted by “will belong”.
Paragraph 1(3)	
Paragraph 1(4)	
Paragraph 2	That paragraph shall have effect as if— (a) in sub-paragraph 2(1) the words “for a maintained school subject to any relevant modifications” were omitted and were substituted by “for a school changing its category in accordance with Schedule 8”, and (b) sub-paragraph (2) were omitted.
Sub-paragraphs 3(1), and (2)	Those sub-paragraphs shall have effect as if sub-paragraph (2) were omitted and the following substituted— “(2) Where the school has foundation governors or it is proposed will have foundation governors, the governing body shall not submit the draft to the local education authority unless the following persons have agreed to the contents of the draft, namely— (a) the existing foundation governors; or (b) if there are no existing foundation governors, the persons whom it is proposed will be entitled to appoint foundation governors; (c) any trustees under a trust deed relating to the school; and (d) in the case of a Church of England School or Roman Catholic Church School, the appropriate diocesan authority.”
Paragraph 3(3)	That paragraph shall have effect as if the words “or it is proposed that the school will have foundation governors” were inserted after “foundation governors”.
Paragraph 3(4)	That paragraph shall have effect as if (a) the words “or it is proposed should have foundation governors” were inserted after “foundation governors”, and (b) the words “to the category of school to which the school belongs” were omitted and the following were substituted “to the category of school to which it is proposed the school should belong”.
Paragraph 3(5)	That paragraph shall have effect as if (a) the words “or it is not proposed should have foundation governors” were inserted after “a school which does not have foundation governors”, and

Provision	Modification
	(b) the words “to the category of school to which the school belongs” were omitted and the following were substituted “to the category of school to which it is proposed the school should belong”.
Paragraph 3(6)	That paragraph shall have effect as if the words “or it is proposed should have foundation governors” were inserted after “(if the school has foundation governors)”.
Paragraph 3(7)	
Paragraph 4	
Paragraph 5	

SCHEDULE 5

Regulation 13

INSTRUMENTS OF GOVERNMENT: PROVISIONS OF SCHEDULE 12 TO THE ACT AS MODIFIED BY PART VI OF SCHEDULE 4 TO THESE REGULATIONS

1.—(2) The manner in which the governing body are to be constituted, as set out in the instrument, must conform with the provisions of—

- (a) Part II of Schedule 9, and
- (b) any regulations made under paragraph 15 of that Schedule,

as they apply to a school of the category to which the school will belong.

(3) Where, for the purposes of any provision of that Part of that Schedule, it is material to determine the number of registered pupils at that school, that number shall be determined as at the date when the instrument is made.

(4) The instrument shall (subject to any other statutory provision) comply with any trust deed relating to the school.

Making of instruments of government

2.—(1) Paragraph 3 shall apply in connection with the making of an instrument of government for a school changing its category in accordance with Schedule 8.

Procedure for making instrument

3.—(1) The governing body shall prepare a draft of the new instrument of government and submit it to the local education authority.

(2) Where the school has foundation governors or it is proposed that the school will have foundation governors, the governing body shall not submit the draft to the local education authority unless the following persons have agreed to the contents of the draft, namely—

- (a) the existing foundation governors;
- (b) if there are no existing foundation governors, the persons whom it is proposed will be entitled to appoint foundation governors;

- (c) any trustees under a trust deed relating to the school; and
- (d) in the case of a Church of England school or Roman Catholic Church school, the appropriate diocesan authority.

(3) On receiving the draft the authority shall consider whether it complies with all applicable statutory provisions, and if—

- (a) the authority are content with the draft, or
- (b) there is agreement between the authority, the governing body and (if the school has foundation governors or it is proposed that the school will have foundation governors) the persons mentioned in sub-paragraph (2) that the draft should be revised to any extent,

the instrument shall be made by order of the authority in the form of the draft or (as the case may be) in the form of the revised draft.

