

2002 No. 3177

EDUCATION, ENGLAND

**The School Companies (Private Finance Initiative
Companies) Regulations 2002**

Made - - - - - 17th December 2002

Laid before Parliament 19th December 2002

Coming into force - - 20th January 2003

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SCHEDULE

Individuals who cannot be members of a school PFI company

In exercise of the powers conferred by section 12 and 210(7) of the Education Act 2002(a), the Secretary of State for Education and Skills hereby makes the following Regulations:

PART 1

PRELIMINARY

Citation and commencement

1. These Regulations may be cited as the School Companies Regulations (Private Finance Initiative Companies) Regulations 2002 and shall come into force on 20th January 2003.

Interpretation

2.—(1) In these Regulations—

“the 2002 Act” means the Education Act 2002;

“a further education institution” means

- (a) an institution which has been designated by order of the Secretary of State under section 28 of the Further and Higher Education Act 1992(b); or
- (b) an institution conducted by a further education corporation as defined by section 17(1) of the Further and Higher Education Act 1992;

“a higher education institution” means

- (a) an institution conducted by a higher education corporation as defined by section 90(1) of the Further and Higher Education Act 1992;
- (b) a university; or
- (c) an institution which has been designated by order of the Secretary of State as eligible to receive funding from a higher education council under section 129 of the Education Reform Act 1988(c)

“a relevant local education authority” means a local education authority which maintains any schools whose governing bodies are members of the school PFI company;

“a school PFI company” means a company to which these Regulations apply in accordance with Regulation 4;

“supervising authority” means the local education authority designated in accordance with Part 4 of these Regulations to supervise a school PFI company.

(2) For the purpose of these Regulations a school is “subject to special measures” if—

- (a) a report of an inspection of the school has been made under either Part 1 of the School Inspections Act 1996(d) or section 65 of the Learning and Skills Act 2000 (e) in which the person making it stated that in his opinion special measures were required to be taken in relation to the school;
- (b) either that person was a member of the Inspectorate or the report stated that the Chief Inspector agreed with his opinion; and

(a) 2002 c. 32. See section 212 for the definition of “regulations”; by virtue of that definition these Regulations, made by the Secretary of State, only apply in relation to England.

(b) 1992 c. 13.

(c) 1988 c. 40.

(d) 1996 c. 57.

(e) 2000 c. 21.

- (c) the report has not been superseded by any subsequent report in which the person making it stated that in his view special measures were not required to be taken in relation to the school.
- (3) For the purposes of these regulations a school “has serious weaknesses” if—
 - (a) a report of an inspection of the school has been made under Part 1 of the School Inspections Act 1996 in which the person making it stated that in his opinion the school had serious weaknesses; and
 - (b) that report has not been superseded by a subsequent report stating that, in the opinion of the person writing the report, the school either no longer has serious weaknesses, or stating that special measures are required to be taken in relation to the school.

Definition of “an agreement under the private finance initiative”

3.—(1) For the purposes of these Regulations “an agreement under the private finance initiative” means an agreement to which paragraph (3) or (4) of this regulation applies.

- (2) In this regulation—
 - “asset” means—
 - (a) any tangible asset, including any land, building or equipment; or
 - (b) any computer software;
 - “works” means the construction, enhancement, replacement or installation of an asset.
- (3) This paragraph applies to an agreement where—
 - (a) consideration is received by the governing body of a maintained school under the agreement and that consideration includes—
 - (i) the provision or making available of an asset or the carrying out of works for the purposes of, or in connection with, the discharge of a function of the governing body; and
 - (ii) the provision of services for the purposes of, or in connection with, the discharge of the same function;
 - (b) the governing body do not give to any other person any indemnity or guarantee in respect of any liabilities of the person with whom they enter into the transaction (whether those liabilities are incurred in respect of the transaction or otherwise);
 - (c) the consideration given by the governing body under the transaction includes the payment of fees by instalments at annual or more frequent intervals;
 - (d) the fees are determined in accordance with factors which in every case include—
 - (i) standards attained in the performance of the services; or
 - (ii) the extent, rate or intensity of use of the asset, or as the case may be of the asset which is constructed, enhanced, replaced or installed under the transaction; and
 - (e) the first instalment of fees falls to be paid after the services have started to be provided.
- (4) This paragraph applies to an agreement where private finance initiative credits are given to a local authority in respect of that agreement.

Companies governed by these Regulations

- 4. These Regulations apply in relation to any company—
 - (a) whose members include the governing body of a maintained school which has exercised its powers under section 11 of the 2002 Act to become a member of the company;
 - (b) where the main purpose of the members in forming the company is to enter into or facilitate agreements under the private finance initiative; and
 - (c) one of the company’s objects is to enter into or facilitate agreements under the private finance initiative.

