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WELSH STATUTORY INSTRUMENTS

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**2010 No. 638**

**The Federation of Maintained Schools and  
Miscellaneous Amendments (Wales) Regulations 2010**

**PART 1**

**INTRODUCTION**

**Title, commencement and application**

1.—(1) The title of these Regulations is the Federation of Maintained Schools and Miscellaneous Amendments (Wales) Regulations 2010 and they come into force on 12 April 2010.

(2) These Regulations apply in relation to Wales.

**Interpretation**

2.—(1) In these Regulations—

“the 1996 Act” (“*Deddf 1996*”) means the Education Act 1996<sup>(1)</sup>

“the 1998 Act” (“*Deddf 1998*”) means the School Standards and Framework Act 1998<sup>(2)</sup>;

“the 2002 Act” (“*Deddf 2002*”) means the Education Act 2002;

“acting head teacher” (“*pennaeth dros dro*”) means a person appointed to carry out the functions of the head teacher of the school, pending the appointment of head teacher or in the absence of the head teacher;

“appropriate diocesan authority” (“*awdurdod esgobaethol priodol*”) has the meaning given by section 142(1) and (4) of the 1998 Act;

“appropriate religious body” (“*corff crefyddol priodol*”) in relation to a school designated under section 69(3) of the 1998 Act as having a religious character that is not a Church in Wales school or a Roman Catholic Church school, means the body that the Welsh Ministers consider appropriate in relation to the religion or religious denomination to which the school belongs;

“day” (“*diwrnod*”) means school day as defined by section 579 of the 1996 Act;

“the federation date” (“*y dyddiad ffedereiddio*”) means the date on which governing bodies federate;

“governing body” (“*corff llywodraethu*”) means a governing body incorporated under section 19(1) of the 2002 Act or these Regulations as appropriate;

“the Government of Maintained Schools Regulations” (“*y Rheoliadau Llywodraethu Ysgolion a Gynhelir*”) means the Government of Maintained Schools (Wales) Regulations 2005<sup>(3)</sup>;

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(1) 1996 c. 56.

(2) 1998 c. 31.

(3) S.I.2005/2914 (W.211) as amended by the School Councils (Wales) Regulations 2005 (S.I.2005/3200 (W.236)); and by the Staffing of Maintained Schools (Wales) Regulations 2006 (S.I. 2006/873 (W.81)) and by the Staffing of Maintained Schools (Miscellaneous Amendments) (Wales) Regulations 2007 (S.I. 2007/944 (W.80)), and by the Education (Miscellaneous Amendments relating to Safeguarding Children) (Wales) Regulations 2009 (S.I. 2009/2544 (W.206)).

“local authority” (“*awdurdod lleol*”) means the local education authority in Wales by which a maintained school is, or a proposed school is to be, maintained; and where a federation includes schools maintained by different local education authorities in Wales, “relevant local authority” (“*awdurdod lleol perthnasol*”) means the local education authority by which a maintained school is, or a proposed school is to be, maintained;

“the New Maintained Schools Regulations” (“*y Rheoliadau Ysgolion a Gynhelir Newydd*”) means the New Maintained Schools (Wales) Regulations 2005(4);

“new school” (“*ysgol newydd*”) has the same meaning as in regulation 3 of the New Maintained Schools Regulations;

“pupil” (“*disgybl*”) has the meaning given by section 3 of the 1996 Act;

“school council” (“*cyngor ysgol*”) means a council established in accordance with regulation 3 of the School Councils Regulations;

“the School Council Regulations” (“*y Rheoliadau Cynghorau Ysgol*”) means the School Councils (Wales) Regulations 2005(5);

“school teacher” (“*athro neu athrawes ysgol*”) is to be interpreted in accordance with section 122 of the 2002 Act;

“the Staffing Regulations” (“*y Rheoliadau Staffio*”) means the Staffing of Maintained Schools (Wales) Regulations 2006(6) and;

“working day” (“*diwrnod gwaith*”) means any day other than a Saturday, a Sunday or a day which is a bank holiday within the meaning of section 1 of the Banking and Financial Dealings Act 1971(7).

(2) Any reference in these Regulations to—

- (a) the governing body or governors of a school is to be construed, in relation to a federated school, as a reference to the governing body or governors of the federation; and
- (b) the instrument of government of a school is to be construed, in relation to a federated school, as a reference to the instrument of government of the federation.

## PART 2

### ESTABLISHING OR JOINING A FEDERATION

#### Prescribed cases

3.—(1) Regulations 4 to 7 apply where at least two but no more than five governing bodies propose to federate in accordance with section 24 of the 2002 Act.

(2) Regulations 8 and 9 apply where it is proposed to establish a new school and either—

- (a) the temporary governing body wish to federate with one or more governing bodies; or
- (b) the local authority or, where the school is to be a foundation or voluntary school proposals for the establishment of which were published by promoters, the promoters propose that the school should be a federated school.

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(4) S.I. 2005/2912 (W.209).

(5) S.I. 2005/3200 (W.236).

(6) S.I. 2006/873 (W.81) as amended by the Staffing of Maintained Schools (Miscellaneous Amendments) (Wales) Regulations 2007 (S.I. 2007/944 (W.80)) and by the Staffing of Maintained Schools (Amendment) (Wales) Regulations 2009 (S.I. 2009/2708 (W.226)) and by the Staffing of Maintained Schools (Amendment No. 2) (Wales) Regulations 2009 (S.I. 2009/3161 (W.275)).

(7) 1971 c. 80.

### **Procedure for schools wishing to federate**

**4.—**(1) Where a governing body is considering federation, they must first consider a report on the proposal.

(2) The report must be specified as an item on the agenda for the meeting of which notice has been given in accordance with regulation 54(4).

**5.—**(1) Where a governing body propose that they should federate with the governing body of a federation, they must give notice of the proposal to the governing body of the federation.

(2) Upon receipt of the notice, the governing body of the federation must consider whether they should—

- (a) give preliminary consent to the governing body joining the federation (“preliminary consent”); or
- (b) determine that the governing body should not join the federation.

**6.—**(1) Where a governing body decide that they should federate with one or more other governing bodies and, where necessary, preliminary consent has been given, they must jointly with the other governing body or bodies publish proposals for federation.

(2) The proposals must contain the following—

- (a) the name or names of the governing body or bodies with which the governing body propose to federate and confirmation that the governing body, or those governing bodies, have resolved likewise to federate;
- (b) the proposed size of the governing body of the federation;
- (c) the proposed number of governors for each category of governor;
- (d) the proposed arrangements for staffing the schools within the federation;
- (e) the proposed federation date;
- (f) the identity of the admission authority or authorities for the schools within the federation;
- (g) the date, not less than six weeks after the publication of the proposals, by which written representations may be made to the governing body regarding the proposals and the address to which they should be sent; and
- (h) such other matters as the governing bodies consider appropriate.

(3) The governing bodies proposing to federate must publish the proposals by sending them to—

- (a) the relevant local authorities;
- (b) the head teacher of each school;
- (c) in the case of any school with a foundation—
  - (i) the foundation governors; and
  - (ii) any trustees of a trust relating to the school;
- (d) where any of the schools are designated under section 69(3) of the 1998 Act as having a religious character, the appropriate diocesan authority in the case of a Church in Wales or Roman Catholic Church school, or the appropriate religious body in the case of any other such school;
- (e) all staff paid to work at any of the schools;
- (f) every person known by them to be a parent of a registered pupil at any of the schools;
- (g) every trade union known to them to have members paid to work at any of the schools; and
- (h) such other persons as the governing bodies consider appropriate.

(4) A copy of the proposals must be made available for inspection at all reasonable times at each school.

