
STATUTORY INSTRUMENTS

2002 No. 2978

The School Companies Regulations 2002

PART 2

Restrictions on School Companies

Persons who may be admitted to membership of School Companies

5.—(1) The constitution of a school company must provide that the company must not admit to its membership any person who is not listed in paragraph (2) below.

(2) The following persons may be members of a school company—

- (a) the governing body of a maintained school;
- (b) a local authority in England;
- (c) the proprietor of an independent school or the governing body of an independent school (if the governing body has legal personality), which provides full-time education for five or more pupils of compulsory school age;
- (d) a company which has as a significant proportion of its business the provision of education or educational or ancillary services or goods;
- (e) the governing body of a further or higher education institution (within the meaning of section 90(1) of the Further and Higher Education Act 1992) if it has legal personality;
- (f) any individual who is not excluded by Schedule 1.

Restriction on entering into contracts in which a director of the company has an interest

6.—(1) If the constitution of a school company permits it to enter into contracts in which a director of the company has an interest, then the constitution shall provide that the company may only enter into such a contract if:—

- (a) the goods or services supplied to the company under the contract are required by the company; and
- (b) the nature and level of consideration is no more than is reasonable in relation to the value of the goods or services.

(2) For the purposes of paragraph (1), a director has an interest in a contract if the following conditions are met and one of the conditions in paragraph (3) is met:—

- (a) the contract is for the supply of goods or services in return for a payment or other material benefit; and
- (b) the contract is not for the supply of services within the scope of the ordinary duties of the director.

(3) The conditions in this paragraph are that:—

- (a) the director is a party to the contract;
- (b) a firm of which the director is a partner is party to the contract; or

- (c) a company or unincorporated association of which he is a member, is a party to the contract and where the company of which he is a member is limited by shares, he is a member holding more than 1% of the issued share capital of the company.

Procedure in meetings of the directors if a director has an interest in a matter to be discussed

7. The constitution of a school company must provide that whenever a director has an interest, whether pecuniary or non-pecuniary, in a matter to be discussed at a meeting of the directors or a committee, the director concerned must:—

- (a) declare an interest at the time that, or before, discussion begins on the matter;
- (b) withdraw from the meeting for that item;
- (c) not be counted in the quorum for that part of the meeting; and
- (d) withdraw during the vote and have no vote on the matter.

Directors of School Companies and their remuneration

8.—(1) The constitution of a school company must provide that at least 40% of the directors of the company at any one time shall be non-executive directors.

(2) The constitution of a school company must provide that:—

- (a) there shall be a remuneration committee;
- (b) the members of the remuneration committee shall all be non-executive directors;
- (c) the remuneration committee shall recommend to the directors of the company the terms of service and remuneration of the executive directors; and
- (d) the terms of service and remuneration of the executive directors shall be determined either by the directors as a whole on the recommendation of the remuneration committee, or by the remuneration committee alone.

Procedure for deciding remuneration and benefits of directors

9. The constitution of a school company must provide that no director is entitled to be present or to vote when his own remuneration or his own terms of service are being discussed. However, the constitution may allow the directors of the company to vote upon benefits, including the provision of pensions and insurance, which are provided equally for all directors or all executive directors of the company.

Application of any surplus or profits of a school company

10. The constitution of a school company must provide that:—

- (a) any surplus or profits generated by the company are to be applied to further the objects of the company and shall not be distributed among the members; or
- (b) any surplus or profits generated by the company are to be distributed among the members according to proportions or procedures set out in the company's constitution; or
- (c) any surplus or profits generated by the company may be applied to further the objects of the company or distributed among the members according to proportions or procedures set out in the company's constitution.

Permission required before a school company may borrow

11. The constitution of a school company must provide that the company shall not borrow any funds, whether secured or unsecured, without the permission of the company's supervising authority.

Restriction on school funding of school companies

12. Where a governing body of a maintained school, which is a member of a school company, is spending money as agent of its local education authority by virtue of section 49(5) of the 1998 Act, it must only make payments to that company in the following circumstances:—

- (a) as consideration for services or goods that the company has supplied or procured for the school; or
- (b) where such payment is necessary or expedient to enable the company to pursue its objects.

Circumstances where a governing body must withdraw from a school company

13. If a maintained school whose governing body is a member of a school company has its delegated budget suspended under section 17 of the 1998 Act then that school's governing body must either:—

- (a) reduce their involvement in the management of the company in accordance with regulation 32; or
- (b) resign as a member of the company.

Notice required if a member wishes to leave a company

14. The constitution of a school company must provide that a member of the company may resign that membership at his own discretion but only after he has given every member of the company and the company itself 12 weeks notice of his resignation.