(4) If, in the case of a school which has foundation governors or it is proposed should have foundation governors, there is at any time disagreement as to the contents of the draft among the bodies and persons mentioned in sub-paragraph (3)(b), any of those bodies or persons may refer the draft to the Secretary of State; and on such a reference the Secretary of State shall give such direction as he thinks fit having regard, in particular, to the category of school to which it is proposed the school should belong.

(5) If neither of paragraphs (a) and (b) of sub-paragraph (3) applies in the case of a school which does not have foundation governors or it is not proposed should have foundation governors, the authority shall—

- (a) notify the governing body of the reasons why they are not content with the draft instrument, and
- (b) give the governing body a reasonable opportunity to reach agreement with the authority on revising the draft;

and the instrument shall be made by order of the authority either in the form of a revised draft agreed between the authority and the governing body or (in the absence of such agreement) in such form as the authority think fit having regard, in particular, to the category of school to which it is proposed the school should belong.

(6) When taking any decision as to the name of the school the governing body, the authority and (if the school has foundation governors or it is proposed should have foundation governors) the persons mentioned in sub-paragraph (2), shall have regard to any guidance given from time to time by the Secretary of State.

(7) Nothing in this paragraph requires the agreement of, or enables any objection to be made by, any body or person to any part of a draft instrument that reflects any decision taken by the governing body or any other person which the governing body or that person is required or authorised to take by virtue of any statutory provision.

Review of instruments of government

4.—(1) The governing body or the local education authority may review the instrument at any time after it is made.

(2) The governing body or the authority shall review the instrument on such occasions as may be prescribed; and regulations may require the instrument to be varied at the instance of the governing body in such circumstances as may be prescribed.

(3) Where—

- (a) on any review the governing body or the authority decide that the instrument should be varied, or
- (b) any regulations under sub-paragraph (2) require the instrument to be varied,

the governing body or (as the case may be) the authority shall notify the other of their proposed variation.

(4) Where the governing body have received a notification under sub-paragraph (3), they shall notify the authority as to whether or not they are content with it.

(5) Where the school has foundation governors, the governing body shall not give the authority—

- (a) any notification under sub-paragraph (3), or
- (b) any notification under sub-paragraph (4) to the effect that they are content with the authority's proposed variation,

unless the persons mentioned in paragraph 3(2) have agreed to the proposed variation.

(6) If—

- (a) both the governing body and the authority are content with a proposed variation as notified under sub-paragraph (3), or
- (b) there is agreement between the authority, the governing body and (if the school has foundation governors) the persons mentioned in paragraph 3(2) that some other variation should be made instead,

the instrument shall be varied accordingly by order of the authority.

(7) If, in the case of a school which has foundation governors, there is at any time disagreement as to the proposed variation among the bodies and persons mentioned in sub-paragraph (6)(b), any of those bodies or persons may refer the proposed variation to the Secretary of State; and on such a reference the Secretary of State shall give such direction as he thinks fit having regard, in particular, to the category of school to which the school belongs.

(8) If neither of paragraphs (a) and (b) of sub-paragraph (6) applies in the case of a school which does not have foundation governors, the authority shall—

- (a) notify the governing body of the reasons—
 - (i) why they are not content with the governing body's proposed variation, or
 - (ii) why they wish to proceed with their own proposed variation,

as the case may be, and

- (b) give the governing body a reasonable opportunity to reach agreement with the authority on revising the variation;

and the instrument shall be varied by order of the authority either in the manner agreed between the authority and the governing body or (in the absence of such agreement) in such manner as the authority think fit having regard, in particular, to the category of school to which the school belongs.

(9) Where there is no such agreement (and no variation is required by regulations under sub-paragraph (2)), sub-paragraph (8) does not require the authority to vary the instrument if they consider it appropriate not to do so.

(10) The following requirements under paragraph 3, namely—

- (a) the requirement under sub-paragraph (3) for the authority to consider compliance with all applicable statutory provisions, and
- (b) the requirement under sub-paragraph (6) to have regard, in connection with the name of the school, to guidance given by the Secretary of State,

shall apply in relation to a proposed variation of an instrument of government as they apply in relation to a draft of such an instrument.