(5) The proposed federation date in paragraph (2)(e) must be not less than 125 days following the publication of the proposals for federation by the governing body pursuant to paragraph (1).

7.—(1) The governing bodies proposing to federate must jointly consider any responses to the proposals and each governing body must determine whether—

- (a) to proceed with the proposals for federation as published;
- (b) to proceed with the proposals for federation with such modifications as the governing body consider appropriate; or
- (c) not to proceed with the proposals for federation.

(2) The modifications referred to in paragraph (1)(b) must not include a change in the identity of the governing bodies proposing to federate.

(3) All the governing bodies that have determined to proceed must jointly give notice of that fact to the relevant local authority or local authorities.

#### **New schools wishing to federate**

8.—(1) Where it is proposed that a new school should federate with one or more schools or a federation, paragraph (2) or (3) applies as appropriate.

(2) Where a temporary governing body has been established, regulations 4 to 7 have effect as if references to a governing body proposing to federate were references to a temporary governing body proposing to federate.

(3) Where a temporary governing body is yet to be established, regulations 4 to 7 have effect as if—

- (a) references to the governing body proposing to federate were references to the local authority or, where proposals are to establish a foundation or voluntary school proposals for the establishment of which were published by promoters, the promoters;
- (b) regulation 4(2) were omitted; and
- (c) in regulation 6(2)(a) for “the governing body propose to federate” there were substituted “the local authority or the promoters propose that the temporary governing body of the new school should federate”.

9.—(1) Parts 1 to 3 and 5 to 7 of the New Maintained Schools Regulations are to apply to a temporary governing body constituted pursuant to this regulation.

(2) Where it is proposed that two or more new schools should federate, with or without one or more other schools or other federation, the local authority may make arrangements providing for the constitution of a single temporary governing body for those new schools.

(3) Where the proposed federation includes schools which are maintained by two or more local authorities, those local authorities must agree amongst themselves which local authority may make arrangements providing for the constitution of a single temporary governing body for those new schools.

(4) Where one or more of the new schools referred to in paragraph (2) is to be a foundation or voluntary school proposals for the establishment of which were published by promoters, the local authority must consult the promoters—

- (a) as to whether the power given to the local authority in paragraph (2) should be exercised; and
- (b) if the local authority proposes to exercise it, as to the date on which the arrangements should be made.

(5) Schedule 1 applies to a temporary governing body constituted pursuant to this regulation.

### **Incorporation of governing bodies of federations and dissolution of former governing bodies**

**10.**—(1) On the federation date—

- (a) the governing bodies of the federating schools or federations are dissolved;
- (b) the governing body of the federation is incorporated;
- (c) all land and property which, immediately before the federation date, was held by the governing body of a federating school or federation transfers to, and by virtue of these Regulations vests in, the governing body of the federation; and
- (d) all rights and liabilities subsisting immediately before the federation date which were acquired or incurred by the governing body of a federating school or federation be transferred to the governing body of the federation.

(2) Section 198 of the Education Reform Act 1988<sup>(8)</sup> (which, with Schedule 10 to that Act, makes further provision in relation to transfers of property, rights and liabilities) applies in relation to transfers effected by this regulation as they apply in relation to transfers to which that section and Schedule apply.

## **PART 3**

### **CATEGORIES OF GOVERNOR**

#### **Parent governors**

**11.**—(1) In these Regulations “parent governor” (“*rhiant-lywodraethwr*”) means—

- (a) a person who is elected in accordance with paragraphs 3 to 8 of Schedule 2 as a member of the governing body of a federation by parents of registered pupils at a federated school and is himself or herself such a parent at the time when he or she is elected; or
- (b) a person appointed as a parent governor in respect of a federated school in accordance with paragraphs 9 to 11 of Schedule 2.

(2) Schedule 2 applies to the election and appointment of parent governors.

(3) A person is disqualified from election or appointment as a parent governor of a federation if he or she is—

- (a) an elected member of the local authority;
- (b) employed by the local authority in connection with its functions as a local education authority; or
- (c) paid to work at the school in the federation for more than 500 hours in any twelve month period.

(4) A person is not disqualified from continuing to hold office as a parent governor when he or she ceases to be a parent of a registered pupil at a federated school or to fulfil any of the requirements set out in paragraphs 10 and 11 of Schedule 2 (as the case may be) unless he or she is otherwise disqualified under these Regulations.

#### **Teacher governors**

**12.**—(1) In these Regulations “teacher governor” (“*athro-lywodraethwr*”) means a person—

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(8) 1988 c. 40.

- (a) who is elected in accordance with Schedule 3 as a governor by school teachers at any school within the federation; and
  - (b) who is himself or herself such a school teacher at a time when he or she is elected.
- (2) Upon ceasing to work at the school a teacher governor is disqualified from continuing to hold office as such a governor.
- (3) Subject to paragraph (4) a person is disqualified from election as a teacher governor to a governing body if he or she—
- (a) has previously been elected as a teacher governor to the same governing body within the last two years; or
  - (b) is employed to work at the same federated school as any person elected as a teacher governor to that governing body within the last two years.
- (4) Paragraph (3)(b) does not apply to any person employed to work at two or more federated schools in the federation.

### **Staff governors**

- 13.**—(1) In these Regulations “staff governor” (“*staff-lywodraethwr*”) means a person who is—
- (a) a person who is elected in accordance with Schedule 3 as a member of the governing body of a federation by persons who are employed to work at the federation or at a federated school; and
  - (b) who is himself or herself a person so working at the time when he or she is elected.
- (2) Upon ceasing to work at a school within the federation, a staff governor of a school is disqualified from continuing to hold office as such a governor.
- (3) Subject to paragraph (4) a person is disqualified from election as a staff governor to a governing body if he or she—
- (a) has previously been elected as a staff governor to the same governing body within the last two years; or
  - (b) is employed to work at the same federated school as any person elected as a staff governor to that governing body within the last two years.
- (4) Paragraph (3)(b) does not apply to any person employed to work at two or more schools in the federation.

### **Local authority governors**

- 14.**—(1) In these Regulations “local authority governor” (“*llywodraethwr awdurdod lleol*”) means a governor appointed to be a member of the governing body of a federation by the local authority that maintains the federated schools.
- (2) Where the federation includes schools which are maintained by two or more local authorities, those local authorities must agree amongst themselves who will appoint such governors and, if more than one governor is to be appointed, in what proportion.
- (3) A person is disqualified from appointment or continuing to hold office as a local authority governor if he or she is eligible to be a staff governor.

### **Community governors and additional community governors**

- 15.**—(1) In these Regulations —
- “additional community governor” (“*llywodraethwr cymunedol ychwanegol*”) means a governor appointed in accordance with regulation 28;

“community governor” (*“llywodraethwr cymunedol”*) means a person who is appointed as such by the governing body of a federation and who is—

- (a) a person who lives or works in the community served by the federation; or
- (b) a person who, in the opinion of the governing body, is committed to the good government and success of the federation.

(2) A person is disqualified from appointment or continuing to hold office as a community governor if he or she is—

- (a) a registered pupil at one of the federated schools;
- (b) eligible to be a teacher or staff governor; or
- (c) an elected member of the local authority.

(3) Paragraph (2) does not apply in the case of an additional community governor.

