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STATUTORY INSTRUMENTS

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**2004 No. 530**

**EDUCATION, ENGLAND**

**The School Governance (Transition from an Interim Executive Board) (England) Regulations 2004**

<i>Made</i>	- - - -	<i>1st March 2004</i>
<i>Laid before Parliament</i>		<i>4th March 2004</i>
<i>Coming into force</i>	- -	<i>1st April 2004</i>

In exercise of the powers conferred upon the Secretary of State by paragraph 19(2) and (3) of Schedule 1A to, the School Standards and Framework Act 1998<sup>(1)</sup> and section 19 of the Education Act 2002<sup>(2)</sup>, the Secretary of State for Education and Skills hereby makes the following Regulations:

**PART 1**

**Introduction**

**Citation, commencement and application**

**1.**—(1) These Regulations may be cited as the School Governance (Transition from an Interim Executive Board) (England) Regulations 2004 and shall come into force on 1st April 2004.

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

**Interpretation**

**2.** In these Regulations—

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

“the 2002 Act” means the Education Act 2002;

“interim executive board” means a governing body constituted in accordance with Schedule 1A to the 1998 Act (governing bodies of interim executive members);

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(1) 1998 c. 31. Section 59(2) of the 2002 Act inserted Schedule 6 of that Act into the 1998 Act as Schedule 1A. By virtue of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I.1999/672) and section 211 of the 2002 Act the powers conferred by these provisions are exercisable by the Secretary of State only in relation to England. For the meaning of “prescribed” and “regulations” see section 142(1).

(2) 2002 c. 32.

“interim executive member” means a member of a governing body constituted in accordance with Schedule 1A to the 1998 Act;

“local education authority” means the local education authority by which a maintained school is maintained; and

“shadow governing body” and “shadow governors” have the meaning given in regulation 5(2).

### **Exclusion of certain provisions**

3.—(1) Regulations made by virtue of subsections (2) or (3) of section 19 or section 23 of the 2002 Act shall not apply in relation to the shadow governing body.

(2) The instrument of government of the school shall not have effect in relation to the constitution of the shadow governing body.

## **PART 2**

### **Composition, Establishment and Conduct of a Shadow Governing Body**

#### **Members of a shadow governing body**

4.—(1) In these Regulations:

- (a) “shadow parent governor” means a person who is appointed as such by the local education authority to be a member of the shadow governing body and who is a parent of a child under or of compulsory school age;
- (b) “shadow staff governor” means—
  - (i) a person who is appointed as such by the local education authority to be a member of the shadow governing body and who is paid to work at a maintained school;
  - (ii) the head teacher, who is a shadow staff governor by virtue of his office unless he resigns the position;
- (c) “shadow LEA governor” means a person appointed as such by the local education authority to be a member of the shadow governing body;
- (d) “shadow community governor” means a person appointed as such by the local education authority, to be a member of the shadow governing body and who is:
  - (i) a person who lives or works in the community served by the school; or
  - (ii) a person who, in the opinion of the local education authority, is committed to the good government and success of the school; and
- (e) “shadow foundation governor” means a person who is appointed as such by the local education authority to be a member of the shadow governing body and who—
  - (i) where the school has a particular religious character, designated by an Order of the Secretary of State under section 69(3) of the 1998 Act, is appointed as a shadow foundation governor for the purpose of securing that that character is preserved and developed;
  - (ii) where there is a trust relating to the school, is appointed as a shadow foundation governor for the purpose of securing that the school is conducted in accordance with that trust.

(2) Where the head teacher has resigned the position of shadow staff governor in accordance with paragraph (1)(b)(ii), he may withdraw that resignation at any time.

(3) Before appointing a shadow foundation governor in accordance with paragraph (1)(e) the local education authority shall consult—

- (a) in the case of a foundation or voluntary school which is a Church of England school or a Roman Catholic Church school, the appropriate diocesan authority, and
- (b) in the case of any other foundation or voluntary school, the persons by whom the foundation governors were appointed immediately before the governing body became constituted in accordance with Schedule 1A to the 1998 Act.

