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STATUTORY INSTRUMENTS

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**2007 No. 3475**

**The School Organisation (Removal of Foundation, Reduction in Number of Foundation Governors and Ability of Foundation to Pay Debts) (England) Regulations 2007**

**Part 1**

**Removal of Foundation and Reduction in Number of Foundation Governors**

**Interpretation and application of Part 1**

**3. In this Part—**

- (a) any reference to the governing body is a reference to the governing body of any school to which section 25 of EIA 2006 applies,
- (b) any reference to a governor or governors is a reference to a member of a governing body of any school to which section 25 of EIA 2006 applies, and
- (c) any reference to a proportion of the governors is a reference to a proportion of the total membership of the governing body, excluding any vacancies.

**Decision of governing body to publish proposals**

**4. A decision to publish proposals to—**

- (a) remove the school's foundation, or
- (b) alter the instrument of government so that the foundation governors will cease to constitute the majority of governors,

under section 25(4) of EIA 2006, whether taken by the governing body or by a committee of the governing body, must be confirmed by the whole governing body at a meeting held not less than 28 days after the meeting at which the initial decision was made.

**Requirement to publish proposals in certain circumstances**

**5.—(1) This regulation applies where—**

- (a) the school's instrument of government provides for the majority of governors to be foundation governors, and
- (b) the governing body has not made a decision to publish proposals under section 25(4) of EIA 2006.

(2) Subject to paragraph (4), where at least one third of the governors give notice in writing to the clerk of the governing body that they require the publication of proposals for either or both of the following alterations to the school—

- (a) the removal of the foundation, or

- (b) the alteration of the instrument of government in such a way that foundation governors will cease to constitute the majority of governors,

the governing body must publish proposals for such alteration or alterations (as the case may be) under section 25 of EIA 2006 and in accordance with this Part.

(3) Unless matters are referred to the adjudicator under regulation 6 (*determination of land issues*) (in which case the governing body must publish proposals within 1 month of receipt of the adjudicator's determination), the governing body must publish such proposals within 3 months of the receipt of notice by the clerk under paragraph (2).

(4) Paragraph (2) does not require the governing body to publish proposals under section 25 of EIA 2006—

- (a) at any time within a 5 year period beginning with the date on which—
- (i) proposals for the establishment of the school were implemented under Schedule 2 to EIA 2006, or
  - (ii) proposals for the acquisition of a foundation, for a relevant change<sup>(1)</sup> in the instrument of government or for a change of category to foundation or foundation special school were implemented under the School Organisation (Prescribed Alterations to Maintained Schools)(England) Regulations 2007<sup>(2)</sup>, or
- (b) at any time within a 5 year period beginning with the date on which previous proposals published under section 25 of EIA 2006 in pursuance of paragraph (2) of this regulation (governing body required to publish proposals) were rejected by the governing body in accordance with regulation 11.

### **Determination of land issues**

**6.—**(1) Before publishing proposals to remove the school's foundation, the governing body must agree with the trustees and the local education authority all matters relating to—

- (a) the land to be transferred under regulation 17, including, where appropriate, the terms of any transfer agreement to be made for the purposes of regulation 17(3), and
- (b) any payment to be made under regulation 18(1) or (2),

which would arise as a result of the governing body's approval of the proposals (with or without modification).

(2) Where the governing body has not reached agreement with the trustees and the local education authority as to any of the matters set out in paragraph (1) within 3 months of—

- (a) the initial decision to publish proposals under regulation 4, or
- (b) receipt of notice by the clerk under regulation 5(2),

such matters must be referred to the adjudicator for his determination.

### **Consultation on proposals**

**7.—**(1) Subject to paragraph (2), before publishing proposals to remove the school's foundation or to alter the school's instrument of government, the governing body must consult—

- (a) families of pupils at the school,
- (b) teachers and other staff at the school,
- (c) the trustees and, if different, the person or persons by whom the foundation governors are appointed,

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(1) As defined in section 25(7) of EIA 2006.

(2) [S.I. 2007/1289](#).

- (d) the local education authority,
  - (e) the governing bodies of any other foundation or foundation special schools maintained by the same local education authority for which the foundation acts as a foundation,
  - (f) any trade unions who represent staff at the school,
  - (g) if the school has a religious character the appropriate diocesan authority (as defined in section 142(1) and (4) of SSFA 1998) or other relevant faith group in relation to the school,
  - (h) if the proposals affect the provision of full-time education suitable to the requirements of persons during the period beginning with the start of the academic year in which they attain the age of 15 and ending when they attain the age of 19, the Learning and Skills Council for England, and
  - (i) such other persons as the governing body consider appropriate.
- (2) The requirement to consult before publishing proposals does not apply where the governing body is required to publish proposals under regulation 5(2).

#### **Information to be included in proposals**

- 8.—(1) Removal of foundation proposals must include the information set out in Schedule 1.
- (2) Reconstitution of governing body proposals must include the information set out in Schedule 2.

#### **Manner of publication of proposals**

- 9.—(1) The governing body must publish the information contained in paragraphs 1 to 4 of Schedule 1, or Schedule 2 as the case may be, together with details of how complete copies of the proposals may be obtained.
- (2) The governing body must publish the information in paragraph (1)—
- (a) by posting it—
    - (i) at or near the main entrance to the school or, if there is more than one main entrance, all of them, and
    - (ii) in a conspicuous place in the area served by the school, and
  - (b) by publishing it in at least one local newspaper circulating in that area, and
- (3) The governing body at the same time as publishing the information in paragraph (1), must send copies of the proposals to—
- (a) the trustees,
  - (b) the Secretary of State, and
  - (c) the local education authority.