PART 2

RESTRICTIONS ON SCHOOL PFI COMPANIES

Persons who may be admitted to membership of a school PFI company

5.—(1) The constitution of a school PFI 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 PFI company—

- (a) the governing body of a maintained school;
- (b) a local authority in England;
- (c) a company which has as a significant proportion of its business the provision of education or educational or ancillary services or goods;
- (d) a company which provides services or facilities under private finance agreements;
- (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) 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;
- (g) any individual not excluded by the Schedule.

Restriction on school funding of school PFI companies

6. 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 School Standards and Framework Act 1998(a), it must only make payments to that company in the following circumstances—

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

PART 3

SEEKING CONSENT TO BECOME A MEMBER OF A SCHOOL PFI COMPANY

Grounds on which a local education authority may refuse consent to a school governing body to become a member of a school company

7. Where the governing body of a maintained school seek the consent of the local education authority to form or become a member of a school PFI company in exercise of their powers under section 11 of the 2002 Act, the local education authority must give that consent unless—

- (a) the school has a deficit budget;
- (b) the governing body of the school has been a member of a school PFI company which failed to act in accordance with these Regulations whilst the governing body was a member, within the last 3 years;
- (c) the school is subject to special measures; or
- (d) the school has serious weaknesses.

Duty to provide written reasons for refusal

8. Where the local education authority does not consent to a governing body becoming a member of a school PFI company, it must provide written reasons for its refusal.

(a) 1998 c. 31.

PART 4

THE SUPERVISING AUTHORITY FOR A SCHOOL PFI COMPANY

Designation of a supervising authority by a school PFI company

9.—(1) Each school PFI company must have a local education authority designated as its supervising authority.

(2) Where the governing bodies of maintained schools who are members of a school PFI company are all governing bodies of schools which are maintained by one local education authority, then that local education authority is the supervising authority for that school PFI company and the company shall designate it as such.

(3) Where the membership of a school PFI company includes governing bodies of maintained schools maintained by more than one local education authority and there is only one relevant local education authority that is not a member of the school PFI company, then that local education authority is the supervising authority for that school PFI company and the company shall designate it as such.

(4) A school PFI company shall designate its supervising authority in accordance with this regulation by serving written notice of the designation on the supervising authority and all relevant local education authorities within 28 days of these Regulations applying to the Company.

Designation of a supervising authority by the relevant local education authorities

10.—(1) This regulation applies to any school PFI company where neither regulation 9(2) nor 9(3) applies.

- (2) Where this regulation applies the relevant local education authorities must—
- (a) agree which of them to designate as the supervising authority within 28 days of this regulation applying to the company; or, in the absence of such agreement,
 - (b) notify the Secretary of State, in writing, that they cannot agree, within 28 days of this regulation applying to the company and request that he designate a supervising authority for the school PFI company.

Designation of a supervising authority by the Secretary of State

11.—(1) Where the Secretary of State designates a local education authority as the supervising authority for a school PFI company he shall serve written notice of the designation on the supervising authority, the company and all the relevant local education authorities specifying the date on which the designation takes effect.

(2) The Secretary of State may, where he has designated a local education authority as the supervising authority, revoke that designation and may designate another relevant local education authority as the school PFI company's supervising authority.

Written notice required when Secretary of State revokes the designation of a supervising authority

12.—(1) The Secretary of State may revoke the designation of a supervising authority and designate a new supervising authority under regulation 11(2) by serving written notice of the revocation and designation on the school company, the supervising authority and all relevant local education authorities.

(2) Any such notice must specify the date on which the local education authority designated as the supervising authority ceases to be the supervising authority and either—

- (a) the new supervising authority and the date on which it becomes the supervising authority; or

- (b) the date by which the relevant local education authorities must notify the Secretary of State either—
 - (i) of the authority which they have agreed to designate as the supervising authority; or
 - (ii) that they cannot agree and request that he designate a supervising authority for the company.

Supervising authority may resign

13. Where a local education authority has been designated as the supervising authority for a school PFI company by agreement under regulation 10(2)(a), 12(2)(b)(i) or 15(a), that authority may, after it has been the supervising authority for two years, resign from its role as supervising authority by serving 56 days' notice on the company and all relevant local education authorities.

Circumstances in which the supervising authority must resign

14. If all the governing bodies of schools maintained by the supervising authority cease to be members of the school PFI company, the supervising authority must resign from its role as supervising authority by serving 56 days' notice on the company and all the relevant local education authorities.

Procedure where a supervising authority resigns

15. Where a supervising authority resigns under regulation 13 or 14 the relevant local education authorities must within 28 days of the notice, either—
- (a) agree which authority to designate as the supervising authority; or, in the absence of such agreement,
 - (b) notify the Secretary of State that they cannot agree and request that he designate a supervising authority for the school company.

Notification required if a company ceases to be a school PFI company

16. If a company ceases to be a school PFI company it shall notify its supervising authority in writing of that fact within 7 days and specify the date on which it ceased to be a school PFI company. The supervising authority shall notify any other relevant local education authorities and the Secretary of State that the company has ceased to be a school PFI company within 28 days of receipt of notice from the company.