(11) Where an instrument of government is varied under this paragraph—

- (a) the instrument shall set out the date on which the variation takes effect, and
- (b) paragraph 1(3) shall apply in relation to any variation relating to the manner in which the governing body are to be constituted as if it referred to the date when the variation is made rather than the date when the instrument is made.

(12) Nothing in this paragraph requires the agreement of, or enables any objection to be made by, any body or person to any proposed variation that reflects any decision taken by the governing body or any other person which the governing body or that person is required or authorised to take by virtue of any statutory provision.

Other requirements relating to instruments of government

5. Regulations may make provision imposing on local education authorities requirements with respect to the provision of—

- (a) copies of instruments of government made or varied by them; or
- (b) information relating to such instruments.

SCHEDULE 6

Regulations 7 and 17

Transfer of land

PART I

Effects of transfers under this Schedule

1. Where any land is transferred to and vests in any body in accordance with this Schedule, any rights or liabilities—

- (a) enjoyed or incurred by the transferor in connection with the land, and
- (b) subsisting immediately before the implementation date,

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

2. This Schedule is subject to section 198 of the Education Reform Act 1988^(a) (which with Schedule 10 to that Act makes further provision in relation to transfers of property, rights and liabilities), and references in that Schedule as applied by virtue of this paragraph to the transfer date are to the implementation date in relation to the relevant change of category.

PART II

Rules relating to transfers

3.—(1) This paragraph applies where any proposals that a community school should become a foundation school have been approved under paragraph 3 of the modified Schedule 6 to the Act or a local education authority have determined under paragraph 4 of the modified Schedule 6 to the Act to implement any such proposals.

(2) In such a case, any land which, immediately before the implementation date, was held or used by a local authority for the purposes of the community school shall on that date be transferred to, and by virtue of this paragraph vest in,—

- (a) the trustees of the school, to be held by them on trust for the purposes of the school; or
- (b) if the school has no trustees, the governing body.

4.—(1) This paragraph applies where any proposals that a community school should become a voluntary aided school have been approved under paragraph 3 of the modified Schedule 6 to the Act.

(2) In such a case, any land other than playing fields which, immediately before the implementation date, was held or used by a local authority for the purposes of the community school shall on that date be transferred to, and by virtue of this paragraph vest in, the trustees of the school, to be held by them on trust for the purposes of the school.

5.—(1) This paragraph applies where any proposals that a community school should become a voluntary controlled school have been approved under paragraph 3 of the modified Schedule 6 to the Act.

^(a) 1988 c. 40. Section 198 and Schedule 10 are amended by section 137 of and Schedule 29 to the Act.

(2) In such a case, any land other than playing fields which, immediately before the implementation date, was held or used by a local authority for the purposes of the community school shall on that date be transferred to, and by virtue of this paragraph vest in, the trustees of the school, to be held by them on trust for the purposes of the school.

6.—(1) This paragraph applies where any proposals that a foundation school should become a community school have been approved under paragraph 3 of the modified Schedule 6 to the Act.

(2) In such a case—

- (a) any publicly funded land which, immediately before the implementation date, was held by the trustees of the school or the governing body for the purposes of the foundation school shall on that date be transferred to, and by virtue of this paragraph vest in, the local education authority; and
- (b) any other land which, immediately before that date, was held by the trustees of the school or the governing body for the purposes of the foundation school shall be transferred to and vest in the local education authority in accordance with a transfer agreement.

(3) In this paragraph “publicly funded land” means land which was acquired—

- (a) from a local authority under a transfer under section 201(1)(a) of the Education Act 1996**(a)**;
- (b) from the Funding Agency for Schools;
- (c) wholly by means of any maintenance, special purpose or capital grant (within the meaning of Chapter VI of Part III of the Education Act 1996);
- (d) wholly by means of any grant paid under regulation 2 of the Education (Schedule 32 to the School Standards and Framework Act 1998) (England) (No. 2) Regulations 1999**(b)**;
- (e) wholly by means of expenditure incurred for the purposes of the school and treated by the local education authority as expenditure of a capital nature;
- (f) under a transfer under this Schedule; or
- (g) wholly with the proceeds of disposal of any land acquired as mentioned in any of paragraphs (a) to (f).