#### **Objections and Comments**

10. Any person may object to or comment on proposals published in accordance with regulation 9 provided that such objections or comments must be sent to the governing body within six weeks after the date of publication of the proposals.

#### **Determination of proposals**

- 11.—(1) The governing body must within 3 months after the publication of the proposals under regulation 9 determine whether to—
- (a) approve the proposals without modification,

- (b) approve the proposals in accordance with regulation 12 (*modification of proposals*), or
- (c) subject to paragraph (2), reject the proposals.

(2) Despite regulations 12(1) and (2) of the Procedures Regulations, the governing body may not reject proposals published pursuant to regulation 5(2) above, unless two thirds or more of the governors indicate that they are in favour of such rejection either by—

- (a) being present and voting at the meeting of the governing body at which the proposals are to be determined, or
- (b) if a governor is unable to attend such meeting, notifying the clerk in writing of their vote before the date of the meeting.

(3) The governing body must notify the Secretary of State, the trustees and the local education authority of their determination made under paragraph (1).

### **Modification of proposals**

**12.**—(1) Subject to paragraph (2), the governing body may approve the proposals with either or both of the following modifications—

- (a) a modification to the date on which the proposals will take effect (“the implementation date”),
- (b) a modification to the proposed constitution of the governing body.

(2) Where proposals have been published pursuant to regulation 5(2) above, the governing body may only modify the proposals in accordance with paragraph (1) where, despite regulations 12(1) and (2) of the Procedures Regulations, two thirds or more of the governors indicate that they are in favour of such modification either by—

- (a) being present and voting at the meeting of the governing body at which the proposals are to be determined, or
- (b) if a governor is unable to attend such meeting, notifying the clerk in writing of their vote before the date of the meeting.

### **Implementation of proposals published under section 25**

**13.**—(1) Regulations 14 to 18 apply where the governing body have, in accordance with regulation 11(1)(a) or (b), approved removal of foundation proposals.

(2) Regulations 14 to 16 apply where the governing body have, in accordance with regulation 11(1)(a) or (b), approved reconstitution of governing body proposals.

### **New governing body**

**14.**—(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 procedure for review under regulation 32 of the Constitution Regulations.

(2) The implementation period is the period commencing on the date a proposal is approved under regulation 11(1)(a) or (b) and ending on the implementation date.

(3) 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.

(4) The new instrument of government is to take effect from the date of making for the purpose of reconstituting the governing body but is not to affect the constitution of the governing

body conducting the school pending the implementation date, (or the making of the instrument of government if later).

(5) The governing body must exercise their functions in a manner calculated to enable the local education authority to fulfil their duties under paragraph (1).

(6) For all other purposes, the new instrument of government is to take effect from the implementation date.

### **Governors continuing in office**

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

(2) Subject to regulation 16 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 governor who continues in office under paragraph (2) is to 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 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 of the appropriate category resigning,

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

(2) The governors who are to cease to hold office are to be determined on the basis of length of service, 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 with equal length of service, it must be done by drawing lots.

(4) For the purposes of these Regulations, 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 land**

**17.—**(1) Subject to paragraph (2) any publicly provided land which, immediately before the implementation date, was held by the trustees for the purposes of the school transfers on that date to, and by virtue of this regulation vests in, the governing body.

(2) But, where, in connection with the acquisition of the publicly provided land or the provision of buildings on that land, the trustees had paid any sum representing proceeds of sale of other premises,

that land does not transfer under paragraph (1), but transfers to and vests in the governing body in accordance with a transfer agreement under paragraph (3).

(3) Any other land which, immediately before the implementation date, was held by the trustees for the purposes of the school transfers to and vests in the governing body in accordance with a transfer agreement.

(4) Where any land is transferred to and vests in the governing body in accordance with this regulation, any rights or liabilities—

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

also transfer to, and by virtue of this regulation, vest in, the governing body.

(5) This regulation is subject to Schedule 3 (which makes further provision in relation to transfers of property, rights and liabilities).

(6) In this regulation—

- (a) “publicly provided land” means any land of the kind referred to in sub-paragraph (1) or (2) of paragraph A26 of Schedule 22 to SSFA 1998(3), and
- (b) “transfer agreement” means an agreement made for the purposes of paragraph (3) between the governing body and the trustees, and providing for the land in question to be transferred to, and vest in, the governing body on the implementation date, whether or not in consideration of any payment by the governing body.

### **Compensation where capital expenditure incurred**

**18.**—(1) Where the trustees have incurred capital expenditure in relation to—

- (a) land transferred under regulation 17(1) or (3) (“the transferred land”), or
- (b) other land, the proceeds of the disposal of which were used to acquire or enhance the value of the transferred land,

the governing body must pay to the trustees such sum representing the value of the transferred land as may be agreed between them or determined by the adjudicator under regulation 6.

(2) Where the governing body or the local education authority have incurred capital expenditure in relation to—

- (a) any land held by the trustees for the purposes of the school which is not transferred land (“the excluded land”), or
- (b) other land, the proceeds of the disposal of which were used to acquire or enhance the value of the excluded land,

the trustees must pay to the governing body or the local education authority (as the case may be) such sum representing the value of the excluded land as may be agreed between the trustees and the governing body or the local education authority (as the case may be) or determined by the adjudicator under regulation 6.

### **Duty to have regard to guidance issued by the Secretary of State**

**19.** In exercising their functions under this Part, the following persons must have regard to any guidance given from time to time by the Secretary of State—

- (a) the governing body,
- (b) the trustees,

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(3) Paragraph A26 is inserted by paragraph 2 of Schedule 4 to EIA 2006.

- (c) the local education authority, and
- (d) the adjudicator.