(4) A shadow governor may at any time be removed from office by the local education authority for incapacity or misbehaviour.

#### **Arrangements for the establishment of a shadow governing body**

5.—(1) At least six months before the date given in a notice served under section 16A(1) or 18A(1) of, or paragraph 17(1) of Schedule 1A to, the 1998 Act, as the date on which the governing body will become a normally constituted governing body, the local education authority shall make arrangements providing for the establishment of a governing body for the school in anticipation of the transition to a normally constituted governing body(3).

(2) In these Regulations, a governing body so established is referred to as a shadow governing body and members of the shadow governing body are referred to as shadow governors.

(3) Nothing in these Regulations shall prevent the appointment of an interim executive member as a shadow governor.

(4) No person shall be appointed as a shadow foundation governor unless the local education authority have first consulted any person who would be entitled to appoint foundation governors under the instrument of government of the school if the governing body were a normally constituted governing body.

(5) In calculating the number of shadow governors required in each category in accordance with regulations 6 to 9, the numbers shall be rounded up or down to the nearest whole number.

#### **Community schools, community special schools or maintained nursery schools**

6. The shadow governing body of a community school, community special school or maintained nursery school shall be composed as follows:

- (a) one third or more shall be shadow parent governors;
- (b) at least two but no more than one third shall be shadow staff governors;
- (c) one fifth shall be shadow LEA governors; and
- (d) one fifth or more shall be shadow community governors.

#### **Foundation schools or foundation special schools**

7. The shadow governing body of a foundation school or foundation special school shall be composed as follows:

- (a) one third or more shall be shadow parent governors;
- (b) at least two but no more than one third shall be shadow staff governors;
- (c) at least one but no more than one fifth shall be shadow LEA governors;
- (d) one tenth or more shall be shadow community governors; and

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(3) As defined in paragraph 1(1) of Schedule 1A to the 1998 Act.

- (e) where the school has a foundation, at least two but no more than one quarter shall be shadow foundation governors.

#### **Voluntary controlled schools**

- 8. The shadow governing body of a voluntary controlled school shall be composed as follows:
  - (a) one third or more shall be shadow parent governors;
  - (b) at least two but no more than one third shall be shadow staff governors;
  - (c) at least one but no more than one fifth shall be shadow LEA governors;
  - (d) one tenth or more shall be shadow community governors; and
  - (e) at least two but no more than one quarter shall be shadow foundation governors.

#### **Voluntary aided schools**

- 9. The shadow governing body of a voluntary aided school shall be composed as follows:
  - (a) at least one shall be a shadow parent governor;
  - (b) at least two but no more than one third shall be shadow staff governors;
  - (c) at least one but no more than one tenth shall be shadow LEA governors; and
  - (d) such number of shadow foundation governors as will lead to their outnumbering the shadow governors mentioned in paragraphs (a) to (c) by two.

#### **Chair and vice-chair of the shadow governing body**

10.—(1) The shadow governing body shall, at their first meeting, elect a chair and vice-chair of the shadow governing body from among their number.

(2) A person employed to work at the school shall not be elected as chair or vice-chair, however nothing in this regulation shall prevent an interim executive member from being elected as chair or vice chair.

(3) The chair or vice-chair of the shadow governing body may, at any time, resign his office by giving notice in writing to the clerk to the shadow governing body.

- (4) The chair or vice-chair of the shadow governing body shall cease to hold office if:
  - (a) he ceases to be a shadow governor; or
  - (b) he is employed to work at the school.

(5) Where a vacancy arises in the office of chair or vice-chair, the shadow governing body shall at their next meeting elect one of their number to fill that vacancy.

(6) Where the chair is absent from any meeting or there is at the time a vacancy in the office of the chair, the vice-chair shall act as chair for all purposes.

#### **Appointment of the clerk to the shadow governing body**

11.—(1) The local education authority shall appoint the clerk to the shadow governing body.

- (2) The clerk to the shadow governing body shall not be:
  - (a) a shadow governor; or
  - (b) the head teacher of the school.