(4) In this paragraph “transfer agreement” means an agreement—

- (a) made for the purposes of sub-paragraph (2)(b) between the local education authority and the trustees mentioned in that sub-paragraph or (as the case may be) the governing body, and
- (b) providing for the land in question to be transferred to, and vest in, the authority on the implementation date, whether or not in consideration of the payment by the authority of such amount as may be agreed between the parties.

7.—(1) This paragraph applies where any proposals that a voluntary aided school should become a community school have been approved under paragraph 3 of the modified Schedule 6 to the Act.

(2) In such a case—

- (a) any publicly funded land which, immediately before the implementation date, was held by the trustees of the school or the governing body for the purposes of the voluntary aided school shall on that date be transferred to, and by virtue of this paragraph vest in, the local education authority; and
- (b) any other land which, immediately before that date, was held by the trustees of the school or the governing body for the purposes of the voluntary aided school shall be transferred to and vest in the local education authority in accordance with a transfer agreement.

(a) 1996 c. 56.

(b) S.I. 1999/2271.

- (3) In this paragraph “publicly funded land” means land which was acquired—
- (a) from a local authority under a transfer under section 201(1)(a) of the Education Act 1996;
 - (b) from the Funding Agency for Schools;
 - (c) wholly by means of any maintenance, special purpose or capital grant (within the meaning of Chapter VI of Part III of the Education Act 1996);
 - (d) wholly by means of any grant paid under regulation 2 of the Education (Schedule 32 to the School Standards and Framework Act 1998) (England) (No. 2) Regulations 1999;
 - (e) wholly by means of expenditure incurred for the purposes of the school and treated by the local education authority as expenditure of a capital nature;
 - (f) under a transfer under this Schedule; or
 - (g) wholly with the proceeds of disposal of any land acquired as mentioned in any of paragraphs (a) to (f).
- (4) In this paragraph “transfer agreement” means an agreement—
- (a) made for the purposes of sub-paragraph 2(b) between the local education authority and the trustees mentioned in that sub-paragraph or (as the case may be) the governing body, and
 - (b) providing for the land in question to be transferred to, and vest in, the authority on the implementation date, whether or not in consideration of the payment by the authority of such amount as may be agreed between the parties.

8.—(1) This paragraph applies where any proposals that a voluntary aided school should become a foundation school have been approved under paragraph 3 of the modified Schedule 6 to the Act.

(2) In such a case, any land which, immediately before the implementation date, was held by the local education authority for the purposes of the voluntary aided school shall on that date be transferred to, and by virtue of this paragraph vest in, the governing body.

9.—(1) This paragraph applies where any proposals that a voluntary controlled school should become a community school have been approved under paragraph 3 of the modified Schedule 6 to the Act.

- (2) In such a case—
- (a) any publicly funded land which, immediately before the implementation date, was held by the trustees of the school or the governing body for the purposes of the voluntary controlled school shall on that date be transferred to, and by virtue of this paragraph vest in, the local education authority; and
 - (b) any other land which, immediately before that date, was held by the trustees of the school or the governing body for the purposes of the voluntary controlled school shall be transferred to and vest in the local education authority in accordance with a transfer agreement.
- (3) In this paragraph “publicly funded land” means land which was acquired—
- (a) from a local authority under a transfer under section 201(1)(a) of the Education Act 1996;
 - (b) from the Funding Agency for Schools;
 - (c) wholly by means of any maintenance, special purpose or capital grant (within the meaning of Chapter VI of Part III of the Education Act 1996);
 - (d) wholly by means of any grant paid under regulation 2 of the Education (Schedule 32 to the School Standards and Framework Act 1998) (England) (No. 2) Regulations 1999;
 - (e) wholly by means of expenditure incurred for the purposes of the school and treated by the local education authority as expenditure of a capital nature;
 - (f) under a transfer under this Schedule; or
 - (g) wholly with the proceeds of disposal of any land acquired as mentioned in any of paragraphs (a) to (f).