### **Foundation governors**

**16.**—(1) In these Regulations—

(a) “foundation governor” (*“llywodraethwr sefydledig”*) means a person who is appointed to be a member of the governing body of a federation in respect of a particular federated school, otherwise than by the local authority, and who—

- (i) where the federation includes a federated school which has a particular religious character<sup>(9)</sup>, is appointed for the purpose of securing that that character is preserved and developed at that federated school;
- (ii) where the federation includes a federated school to which a trust relates, is appointed for the purpose of securing that the federated school is conducted in accordance with that trust, or
- (iii) where the federation includes a school which has neither a religious character nor a trust, is appointed as a foundation governor of the federation by a person previously named in the federated school’s instrument of government as having the power to appoint foundation governors;

(b) “ex officio foundation governor” (*“llywodraethwr sefydledig ex officio”*) means a foundation governor who is the holder of an office by virtue of which he or she is entitled to be a foundation governor;

(c) “substitute governor” (*“dirprwy-lywodraethwr”*) means a foundation governor appointed to act in place of an ex officio foundation governor—

- (i) who is unwilling or unable to act as governor;
- (ii) who has been removed as a governor under regulation 35(2); or
- (iii) if there is a vacancy in the office by virtue of which such a governorship exists.

(2) An ex officio foundation governor is, upon ceasing to hold the office from which his or her governorship derives, disqualified from continuing to hold office as such a governor.

### **Partnership governors**

**17.**—(1) In these Regulations “partnership governor” (*“llywodraethwr partneriaeth”*) means a person who is nominated as a partnership governor and appointed as such in accordance with Schedule 4.

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(9) As designated by Order of the Welsh Ministers under section 69(3) of the 1998 Act.

(2) A person is disqualified from nomination or appointment as a partnership governor of a federation if he or she is—

- (a) a parent of a registered pupil at a school within the federation;
- (b) a registered pupil at a school within the federation;
- (c) eligible to be a teacher or staff governor of the federation;
- (d) an elected member of a relevant local authority; or
- (e) employed by a relevant local authority in connection with its functions as a local education authority.

### **Sponsor governors**

**18.** In these Regulations “sponsor governor” (*“noddwr-lywodraethwr”*) means a person nominated as a sponsor governor and appointed as such by the governing body of a federation in accordance with Schedule 5.

### **Representative governors**

**19.** In these Regulations “representative governor” (*“llywodraethwr cynrychiadol”*) means a person who is appointed as such in accordance with Schedule 6.

### **Associate pupil governors**

**20.—(1)** In these Regulations “associate pupil governor” (*“disgybl-lywodraethwr cyswllt”*) means a registered pupil nominated by the school council to be a member of the federated governing body and appointed as such by the federated governing body in accordance with regulation 7 of the School Council Regulations.

(2) The maximum number of associate pupil governors on any federated governing body is two.

## **PART 4**

### **COMPOSITION OF GOVERNING BODIES OF A FEDERATION**

#### **General principles**

**21.—(1)** Subject to paragraphs (2) and (3), the instrument of government for a federation must specify the size of the membership of the governing body of the federation, being no fewer than 15 and no more than 25 governors.

(2) In determining the size of the membership of the governing body of a federation any sponsor governors and associate pupil governors appointed in accordance with regulations 22 to 28 and any additional foundation governors appointed in accordance with regulation 25(2)(b) must not be included.

(3) In determining the size of the membership of the governing body any additional community governors appointed in accordance with regulation 28 must be included.

(4) Subject to regulations 22 to 28, the instrument of government must specify the numbers of governors from each of the following categories of governor to be elected or appointed—

- (a) parent governors;
- (b) teacher governors;
- (c) staff governors;



- (d) local authority governors;
- (e) community governors;
- (f) foundation governors;
- (g) partnership governors;
- (h) sponsor governors;
- (i) representative governor; and
- (j) additional community governors.

(5) Where application of this regulation and regulations 22 to 28 produces a number other than a whole number, the governing body must specify either the whole number next above or the whole number next below (at their choice) providing that the total number of governors may not exceed the limit set in this regulation.

### **Federation comprising only community, community special and maintained nursery schools**

**22.**—(1) The governing body of a federation containing any combination of community schools, community special schools and maintained nursery schools<sup>(10)</sup> (and no other category of school) is to comprise the following—

- (a) for each federated school at least one parent governor elected or appointed in accordance with paragraphs 3 to 11 of Schedule 2 to represent the interests of parents of registered pupils at that school;
  - (b) at least one but no more than two teacher governors;
  - (c) at least one but no more than two staff governors;
  - (d) at least two local authority governors;
  - (e) subject to sub-paragraph (f) at least two community governors;
  - (f) at least one representative governor where the federation contains at least one community special school to take the place of an equal number of the community governors required by sub-paragraph (e); and
  - (g) the head teacher or the acting head teacher of each federated school, unless he or she resigns the position in accordance with regulation 34.
- (2) The governing body of the federation may in addition—
- (a) appoint up to two sponsor governors; and
  - (b) appoint up to two associate pupil governors where the federation contains secondary schools.

### **Federation comprising only foundation or foundation special schools**

**23.**—(1) The governing body of a federation containing foundation schools or foundation special schools<sup>(11)</sup> only is to comprise the following—

- (a) for each federated school at least one parent governor elected or appointed in accordance with paragraphs 3 to 11 of Schedule 2 to represent the interests of parents of registered pupils at that school;
- (b) at least one but no more than two teacher governors;
- (c) at least one but no more than two staff governors;

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<sup>(10)</sup> Within the meaning of section 20 of, and Schedule 2 to, the 1998 Act and section 39(1) of the 2002 Act.

<sup>(11)</sup> Within the meaning of section 20 of, and Schedule 2 to, the 1998 Act.

- (d) at least two local authority governors;
  - (e) at least two community governors;
  - (f) at least two foundation governors (or partnership governors, as appropriate in respect of any school without a foundation); and
  - (g) the head teacher or the acting head teacher of each federated school, unless he or she resigns the position in accordance with regulation 34.
- (2) The governing body of the federation may in addition—
- (a) appoint up to two sponsor governors; and
  - (b) appoint up to two associate pupil governors where the federation contains secondary schools.

#### **Federation comprising voluntary controlled schools only**

**24.**—(1) The governing body of a federation containing voluntary controlled schools<sup>(12)</sup> only is to comprise the following—

- (a) for each federated school at least one parent governor is to be elected or appointed in accordance with paragraphs 3 to 11 of Schedule 2 to represent the interests of parents of registered pupils at that school;
  - (b) at least one but no more than two teacher governors;
  - (c) at least one but no more than two staff governors;
  - (d) at least two local authority governors;
  - (e) at least two community governors;
  - (f) at least two foundation governors; and
  - (g) the head teacher or the acting head teacher of each federated school, unless he or she resigns, the position in accordance with regulation 34.
- (2) The governing body of the federation may in addition—
- (a) appoint up to two sponsor governors; and
  - (b) appoint up to two associate pupil governors where the federation contains secondary schools.

#### **Federation comprising voluntary aided schools only**

**25.**—(1) The governing body of a federation containing voluntary aided schools<sup>(13)</sup> only is to comprise the following—

- (a) for each federated school at least one parent governor elected or appointed in accordance with paragraphs 3 to 11 of Schedule 2 to represent the interests of parents of registered pupils at that school;
- (b) at least one but no more than two teacher governors;
- (c) at least one but no more than two staff governors;
- (d) at least two local authority governors;
- (e) such number of foundation governors as out number all the other governors listed in subparagraphs (a) to (d) by two; and

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<sup>(12)</sup> Within the meaning of section 20 of, and Schedule 2 to, the 1998 Act.

<sup>(13)</sup> Within the meaning of section 20 of, and Schedule 2 to, the 1998 Act.

- (f) the head teacher or the acting head teacher of each federated school, unless he or she resigns the position in accordance with regulation 34.
- (2) In addition—
  - (a) the governing body of the federation may in addition—
    - (i) appoint up to two sponsor governors; and
    - (ii) appoint up to two associate pupil governors where the federation contains secondary schools;
  - (b) the persons who are entitled to appoint foundation governors may appoint such number of foundation governors as are required to preserve their majority but no more than two.