Functions of a supervising authority

- 17.—(1) When a local education authority becomes the supervising authority for a school PFI company it must provide the Secretary of State with the following information, in writing, within 28 days of becoming the supervising authority—
- (a) the members of the company;
 - (b) the name and registered number of the company; and
 - (c) the fact that it is the supervising authority for the company.
- (2) A supervising authority must notify the Secretary of State, in writing within 28 days, of the following events—
- (a) changes to the company's membership, name and registered number; and
 - (b) if it ceases to be a relevant local education authority.

Duty of company to provide accounts to its supervising authority

18. A school company must provide a copy of its annual audited accounts to its supervising authority within 28 days of the audited accounts being approved or qualified by its auditors.

Individuals who cannot be members of a school PFI company

The following individuals shall not be admitted or permitted to remain as members of a school company—

1. A person who has been adjudged bankrupt or sequestration of his estate has been awarded and (in either case) he has not been discharged and the bankruptcy order has not been annulled or rescinded;
2. A person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;
3. A person who is subject to a disqualification order under the Company Directors Disqualification Act 1986(a);
4. A person who has been removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commissioners or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity for which he was responsible or to which he was privy or which he by his conduct contributed to or facilitated;
5. A person who has been removed under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990(b) (powers of Court of Session to deal with management of charities), from being concerned in the management or control of any body;
6. A person who is included in the list of teachers and workers with children or young persons whose employment is prohibited or restricted which is kept for the purposes of regulations made under section 218 of the Education Reform Act 1988;
7. A person who is disqualified from being the proprietor of any independent school or from being a teacher or other employee in any school by virtue of any order made under section 470 or section 471 of the Education Act 1996;
8. A person who is subject to a direction under section 142 of the 2002 Act which prohibits him from carrying out work to which that section applies, unless the direction specifies that he may carry out work to which that section applies if certain conditions or circumstances are fulfilled and the conditions or circumstances in relation to his being a member of a school company are fulfilled;
9. A person who, either during his membership of the company, or in the period of five years ending with the date on which his membership of the company would otherwise have taken effect, has been convicted, whether in the United Kingdom or anywhere else, of an offence, the facts of which give rise to a criminal offence under English law, and has had passed on him a sentence of imprisonment (whether suspended or not) for a period of not less than 3 months without the option of a fine;
10. A person who, within 20 years ending with the date on which his membership of the company would otherwise have taken effect, has been convicted as stated in paragraph 9 of any offence and has had passed on him a sentence of imprisonment for a period of not less than two and half years;
11. A person who, at any time, has been convicted as stated in paragraph 9 of any offence and has had passed on him a sentence of imprisonment for a period of not less than 5 years;
12. A person who has not attained the age of 18;
13. A person who is liable to be detained under the Mental Health Act 1983(c);
14. A person who is employed by the governing body of a maintained school or who is employed by a local education authority.

David Miliband
Minister of State

17th December 2002

Department for Education and Skills

(a) 1986 c. 46.
(b) 1990 c. 40.
(c) 1983 c. 20.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These regulations govern the operation of companies whose members include governing bodies of maintained schools, where the main purpose of forming the company is for it to enter into or facilitate agreements made under the private finance initiative. Where a governing body of a maintained school uses its powers under section 11 of the Education Act 2002 to become a member of a company which is formed for any other purpose, these regulations do not apply and the company will be governed by The School Companies Regulations 2002 instead.

Regulation 4 sets out which companies are governed by these regulations (“school PFI companies”) and regulation 3 defines “an agreement under the private finance initiative”.

There are restrictions on who may be a member of a school PFI company. Those who may be members are set out in regulation 5. Schedule 1 lists the individuals who are prohibited from being members.

Regulation 6 limits the ability of maintained school governing bodies to make payments to school PFI companies when the school is spending its delegated budget as agent of the local education authority by virtue of section 49(5) of the School Standards and Framework Act 1998. They may only make such payments when they are either necessary or expedient to enable the company to pursue its objects or when the payment is due for services or facilities provided by the company.

Any governing body of a maintained school seeking to become a member of a school PFI company needs the consent of its local education authority. Regulation 7 sets out the circumstances in which the local education authority may refuse permission and regulation 8 requires it to provide written reasons if it does refuse permission.

Regulations 9 to 11 set out which local education authority will be the supervising authority for a school PFI company and the procedure by which the supervising authority is designated as such.

Regulations 13 and 14 deal with when a supervising authority may and must resign and how a replacement supervising authority is to be designated.

A school PFI company must notify its supervising authority if it ceases to be a school PFI company and the supervising authority must likewise notify the Secretary of State and any other relevant local education authorities (regulation 16).

Regulation 17 sets out the functions of a supervising authority for a school PFI company and regulation 18 requires a school PFI company to provide a copy of its annual audited accounts to its supervising authority.

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