- (4) In this paragraph “transfer agreement” means an agreement—
- (a) made for the purposes of sub-paragraph (2)(b) between the local education authority and the trustees mentioned in that sub-paragraph or (as the case may be) the governing body, and
 - (b) providing for the land in question to be transferred to, and vest in, the authority on the implementation date, whether or not in consideration of the payment by the authority of such amount as may be agreed between the parties.

10.—(1) This paragraph applies where any proposals that a voluntary controlled school should become a foundation school have been approved under paragraph 3 of the modified Schedule 6 to the Act.

(2) In such a case, any land which, immediately before the implementation date, was held by the local education authority for the purposes of the voluntary controlled school shall on that date be transferred to, and by virtue of this paragraph vest in, the governing body.

11.—(1) This paragraph applies where any proposals that a community special school should become a foundation special school have been approved under paragraph 3 of the modified Schedule 6 to the Act or a local education authority have determined under paragraph 4 of the modified Schedule 6 to the Act to implement any such proposals.

(2) In such a case, any land which, immediately before the implementation date, was held or used by a local authority for the purposes of the community special school shall on that date be transferred to, and by virtue of this paragraph vest in,—

- (a) the trustees of the school, to be held by them on trust for the purposes of the school; or
- (b) if the school has no trustees, the governing body.

12.—(1) This paragraph applies where any proposals that a foundation special school should become a community special school have been approved under paragraph 3 of the modified Schedule 6 to the Act.

(2) In such a case—

- (a) any publicly funded land which, immediately before the implementation date, was held by the trustees of the school or the governing body for the purposes of the foundation special school shall on that date be transferred to, and by virtue of this paragraph vest in, the local education authority; and
- (b) any other land which, immediately before that date, was held by the trustees of the school or the governing body for the purposes of the foundation special school shall be transferred to and vest in the local education authority in accordance with a transfer agreement.

(3) In this paragraph “publicly funded land” means land which was acquired—

- (a) from a local authority under a transfer under section 201(1)(a) of the Education Act 1996;
- (b) from the Funding Agency for Schools;
- (c) wholly by means of any maintenance, special purpose or capital grant (within the meaning of Chapter VI of Part III of the Education Act 1996);
- (d) wholly by means of any grant paid under regulation 2 of the Education (Schedule 32 to the School Standards and Framework Act 1998) (England) (No. 2) Regulations 1999;
- (e) wholly by means of expenditure incurred for the purposes of the school and treated by the local education authority as expenditure of a capital nature;
- (f) under a transfer under this Schedule; or
- (g) wholly with the proceeds of disposal of any land acquired as mentioned in any of paragraphs (a) to (f).

(4) In this paragraph “transfer agreement” means an agreement—

- (a) made for the purposes of sub-paragraph (2)(b) between the local education authority and the trustees mentioned in that sub-paragraph or (as the case may be) the governing body, and

- (b) providing for the land in question to be transferred to, and vest in, the authority on the implementation date, whether or not in consideration of the payment by the authority of such amount as may be agreed between the parties.

PART III

Outstanding transfers

13. Where immediately before the implementation date in relation to any change of category—

- (a) any land vested in a local authority is by virtue of any statutory provision required to be transferred to the governing body or any trustees of a school, but
- (b) the land has not yet been so transferred,

Part II of this Schedule shall apply to the school as if it had been so transferred by that time.

PART IV

Transfer of rights to use land

14.—(1) Where paragraph 3, 4, 5 or 11 applies to a school and any land held by a person or body other than a local authority was, immediately before the implementation date, used for the purposes of the school, any rights or liabilities—

- (a) enjoyed or incurred by the local authority in connection with the use of the land, and
- (b) subsisting immediately before the implementation date,

shall on that date be transferred to, and by virtue of these Regulations vest in, the trustees of the school or, if there are no trustees, the governing body.