**Federation comprising voluntary controlled schools and community, community special or maintained nursery schools**

26.—(1) The governing body of a federation containing at least one voluntary controlled school and at least one community school, community special school or maintained nursery school and no other category of school is to comprise the following—

- (a) for each federated school at least one parent governor elected or appointed in accordance with paragraphs 3 to 11 of Schedule 2 to represent the interests of parents of registered pupils at that school;
- (b) at least one but no more than two teacher governors;
- (c) at least one but no more than two staff governors;
- (d) at least two local authority governors;
- (e) subject to sub-paragraph (g) at least two community governors;
- (f) at least one foundation governor;
- (g) at least one representative governor where the federation contains at least one community special school to take the place of one of the community governors required by sub-paragraph (e); and
- (h) the head teacher or the acting head teacher of each federated school, unless he or she resigns the position in accordance with regulation 34.
- (2) The governing body of the federation may in addition—
  - (a) appoint up to two sponsor governors; and
  - (b) appoint up to two associate pupil governors where the federation contains secondary schools.

**Federation comprising more than one category of school including at least one foundation or foundation special or voluntary aided school**

- 27.—(1) The governing body of a federation containing—
- (a) more than one category of school, and
  - (b) at least one foundation school, foundation special school or voluntary aided school,
- is to be constituted in accordance with paragraph (2).
- (2) The governing body of a federation to which paragraph (1) applies is to comprise the following—
- (a) for each federated school at least one parent governor elected or appointed in accordance with paragraphs 3 to 11 of Schedule 2 to represent the interests of parents of registered pupils at that school;

- (b) at least one but no more than two teacher governors;
  - (c) at least one but not more than two staff governors;
  - (d) at least two local authority governors;
  - (e) subject to sub-paragraph (g), at least two community governors;
  - (f) at least two foundation governors (or partnership governors as appropriate in respect of any school without a foundation);
  - (g) at least one representative governor where the federation contains at least one community special school to take the place of one of the community governors required by sub-paragraph (e); and
  - (h) the head teacher or the acting head teacher of each federated school, unless he or she resigns the position in accordance with regulation 34.
- (3) The governing body of the federation may, in addition—
- (a) appoint up to two sponsor governors; and
  - (b) appoint up to two associate pupil governors where the federation contains secondary schools.

### **Additional Community Governors**

**28.**—(1) This paragraph applies to the governing body of a federation which includes one or more of the following—

- (a) any community, voluntary or foundation school which is a primary school; and
- (b) any maintained nursery school;

which serves an area for which there are one or more community councils.

(2) The instrument of government of a school must provide for the governing body of a federation to include (in addition to the governors required by virtue of regulations 22 to 27, as the case may be) one community governor nominated by the community council.

(3) If a school serves an area for which there are two or more community councils, the governing body may seek nominations from one or more of those councils.

### **Notification of vacancies and appointments**

**29.**—(1) Subject to paragraphs (2) and (3), where a vacancy in the office of an appointed member of the governing body arises, the clerk to the governing body must as soon as is reasonably practicable give notice in writing of that fact to the person entitled to appoint or nominate a person to that office.

(2) Subject to paragraph (3), the clerk to the governing body must, at least two months before the date of the expiry of the term of office of an appointed member, give notice in writing of that fact to the person entitled to appoint or nominate a person to that office.

(3) Paragraphs (1) and (2) do not apply where the person entitled to appoint a person to the office in question has already notified the clerk to the governing body in writing of the person appointed or nominated.

(4) Where any person other than a governing body makes an appointment or nominates a person to be appointed to the governing body, he or she must give written notice of the appointment or the nomination to the clerk to the governing body specifying the name and usual place of residence of the person so appointed or nominated.

- (5) For the purposes of this regulation, “appointed member” (“*aelod a benodwyd*”) means—
- (a) a foundation governor;

- (b) a local authority governor;
- (c) a community governor (including an additional community governor);
- (d) a representative governor;
- (e) a sponsor governor; and
- (f) a partnership governor.

### **Joint appointments**

#### **30.** If—

- (a) the instrument of government of a school provides for one or more of the governors to be appointed by persons acting jointly; and
- (b) those persons fail to make an agreed appointment;

the appointment is to be made by, or in accordance with a direction given by, the Welsh Ministers.

### **Surplus Governors**

**31.**—(1) Where a federation has more governors of a particular category than are provided for by the instrument of government for the school, such number of governors of that category as is required to eliminate the excess must cease to hold office in accordance with paragraphs (2) and (3) unless a sufficient number resign.

(2) The governors who are to cease to hold office are to be determined on the basis of seniority, the governors whose current period of office as a governor of any category at the school 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 regulation, additional community governors are treated as if they constituted a separate category of governor.

## **PART 5**

### **QUALIFICATIONS AND TENURE OF OFFICE**

#### **Qualifications and disqualifications**

**32.** Schedule 7 sets out the circumstances in which a person is qualified for or disqualified from holding or continuing in office as a governor.

#### **Term of office**

**33.**—(1) Subject to paragraphs (2) to (9), a governor holds office for a fixed period of four years from the date of his or her election or appointment.

(2) Paragraph (1) does not apply to any governor who is the head teacher of the federation or a federated school, or to any ex officio foundation governor, who may hold office for as long as he or she holds the position from which his or her governorship derives.

(3) Paragraph (1) does not apply to any foundation governor whose term of office is to be determined by the person who appointed him or her, up to a maximum of four years.

(4) Paragraph (1) does not apply to any additional governor, additional foundation governor or interim executive member appointed under sections 16(14), 16A(15), 18(16) or 18A(17) of the 1998 Act whose term of office is to be determined by the person who appointed him or her, up to a maximum of four years.

(5) Paragraph (1) does not apply to any teacher governor or staff governor who is to hold office for a period of two years from the date of his or her appointment.

(6) Paragraph (1) does not apply to any parent governor of a maintained nursery school who is to hold office for a fixed period of two years from the date of his or her election or appointment.

(7) Paragraph (1) does not apply to any associate pupil governor who is to hold office for a period of one year from the date of his or her appointment. Nothing in this paragraph prevents an associate pupil governor from being re-appointed at the expiration of his or her term of office.

(8) A substitute governor may hold office until the earlier of the following—

- (a) the expiry of four years from the date when his or her appointment takes effect;
- (b) the date when the original governor (not having been removed from office under regulation 35(2)) gives written notice to the clerk to the governing body to the effect that he or she is able and willing to act as a foundation governor; or
- (c) the date when a person other than the original governor takes office in the post by virtue of which the ex officio foundation governorship exists.

(9) This regulation does not prevent a governor from—

- (a) being elected or appointed for a further term, save as otherwise provided in these Regulations;
- (b) resigning his or her office in accordance with regulation 34(1);
- (c) being removed from office under regulations 35 to 37; or
- (d) being disqualified, by virtue of any provision of these Regulations, from holding or continuing to hold office.

(10) In this regulation “the original governor” (“*y llywodraethwr gwreiddiol*”) means the ex officio foundation governor in whose place the substitute governor is appointed to act.

## Resignation

**34.—**(1) A governor may at any time resign his or her office by giving written notice to the clerk to the governing body.

(2) The head teacher may withdraw his or her resignation at any time by giving written notice to the clerk to the governing body.

(3) An ex officio foundation governor may resign as governor either permanently or temporarily, but his or her resignation does not prejudice the ex officio governorship of his or her successor in the office from which the ex officio governorship derives.

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(14) Amended by section 56 of, and Schedule 5 and Schedule 21 to, the 2002 Act and by section 61 of, and Schedule 9 to, the Education Act 2005 (c. 18). Further amended by sections 71 and 184 of, and Part 2 of Schedule 7 and Part 4 of Schedule 18 to, the Education and Inspections Act 2006 (c. 40).