(3) Notwithstanding paragraph (2), the shadow governing body may, where the clerk fails to attend a meeting of theirs, appoint any one of their number to act as clerk for the purposes of that meeting.

### **Proceedings of the shadow governing body**

12. The shadow governing body may determine their own procedure, subject to regulations 14 and 15.

### **Delegation of functions**

13. The shadow governing body shall exercise any functions which have been delegated to them by the interim executive board<sup>(4)</sup>.

### **Functions of the clerk to the shadow governing body**

14. The clerk to the shadow governing body shall:

- (a) attend meetings of the shadow governing body and ensure that minutes of the proceedings are produced and signed (subject to the approval of the shadow governing body) by the chair of the meeting; and
- (b) perform such other functions as shall be determined by the shadow governing body from time to time.

### **Minutes of the shadow governing body**

15.—(1) Subject to paragraph (2), the shadow governing body shall, as soon as reasonably practicable, make available for inspection a copy of—

- (a) the agenda for every meeting;
- (b) the signed minutes of every meeting; and
- (c) any report or other paper considered at the meeting.

(2) There may be excluded from any item required to be made available in pursuance of paragraph (1) any material relating to—

- (a) a named person who works, or who it is proposed should work, at the school;
- (b) a named pupil or candidate for admission to the school; or
- (c) any other matter that, by reason of its nature, the temporary governing body is satisfied should remain confidential.

## **PART 3**

### **Transition to a Normally Constituted Governing Body**

#### **End of the interim period**

16. From the day on which the interim executive members cease to hold office (“the transfer date”) in accordance with paragraph 18(1) of Schedule 1A to the 1998 Act—

- (a) the shadow governing body shall be treated as if they were a normally constituted governing body; and
- (b) despite regulation 3(1), Part 5 of the School Governance (Constitution) (England) Regulations 2003 shall apply to the shadow governing body as if they were the governing body of the school.

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(4) An interim executive board may make arrangements for the discharge of their functions under paragraph 11(2) of Schedule 1A to the 1998 Act.

**Constitution of the governing body in accordance with the instrument of government**

17.—(1) The local education authority shall give one term’s notice of a date (“the constitution date”), no later than 13 months after the transfer date, on which—

- (a) the shadow governors shall vacate office; and
- (b) the governing body of the school shall be constituted as a normally constituted governing body.

(2) Sub-paragraph (1)(a) shall not prevent the appointment of a shadow governor as a governor of the normally constituted governing body.

(3) The local education authority shall secure that the required appointment or election of governors takes place in accordance with the instrument of government before the constitution date and takes effect on that date.

1st March 2004

*David Miliband*  
Minister of State  
Department for Education and Skills

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provisions relating to the transition of a school's governing body from being constituted as an interim executive board in accordance with Schedule 1A to the School Standards and Framework Act 1998 to being a governing body constituted in accordance with section 19(1) of the Education Act 2002.

Part 1 provides for the Regulations to come into force on 1st April 2004 and contains interpretative provisions.

Part 2 provides for a shadow governing body to be appointed by the local education authority. It also makes provision for a chair, a vice chair and a clerk to be appointed. The clerk must attend meetings of the shadow governing body and ensure that minutes are taken and signed by the chair. Subject to certain exclusions, those minutes must be made available to interested persons. In all other respects the shadow governing body shall determine their own procedure.

Under regulation 15, certain statutory provisions do not apply to the shadow governing body, nor does the school's instrument of government in so far as it relates to the constitution of the school's governing body.

Part 3 sets out the procedure for the transition from a shadow governing body to a normally constituted governing body. When the interim executive members vacate office, the shadow governing body (to which regulations made under section 19(2) and (3)(a) to (d) of the 2002 Act and those parts of the instrument of government that relates to the constitution of the school's governing body do not apply) shall be treated as if they are a normally constituted governing body. On a date to be determined by the local education authority under regulation 17, the shadow governors will vacate office and the governing body must be constituted in accordance with regulations made by virtue of section 19 of the Education Act 2002 and in accordance with the school's instrument of government.