(2) Where paragraph 6, 7, 9 or 12 applies to a school and any land held by a person or body other than the governing body of the school was, immediately before the implementation date, used for the purposes of the school, any rights and liabilities—

- (a) enjoyed or incurred by the governing body in connection with the use of the land, and
- (b) subsisting immediately before the implementation date,

shall on that date be transferred to, and by virtue of these Regulations vest in, the local education authority.

(3) Where paragraph 6, 7, 9 or 12 applies to a school and any land held by a person or body other than any trustees who hold any land for the purposes of the school was, immediately before the implementation date, used for the purposes of the school, any rights or liabilities—

- (a) enjoyed or incurred by any such trustees in connection with the use of the land, and
- (b) subsisting immediately before the implementation date,

shall on that date be transferred to, and vest in, the local education authority in accordance with a transfer agreement.

(4) Nothing in this paragraph applies in relation to land to which any of paragraphs 3 to 12 apply.

(5) In this paragraph—

“transfer agreement” means an agreement—

- (a) made for the purposes of sub-paragraph (3) between the local education authority and the trustees mentioned in that sub-paragraph, and
- (b) providing for the rights or liabilities in question to be transferred to, and vest in, the authority on the implementation date, whether or not in consideration of the payment by the authority of such amount as may be agreed between the parties.

PART V

Land excluded from transfers and restrictions on disposal of land when proposals are pending

15.—(1) Nothing in Part II of this Schedule has the effect of transferring to, or vesting in, any body—

- (a) any land, rights or liabilities excluded under sub-paragraph (2) or (3),
- (b) any rights or liabilities under a contract of employment,
- (c) any liability of a local authority, governing body or trustees in respect of the principal of, or any interest on, any loan, or
- (d) any liability in tort.

(2) If before the implementation date in relation to any change of category—

- (a) the prospective transferee and transferor have agreed in writing that any land should be excluded from the operation of Part II of this Schedule, and
- (b) the Secretary of State has given his written approval of the agreement,

the land (and any rights or liabilities relating to it) shall be so excluded.

(3) If in default of agreement under sub-paragraph (2)—

- (a) the prospective transferee or transferor have applied to the Secretary of State to exclude any land from the operation of Part II of this Schedule, and
- (b) the Secretary of State has by order directed its exclusion,

the land (and any rights or liabilities relating to it) shall be so excluded.

(4) An agreement under sub-paragraph (2) may provide for the land to be used or held for the purposes of the school (as a school of a new category) on such terms as may be specified in or determined in accordance with the agreement; and directions under sub-paragraph (3)—

- (a) may confer any rights or impose any liabilities that could have been conferred or imposed by such an agreement, and
- (b) shall have effect as if contained in such an agreement.

(5) In this paragraph—

“new category” means one of the categories set out in section 20(1) of the Act;

“the prospective transferee”, in relation to any land, means the body to whom, apart from sub-paragraph (2) or (3), the land would fall to be transferred under Part II of this Schedule; and

“the prospective transferor” shall be construed accordingly.

16.—(1) For the purposes of Part V of this Schedule the procedure for becoming a school of another category is pending in relation to a school when it has been initiated by the governing body in relation to the school on any occasion and not terminated (as initiated on that occasion).

(2) For those purposes, that procedure is to be regarded as initiated in relation to a school on any occasion on receipt by the local education authority of notice of a meeting of the governing body at which a motion for a resolution to consult about proposals to change category is to be considered.

(3) For those purposes, that procedure, as initiated on any occasion, is to be regarded as terminated—

- (a) if the meeting is not held;
- (b) if the meeting is held but the motion is not moved or, though the motion is moved, the resolution is not passed;
- (c) if consultation is not initiated in accordance with section 28(5) of the Act as modified by these Regulations;
- (d) if the proposals in respect of which consultation was initiated are not published;
- (e) if the said proposals are rejected by the relevant school organisation committee or the adjudicator or withdrawn; or
- (f) on the date of implementation of such proposals.