(15) Inserted by section 57 of the 2002 Act. Amended by section 61 of, and Schedule 9 to, the Education Act 2005 (c. 18). Further amended by sections 71 and 184 of, and Part 2 of Schedule 7 and Part 4 of Schedule 18 to, the Education and Inspections Act 2006 (c. 40).

(16) Amended by section 56 and section 215 of, and Schedule 21 to, the 2002 Act and by section 61 of, and Schedule 9 to, the Education Act 2005 (c. 18). Further amended by sections 71 and 184 of, and Part 2 of Schedule 7 and Part 4 of Schedule 18 to, the Education and Inspections Act 2006 (c. 40).

(17) Inserted by section 58 of the 2002 Act. Amended by section 6 of, and Schedule 9 to, the Education Act 2005 (c. 18). Further amended by section 71 of, and Schedule 7 to, the Education and Inspections Act 2006 (c. 40).

### **Removal of local authority, foundation, representative, additional community and sponsor governors**

**35.**—(1) Any local authority governor, foundation governor, or representative governor may be removed from office by the person who appointed him or her, who must give written notice thereof to the clerk to the governing body and to the governor so removed.

(2) An ex officio foundation governor may be removed from office by the person named in the instrument of government as the person entitled to remove him or her, and that person must give written notice thereof to the clerk to the governing body and to the governor so removed.

(3) Any additional community governor or sponsor governor may be removed by the person who nominated him or her, who must give written notice thereof to the clerk to the governing body and to the governor so removed.

### **Removal of community governors**

**36.** The governing body may remove any community governor (except an additional community governor) from office in accordance with the procedure set out in regulation 38.

### **Removal of appointed parent governors, partnership governors and associate pupil governors**

**37.** Any parent governor appointed by the governing body under paragraphs 9 to 11 of Schedule 2, any partnership governor and any associate pupil governor may be removed by the governing body in accordance with the procedure set out in regulation 38.

### **Procedure for removal of governors by the governing body**

**38.**—(1) This regulation applies in relation to the removal of a governor from office in accordance with regulation 36 or 37.

(2) A resolution to remove a governor from office which is passed at a meeting of the governing body does not have effect unless—

(a) before the governing body resolve to remove the governor from office, the governor or governors proposing his or her removal at that meeting state their reasons for doing so and the governor whom it is proposed to remove is given an opportunity to make a statement in response; and

(b) the matter of the governor's removal from office is specified as an item of business on the agenda for the meeting.

(3) After a resolution to remove a governor from office has been passed the governing body must inform the person removed from office of the reasons for the removal in writing.

## **PART 6**

### **INSTRUMENT OF GOVERNMENT, STAFFING, SCHOOL COUNCILS AND CHARITABLE STATUS**

#### **Duty to have regard to guidance**

**39.** In respect of the making of instruments of government, the matters to be dealt with in such instruments, the form of such instruments, and the review and variation of such instruments, governing bodies and local authorities must have regard to any guidance given from time to time by the Welsh Ministers.

## **Contents and form of instrument of government**

**40.**—(1) The instrument of government for a federation must set out—

- (a) the name of the federation;
- (b) the names and categories of the federated schools within the federation;
- (c) the name of the governing body of the federation;
- (d) subject to paragraph (4), the manner in which the governing body is to be constituted in accordance with Part 4, specifying—
  - (i) the number of governors in each category of governor;
  - (ii) the categories of person from whom or from amongst whose members nominations for the appointment of any additional community governor or sponsor governor are authorised by these Regulations; and
  - (iii) the total membership of the governing body;
- (e) where the term of office for a category of governor is to be less than four years, the length of that term of office;
- (f) where the federation has foundation governors—
  - (i) the name of any person who is entitled to appoint such governors and, if there is more than one such person entitled to appoint, the basis upon which such appointments are made;
  - (ii) details of any foundation governorship to be held ex officio by the holder of a named office; and
  - (iii) the name of any person who is entitled to remove any ex officio foundation governor and to appoint any substitute governor;
- (g) where the federation includes a community special school, the name of any appropriate body or appropriate voluntary organisation entitled to nominate a person for appointment as a representative governor under Schedule 6;
- (h) where there is a trust relating to a federated school, that fact;
- (i) where a federated school is a foundation or a voluntary school designated under section 69(3) of the 1998 Act as having a religious character, a single description of the religious ethos of each such school; and
- (j) the date when the instrument of government takes effect.

(2) The manner in which the governing body is to be constituted, as set out in accordance with sub-paragraph (1)(d), must accord with the provisions of these Regulations.

(3) The instrument of government must (subject to any statutory provision) comply with any trust relating to a federated school.

(4) Sub-paragraphs (d) and (e) of paragraph (1) do not apply to associate pupil governors.

## **Procedure for making an instrument**

**41.**—(1) In this regulation, where reference is made to the local authority and the federation is to include schools maintained by different local authorities, the reference is to be taken as a reference to whichever of those local authorities the governing bodies of the schools agree between them should make the instrument of government for the federation.

(2) The governing bodies of the schools which are to form the federation must jointly prepare a draft instrument of government and submit it to the local authority.



(3) Where the federation will have foundation governors, the governing bodies of the proposed federation must not submit the draft to the local authority unless it has been approved in respect of each foundation or voluntary school by—

- (a) that school's foundation governors;
- (b) the trustees of any trust relating to such a school;
- (c) in the case of a Church in Wales or Roman Catholic Church school, the appropriate diocesan authority; and
- (d) in the case of any other school designated under section 69(3) of the 1998 Act as having a religious character, the appropriate religious body.

(4) If—

- (a) the local authority are content that the draft complies with all the applicable provisions; or
- (b) there is agreement between the local authority, the governing bodies and (where the federation will have foundation governors) the persons mentioned in paragraph (3) that the draft should be revised to any extent, and the revised draft complies with all the applicable statutory provisions;

the instrument of government is to be made by the local authority in the form of the draft or (as the case may be) the revised draft.

(5) If, in the case of a federation which will have foundation governors, there is at any time disagreement as to the content of the draft among the persons mentioned in paragraph (3), any of those persons may refer the draft to the Welsh Ministers who must give such direction as they think fit having regard, in particular, to the categories of schools which are proposed to be included within the federation.

(6) If neither of sub-paragraphs (a) and (b) of paragraph (4) applies in the case of a federation which will not have foundation governors, the local authority must—

- (a) inform the governing body of the federation of the reasons why it is not content with the draft instrument of government; and
- (b) give the governing body of the federation a reasonable opportunity to reach agreement with it on revising the draft;

and the instrument of government must be made by the local authority either in the form of a revised draft agreed between it and the governing body of the federation or (in the absence of such agreement) in such form as it thinks fit having regard, in particular, to the categories of school included in the federation.

### **Review of instruments of government**

**42.—**(1) The governing body or the local authority may review the instrument of government at any time after it is made.

(2) Where on any review the governing body or the local authority decides that the instrument of government should be varied, the governing body or (as the case may be) the local authority must notify the other of its proposed variation together with its reasons for proposing such a variation.

(3) Where the governing body has received notification under paragraph (2), it must inform the local authority as to whether or not it is content with the proposed variation and, if not content, its reasons.

(4) Where the federation has foundation governors, the governing body must not—

- (a) give the local authority any notification under paragraph (2); or
- (b) inform the local authority under paragraph (3) that it is content with the local authority's proposed variation;

unless the persons listed in regulation 41(3) have approved the proposed variation.

(5) If—

- (a) whichever of the governing body and the local authority is the recipient of a notification under paragraph (2) agrees with the proposed variation; or
- (b) there is agreement between the local authority, the governing body and (if the federation has foundation governors) the other persons listed in regulation 41(3) that some other variation should be made instead;

the local authority must vary the instrument of government accordingly.

