

## SCHEDULE 3

Regulations 40 and 46

### PROVISIONS APPLICABLE TO PROPOSALS RELATING TO A CHANGE OF CATEGORY

#### **Revision or replacement of the school's instrument of government**

1.—(1) The governing body and the local education authority must secure that by the end of the implementation period a new instrument of government is made for the school in accordance with the Constitution Regulations.

(2) The implementation period is the period commencing on the date a proposal is approved under paragraph 3 or 4 of Schedule 6 to SSFA 1998 or regulation 27 as applicable and ending on the implementation date.

(3) The new instrument of government is to take effect from the date of making for the purpose of reconstituting the governing body but does 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 is to take effect from the implementation date.

#### **Reconstitution or replacement of the governing body**

2.—(1) The governing body and the local education authority must secure that as soon as reasonably practicable after the commencement of the implementation period (and in any event within a period of 3 months beginning on the implementation date) the governing body are reconstituted in accordance with the new instrument of government, and the Constitution Regulations.

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

#### **Current governors continuing in office**

3.—(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 paragraph 4 a governor to whom this paragraph applies is to 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) must hold office for the remainder of the term for which he was originally appointed or elected.

(4) The proceedings of the governing body are not 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 paragraph 4.

#### **Surplus governors**

4.—(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 must cease to hold office in accordance with sub-paragraphs (2) and (3).

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(2) The governors who are to cease to hold office are 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 must be done by drawing lots.

(4) For the purposes of this paragraph, sponsor 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 does not apply to the reconstitution of the governing body under these Regulations.

### **Transfer of staff**

**5.** Where a voluntary aided or foundation school changes category to a voluntary controlled or community school, or from a foundation special school to a community special school—

- (a) the contract of employment between a person to whom this paragraph applies and the governing body has effect from the implementation date as if originally made between him and the local education authority;
- (b) all the governing body's rights, powers, duties and liabilities under, or in connection with, the contract of employment transfer by virtue of this paragraph to the authority on the implementation date; and
- (c) anything done by that date by or in relation to the governing body in respect of that contract or the employee is deemed from that date to have been done by or in relation to the authority.

**6.—(1)** Subject to sub-paragraph (2), paragraph 5 applies 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 the proposal.

(2) Paragraph 5 does not apply to any person whose contract of employment terminates on the day immediately preceding the implementation date.

**7.** Any 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 must be treated for the purpose of paragraph 5 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 the date under his contract of employment with the governing body.

**8.** Where a school changes category from a voluntary controlled or community school to a foundation or voluntary aided school, or from a community special school to a foundation special school—

- (a) the contract of employment between a person to whom this paragraph applies and the local education authority has effect from the implementation date as if originally made between him and the governing body;
- (b) all the authority's rights, powers, duties and liabilities under or in connection with the contract of employment transfer by virtue of this paragraph to the governing body on the implementation date; and
- (c) anything done before that date by or in relation to the authority in respect of that contract or the employee is deemed from that date to have been done by or in relation to the governing body.

**9.—(1)** Subject to sub-paragraph (2), paragraph 8 applies to any person who immediately before the implementation date is employed by the local education authority to work at the school which is the subject of the proposal.

(2) Paragraph 5 does not apply to any person whose contract of employment terminates on the day immediately preceding the implementation date, or to any person employed by the authority to work at the school solely in connection with the provision of school meals.

**10.** Any person who before the implementation date has been appointed by the authority to work at the school as from the implementation date or a date thereafter must be treated for the purpose of paragraph 8 as if he had been employed by the authority immediately before the implementation date to do such work at the school as he would have been required to do on or after the date under his contract of employment with the authority.

**11.** Paragraphs 5 to 10 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 arises by reason only of the change in employer affected by these Regulations.

**12.—(1)** This paragraph applies where a voluntary controlled 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 in a voluntary controlled school enjoyed by virtue of section 60(2) of SSFA 1998, rights not conferred on him on or after the implementation date by section 60 as a teacher at a voluntary aided school, he must continue to enjoy those rights until he ceases to be employed as a teacher at the voluntary aided school.