17.—(1) During any period when the procedure for becoming a school of another category is pending in relation to a school, a local authority shall not—

- (a) dispose of any land used wholly or partly for the purposes of the school, or
- (b) enter into a contract to dispose of any such land,

except with the consent of the Secretary of State.

(2) Sub-paragraph (1) does not apply in relation to a disposal which is made in pursuance of a contract entered into, or an option granted, before the procedure for becoming a school of another category was initiated in relation to the school.

(3) Where proposals for becoming a school of another category are approved, the procedure for becoming a school of another category is not to be treated as terminated for the purposes of this paragraph in relation to any land, where agreement is required to be reached under paragraph 2(1) of Schedule 10 to the Education Reform Act 1988 (identification of property, etc.) on any matter relating to that land, until the date on which that matter is finally determined.

(4) A disposal or contract shall not be invalid or void by reason only that it has been made or entered into in contravention of this paragraph and a person acquiring land, or entering into a contract to acquire land, from a local authority shall not be concerned to enquire whether any consent required by this paragraph has been given.

(5) This paragraph has effect notwithstanding anything in section 123 of the Local Government Act 1972^(a) (general power to dispose of land) or in any other enactment; and the consent required by this paragraph shall be in addition to any consent required by subsection (2) of that section or by any other enactment.

(6) In this paragraph—

- (a) references to disposing of land include granting or disposing of any interest in land, and
- (b) references to entering into a contract to dispose of land include granting an option to acquire land or such an interest.

18.—(1) During any period when the procedure for becoming a school of another category is pending in relation to a school, a local authority shall not, in relation to any land of the authority used or held for the purposes of the school, take without the consent of the Secretary of State any action by which the land ceases to any extent to be so used or held.

(2) If in the case of any school—

- (a) proposals that a school become a school of another category are approved, and
- (b) a local authority have, in relation to any land, taken any action in contravention of sub-paragraph (1),

the provisions relating to the transfer of property shall have effect as if, immediately before the implementation date in relation to the change of category, the property were used or held by the authority for the purposes for which it was used or held when the procedure for becoming a school of another category was initiated.

(3) In this paragraph—

- (a) “the provisions relating to the transfer of property” means this Schedule and section 198 of, and Schedule 10 to, the Education Reform Act 1988, and
- (b) the references to taking action include appropriating property for any purpose.

^(a) 1972 c. 70.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for community, voluntary controlled, voluntary aided, and foundation schools to become another category of school within those categories, and for a community special school to become a foundation special school and a foundation special school to become a community special school.

Regulation 4 deals with how proposals to change category should be made and dealt with, by applying, with modifications, provisions of section 28 of and Schedule 6 to the School Standards and Framework Act 1998 to such proposals. Schedule 2 shows the effects of those modifications on section 28 and Schedule 6.

Regulations 5 to 7 are concerned with restrictions on schools changing category.

Regulation 8 provides that when considering matters relating to proposals for a change of category each group of members of the school organisation committee shall collectively have a single vote and that decisions must be unanimous.

Regulation 9 deals with the implementation of proposals.

Regulation 10 makes provision, by reference to Schedule 3, for the transfer of staff from employment by a local education authority to employment by a governing body and vice versa.

Regulations 11 to 13 and Schedule 4 deal with the making of a new instrument of government when a school changes category and set out standard form instruments to be used by governing bodies. Schedule 5 shows the effects of the modifications to Schedule 12 to the Act.

Regulations 14 to 16 provide for the reconstitution of the governing body when a school changes category. Certain governors are allowed to remain in office and provision is made for the removal of any governors who are surplus to the requirements of the new instrument of government.

Regulation 17 and Schedule 6 provide for the transfer of land.

Regulations 18 to 20 contain transitional provisions.

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