(6) If, in the case of a federation which has foundation governors, at any time the persons listed in regulation 41(3) disagree with the proposed variation any of those persons may refer it to the Welsh Ministers; and on such a reference the Welsh Ministers must give such direction as they think fit having regard, in particular, to the categories of school which make up the federation.

(7) If neither sub-paragraphs (a) and (b) of paragraph (5) applies in the case of a federation which does not have foundation governors, the local authority must—

- (a) inform the governing body of the reasons—
  - (i) why it is not content with the governing body's proposed variation, or as the case may be;
  - (ii) why it wishes to proceed with its own variation; and
- (b) give the governing body a reasonable opportunity to reach agreement with it with regard to the variation;

and the instrument of government must be varied by it either in the manner agreed between it and the governing body or (in the absence of such agreement) in such manner as it thinks fit having regard, in particular, to the categories of school which make up the federation.

(8) Nothing in this regulation is to be taken as requiring the local authority to vary the instrument of government if it does not consider it appropriate to do so.

(9) Where an instrument of government is varied under this regulation the instrument must set out the date on which the variation takes effect.

### **Other requirements relating to instruments of government**

**43.**—(1) The local authority must ensure that the persons set out in paragraph (2) are provided (free of charge) with—

- (a) a copy of the federation's instrument of government; and
- (b) where any variation is made to the federation's instrument of government, a consolidated version of the instrument of government incorporating all variations made by the local authority (other than any variations which have ceased to have effect).

(2) The persons who are to be provided with the information referred to in paragraph (1) are—

- (a) every member of the governing body of the federation;
- (b) the head teacher of the federation or each federated school, whether or not the head teacher is a member of the governing body;
- (c) the trustees of any trust relating to a federation school;
- (d) in the case of a Church in Wales federated school or Roman Catholic Church federated school, the appropriate diocesan authority;
- (e) in the case of any other federated school designated under section 69(3) of the 1998 Act as having a religious character, the appropriate religious body; and
- (f) the Welsh Ministers.

### **Staffing of federations**

44. The Staffing Regulations apply to the staffing of federations subject to the modifications in Schedule 8.

### **School Council Regulations**

45. The School Council Regulations apply to the governing body of a federation and its members subject to the modifications in Schedule 9.

### **Charitable status of federations**

46.—(1) The governing body of a federation which includes a foundation, voluntary or foundation special school is a charity which is an exempt charity for the purposes of the Charities Act 1993<sup>(18)</sup>, but no governing body of a federation which includes only community, community special or maintained nursery schools is a charity.

(2) So far as it is a charity, any institution which—

- (a) is administered by or on behalf of any governing body of a federation which includes a foundation, voluntary or foundation special school; and
- (b) is established for the general purposes of, or for any special purpose of, or in connection with, that body or that federation or any foundation, voluntary or foundation special school within that federation;

must also be an exempt charity for the purposes of the Charities Act 1993.

(3) In this regulation, “charity” (“*elusen*”) and “institution” (“*sefydliad*”) have the same meaning as in the Charities Act 1993.

## **PART 7**

### **APPOINTMENT, FUNCTIONS AND REMOVAL OF OFFICERS**

#### **Election of the chair and vice-chair**

47.—(1) Subject to paragraph (2) and to section 18 of the 1998 Act<sup>(19)</sup> (power of the Welsh Ministers for Wales to appoint additional governors), the governing body must elect a chair and a vice-chair from among their number annually.

(2) A governor who is paid to work at the federation or at a federated school or who is a pupil at a federated school is not eligible to be chair or vice-chair of the governing body of federation in question.

(3) Subject to paragraphs (5) and (6), the chair or vice-chair is to hold office until his or her successor has been elected in accordance with paragraph (1).

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

(5) The chair or vice-chair ceases to hold office—

- (a) when he or she ceases to be a member of the governing body;
- (b) if he or she is paid to work at the federation or federated school in question;

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<sup>(18)</sup> 1993 c. 10.

<sup>(19)</sup> Amended by section 56 of and section 215 of, and Schedule 21 to, the 2002 Act. Further amended by section 61 of, and Schedule 9 to, the Education Act 2005 (c. 18); and further amended by sections 7 and 184 of, and Part 2 of Schedule 7 and Part 4 of Schedule 18 to, the Education and Inspections Act 2006 (c. 40).

- (c) if he or she is removed from office in accordance with regulation 49 or replaced by a chair nominated by the Welsh Ministers pursuant to section 18 of the 1998 Act; or
- (d) in the case of the vice-chair, he or she is elected in accordance with paragraph (6) to fill a vacancy in the office of chair.

(6) Where a vacancy arises in the office of chair or vice-chair, the governing body must at their next meeting elect one of their number to fill that vacancy, subject to paragraph (2) and to section 18 of the 1998 Act.

(7) Any election of the chair or vice-chair which is contested must be held by secret ballot.

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

(9) Where in the circumstances referred to in paragraph (8) the vice-chair is absent from the meeting or there is at the time a vacancy in the office of vice-chair, the governing body must elect one of their number to act as chair for the purposes of that meeting, subject to paragraph (2).

(10) The clerk to the governing body is to act as chair during that part of any meeting at which the chair is to be elected.

#### **Delegation of functions to the chair or vice-chair in cases of urgency**

**48.**—(1) The chair may, where in his or her opinion the circumstances mentioned in paragraph (2) apply, exercise any function of the governing body which can be delegated under regulation 59(1).

(2) The circumstances are that a delay in exercising the function would be likely to be seriously detrimental to the interests of—

- (a) the federation or a federated school;
- (b) any pupil at a federated school, or his or her parent; or
- (c) a person who works at the federation or a federated school.

(3) In paragraph (2), “delay” (“*oedi*”) means delay for a period extending beyond the earliest date on which it would be reasonably practicable for a meeting of the governing body, or of a committee to which the function in question has been delegated, to be held.

(4) Where it appears to the vice-chair that—

- (a) the circumstances mentioned in paragraph (2) apply; and
- (b) the chair (whether by reason of a vacancy in the office or otherwise) would be unable to exercise the function in question before the detriment referred to in that paragraph is suffered;

the reference in paragraph (1) to the chair is to read as if it were a reference to the vice-chair.

#### **Removal of the chair or vice-chair from office**

**49.**—(1) Subject to paragraphs (3) and (4), the governing body may by resolution remove the chair from office, unless he or she has been nominated by the Welsh Ministers pursuant to section 18 of the 1998 Act.

(2) Subject to paragraphs (3) and (4), the governing body may by resolution remove the vice-chair from office.

(3) A resolution to remove the chair or vice-chair from office does not have effect unless the matter is specified as an item of business on the agenda for the meeting, of which notice has been given in accordance with regulation 54(7).

(4) Before the governing body resolve to remove the chair or the vice-chair from office, the governor proposing his or her removal must at that meeting state his or her reasons for doing so and

the chair or vice-chair (as the case may be) must be given an opportunity to make a statement in response, before withdrawing from the meeting.

### **Appointment and removal of the clerk to the governing body**

**50.**—(1) This regulation is without prejudice to any rights and liabilities which the clerk may have under any contract with the governing body or with the local authority.

(2) The governing body must appoint a clerk to the governing body.

(3) The clerk to the governing body must not be—

(a) a governor;

(b) a non-governor member of any committee of the governing body; or

(c) the head teacher of the federation or of a federated school.

(4) Notwithstanding paragraph (2), the governing body may, if the clerk fails to attend a meeting of theirs, appoint any one of their number (who is not the head teacher of the federation or of a federated school) to act as clerk for the purposes of that meeting.

(5) The governing body may remove the clerk to the governing body from office.

(6) If at any time no federated school has a delegated budget<sup>(20)</sup>, the local authority may remove the clerk to the governing body and appoint a substitute, provided the local authority consults the governing body before taking such action.

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

**51.**—(1) The clerk to the governing body must—

(a) convene meetings of the governing body in accordance with regulation 54;

(b) attend meetings of the governing body and ensure minutes of the proceedings are produced in accordance with regulation 56(1);

(c) maintain a register of members of the governing body and report any vacancies to the governing body;

(d) maintain a register of governors' attendance at meetings and report on non-attendance to the governing body;

(e) give and receive notices in accordance with regulations 29 (*notification of vacancies and appointments*), 34 (*resignation*), 35 (*removal of governors*), 47(4) (*resignation of chair or vice chair*), and 54(4) (*convening meetings*) of, and paragraph 13 of Schedule 7 (*notification of disqualification*) to, these Regulations;

(f) report to the governing body as required on the discharge of his or her functions; and

(g) perform such other functions as may be determined by the governing body from time to time.

(2) The clerk to the governing body may provide it with advice on its functions and procedures.

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<sup>(20)</sup> See section 39(2) of the 2002 Act.

## PART 8

### MEETINGS AND PROCEEDINGS OF GOVERNING BODIES

#### Right of persons to attend meetings of the governing body

52. Subject to regulations 53 and 72 of, and Schedule 10 to, these Regulations the following persons are entitled to attend any meeting of the governing body—

- (a) subject to regulation 58, a governor;
- (b) the head teacher of the federation or of a federated school (whether or not he or she is a governor);
- (c) the clerk to the governing body; and
- (d) such other persons as the governing body may determine.

#### Exclusion of associate pupil governors from meetings

53. The governing body must exclude associate pupil governors from any governing body discussion relating to:

- (a) staff appointments, staff pay, staff discipline, performance management of staff, grievances submitted by staff or dismissal of staff;
- (b) admissions;
- (c) individual pupil discipline;
- (d) election, appointment and removal of governors;
- (e) the budget and financial commitments of the governing body;
- (f) in the case of a federated voluntary aided school, the trust deed relating to that school; or
- (g) any other matter that, by reason of its nature, the governing body is satisfied is and should remain confidential.

#### Convening meetings of the governing body

54.—(1) The governing body must hold at least one meeting during every school term.

(2) Meetings of the governing body must be convened by the clerk and, without prejudice to paragraph (3), in exercising this function the clerk must comply with any direction given by—

- (a) the governing body; or
- (b) the chair, so far as such direction is not inconsistent with any direction given under sub-paragraph (a).

(3) Any three members of the governing body may requisition a meeting by giving written notice to the clerk that includes a summary of the business to be transacted; and the clerk must convene a meeting as soon as is reasonably practicable.

(4) Subject to paragraphs (5), (6) and (7), the clerk must give written notice of the meeting, a copy of the agenda, and any reports or other papers to be considered at the meeting at least five clear working days in advance to—

- (a) each governor;
- (b) the head teacher of the federation or of a federated school (whether or not he or she is a governor); and
- (c) the local authority.

(5) Where the chair so determines, on the ground that there are matters demanding urgent consideration, it is sufficient if the written notice of the meeting states that fact and the notice, copy of the agenda, reports and other papers to be considered are given within such shorter period as he or she directs.

(6) This paragraph applies in relation to any meeting at which—

- (a) the removal of the chair or vice-chair from office;
- (b) the suspension of any governor;
- (c) the removal of a community governor or sponsor governor; or
- (d) a decision to serve notice of discontinuance of a federated school under section 30 of the 1998 Act;

is to be considered.

(7) Where paragraph (6) applies—

- (a) written notice of the meeting, a copy of the agenda and any reports or other papers to be considered at the meeting must be given at least seven clear working days in advance; and
- (b) the power of the chair to direct that a meeting be held within a shorter period does not apply.

(8) The functions of the chair in this regulation may be exercised by the vice-chair in the absence of the chair or where there is a vacancy in the office of chair.

(9) A meeting of the governing body and its proceedings are not invalidated by reason of any person not having received written notice of the meeting or a copy of the agenda.

### **Quorum and proceedings of the governing body**

**55.**—(1) The quorum for a meeting of the governing body and for any vote on any matter at such a meeting is one half (rounded up to a whole number) of the membership of the governing body excluding any vacancies and any governors suspended from that meeting in accordance with regulation 58.

(2) Subject to paragraph (3) every question to be decided at a meeting of the governing body must be determined by a majority of the votes of the governors present and voting on the question.

(3) Associate pupil governors may not vote on any question to be determined at a meeting of the governing body.

(4) Where there is an equal division of votes the chair or, as the case may be, the person who is acting as chair for the purposes of the meeting (provided that such person is a governor), has a second or casting vote.

(5) No decision to serve notice of discontinuance of a federated school under section 30(21) of the 1998 Act whether taken by the governing body or by a committee, has effect unless it is confirmed by the governing body at a meeting held not less than twenty eight clear working days after the meeting at which the decision was made and—

- (a) the matter is specified as an item of business on the agenda for both meetings; and
- (b) notice of the second meeting is given in accordance with regulation 54(7).

(6) The proceedings of the governing body of a school are not invalidated by—

- (a) any vacancy among their number;

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(21) Subsection (3) was amended by section 149 of, and Schedule 9 to, the Learning and Skills Act 2000 (c. 21) and by the National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005 (S.I. 2005/3238 (W.243)). Subsection (9) was substituted by section 30 of, and Schedule 3 to, the Education and Inspections Act 2006 (c. 40).

- (b) any defect in the election, appointment or nomination of any governor;
- (c) any defect in the appointment of the chair or vice-chair; or
- (d) the federation having more governors of a particular category than are provided for by the instrument of government<sup>(22)</sup>.

### **Minutes and papers**

**56.**—(1) The clerk (or the person appointed to act as clerk for the purpose of the meeting in accordance with regulation 50(4)) must ensure that minutes of the proceedings of a meeting of the governing body are drawn up and signed (subject to the approval of the governing body) by the chair (or the person acting as chair) at the next meeting.

(2) The minutes of proceedings must be entered into a book kept for the purpose by the clerk and may be entered on loose-leaf pages consecutively numbered; but in that case the person signing the minutes must initial each page.

(3) The person acting as clerk to the governing body for the purposes of any meeting must record immediately before the entry recording the minutes of that meeting in the book or pages used for that purpose the names of those members of the governing body and of any other person present at the meeting concerned.

(4) The governing body must supply a copy of the draft or signed minutes of a particular meeting to the local authority that maintains the school in question on request by the local authority concerned.

### **Publication of minutes and papers**

**57.**—(1) Subject to paragraph (2), the governing body must, as soon as reasonably practicable, make available for inspection at each of the federated schools by any interested person, a copy of—

- (a) the agenda for every meeting;
- (b) the signed minutes of every such meeting;
- (c) any report or other paper considered at any such meeting; and
- (d) the draft minutes of any meeting, if they have been approved by the person acting as chairman of that meeting.

(2) The governing body may exclude 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 federation or a federated school; or
- (b) a named pupil at, or candidate for admission to, a federated school; or
- (c) any other matter that, by reason of its nature, the governing body is satisfied should remain confidential.

(3) Each page of published copies of any draft minutes of proceedings of meetings approved by the chair must indicate that they are draft minutes.

### **Suspension of governors**

**58.**—(1) Subject to paragraphs (2), (3) and (4), the governing body may by resolution suspend a governor for all or any meetings of the governing body, or of a committee, for a fixed period of up to six months on one or more of the following grounds—

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(22) See section 20(1) of the 2002 Act and regulation 31.



- (a) that the governor, being a person paid to work at the federation or federated school, is the subject of disciplinary proceedings in relation to his or her employment;
- (b) that the governor is the subject of proceedings in any court or tribunal, the outcome of which may be that he or she is disqualified from continuing to hold office as a governor under Schedule 7;
- (c) that the governor has acted in a way that is inconsistent with the ethos or with the religious character of a federated school and has brought or is likely to bring the federation, a federated school, the governing body or his or her office into disrepute; or
- (d) that the governor is in breach of his or her duty of confidentiality to the federation or a federated school or to any member of staff or to any pupil at the federation or a federated school.

(2) A resolution to suspend a governor from office does not have effect unless the matter is specified as an item of business on the agenda for the meeting of which notice has been given in accordance with regulation 54(7).

(3) Before a vote is taken on a resolution to suspend a governor, the governor proposing the resolution must at the meeting state his or her reasons for doing so, and the governor who is the subject of the resolution must be given the opportunity to make a statement in response before withdrawing from the meeting in accordance with regulation 72(2).

(4) Nothing in this regulation is to be read as affecting the right of a governor who has been suspended—

- (a) to receive notices of, and agendas and reports or other papers for, meetings of the governing body; or
- (b) to attend a meeting of the governing body convened in accordance with regulation 38 to consider his or her removal from office;

during the period of his or her suspension.

(5) Nothing in this regulation is to be read as preventing a governing body from suspending a governor who has been suspended under paragraph (1) for a further fixed period or periods, whether or not on the same ground as that of the original suspension, and paragraphs (1) to (4) apply in relation to each suspension.

(6) A governor is not disqualified from continuing to hold office under paragraph 5 of Schedule 7 for failure to attend any meeting of the governing body while suspended under this regulation.

### **Delegation of functions**

**59.**—(1) Subject to regulation 60 of these Regulations, regulation 3(2) of the Religious Character of Schools (Designation Procedure) Regulations 1998(**23**) and regulation 7 of the School Government (Terms of Reference) (Wales) Regulations 2000(**24**), the governing body may delegate any of its functions to—

- (a) a committee;
- (b) any governor; or
- (c) the head teacher of the federation or of a federated school (whether or not he or she is a governor).

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(23) S.I. 1998/2535, as amended in relation to Wales by the Education (New Schools) (Wales) Regulations 1999 (S.I.1999/2243 (W.3)) and by the New Maintained Schools (Wales) Regulations 2005 (S.I. 2005/2912 (W.209)).

(24) S.I. 2000/3027 (W.195) as amended by the School Government (Terms of Reference) (Amendment) (Wales) Regulations 2002 (S.I. 2002/1396 (W.138)) and by the Education Act 2002 (Transitional Provisions and Consequential Amendments) (Wales) Regulations 2005 (S.I. 2005/2913 (W.210)).

(2) Where the governing body has delegated functions this does not prevent the governing body from exercising those functions.

(3) The governing body must review the exercise of functions it has delegated annually.

### **Restrictions on delegation and specified committees**

**60.**—(1) The governing body may not delegate under regulation 59(1) its functions under the following regulations—

- (a) those in Part 3 (categories of governors);
- (b) those in Part 4 (composition of governing bodies of a federation);
- (c) those in Part 5 (removal of governors);
- (d) those in Part 6 (instruments of government);
- (e) regulations 47 and 49 (election and removal of chair and vice chair);
- (f) regulation 50 (appointment and removal of the clerk to the governing body);
- (g) regulation 58 (suspension of governors);
- (h) regulation 59 (delegation of functions);
- (i) regulation 63 (establishment of committees);

nor may it delegate its functions in respect of head teacher and deputy head teacher selection panels under regulations 10(9) to (20), 24(8) to (19) and 34 of the Staffing Regulations (as modified by Schedule 8).

(2) The governing body may not delegate to an individual under regulation 59(1)—

- (a) the functions in:
  - (i) sections 28(**25**), 29(**26**), 30(**27**) and 31(**28**) of, and paragraph 10(4) of Schedule 6 to the 1998 Act (Alteration or discontinuance of maintained schools);
  - (ii) sections 28 and 31 of the 1998 Act as they have effect by virtue of Regulations made under Schedule 8 to the 1998 Act in relation to proposals under that Schedule (Change of category of maintained schools);
  - (iii) a scheme made by the local authority under section 48(1)(**29**) of the 1998 Act, to the extent that it requires the governing body to give their approval to the first formal budget plan of the financial year;
  - (iv) section 61(1) to (3) of the 1998 Act (school discipline policies);
  - (v) sections 88(**30**), 89(**31**), 89A(**32**) and 90(8)(**33**) of the 1998 Act (which relate to the determination of admission arrangements), section 90(1)(**34**) of the 1998 Act

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(25) Amended by section 154 of, and by Schedule 21 to, the 2002 Act. Further amended by sections 64 and 123 of, and Part 2 of Schedule 19 to, the Education Act 2005 (c. 18); and by sections 30 and 184 of, and Schedule 3 to, the Education and Inspections Act 2006 (c. 40).

(26) Amended by sections 30 and 184 of, and Schedule 3 to, the Education and Inspections Act 2006 (c. 40).

(27) Amended by section 149 of, and Schedule 9 to, the Learning and Skills Act 2000 (c. 21); and by the National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005 (S.I. 2005/3238 (W.243)); and by section 30 of, and Schedule 3 to, the Education and Inspections Act 2006 (c. 40).

(28) Amended by sections 30 and 184 of, and Schedule 3 to, the Education and Inspections Act 2006 (c. 40).

(29) Amended by section 40 of, and Schedule 5 to, the 2002 Act; and by section 57 of, and Schedule 5 to, the Education and Inspections Act 2006 (c. 40).

(30) Amended by section 43(1) of the Education and Inspections Act 2006 (c. 40).

(31) Amended by paragraph 5 of Schedule 4 to the 2002 Act; and by sections 41, 45, 46(1), and 184 of, and by Part 6 of Schedule 18 to the Education and Inspections Act 2006 (c. 40). Subsection (1A) was inserted by section 106 of the Education Act 2005 (c. 18). Section 89 was further amended by paragraphs 53 and 57 of Part 2 of Schedule 1 to the Education and Skills Act 2008 (c. 25).

(32) Inserted by section 47(2) of the 2002 Act. Further amended by paragraphs 53 and 58 of Part 2 of Schedule 1 to the Education and Skills Act 2008.

(which relates to the reference to the National Assembly for Wales of objections about admission arrangements), or section 94(35)) of the 1998 Act in so far as it relates to the determination of appeal arrangements by the governing body;

(vi) section 63(36) of the 1998 Act (school attendance targets);

(vii) section 439(7) of the 1996 Act (school attendance orders);

(viii) sections 95(2) and 97(3)(37) of the 1998 Act (appeal against a decision of the local authority to admit a child and referral to the Assembly in respect of a direction made by the local authority to admit a child); or

(b) the functions that must be delegated to the committees specified in regulations 64 to 66.

### **Reporting to the governing body following the exercise of delegated functions**

**61.**—(1) This regulation applies where any function of the governing body has been delegated to or is otherwise exercisable by—

(a) a governor (including the chair or vice-chair);

(b) the head teacher of the federation or of a federated school (whether or not he or she is a governor); or

(c) a committee.

(2) Any individual or committee to whom a function of the governing body has been delegated or that has otherwise exercised a function of the governing body, must report to the governing body in respect of any action taken or decision made with respect to the exercise of that function.

## **PART 9**

### **COMMITTEES OF GOVERNING BODIES**

#### **Application of this Part**

**62.** This Part does not apply in relation to head teacher and deputy head teacher selection panels established under regulations 10 or 24 of the Staffing Regulations (as modified by Schedule 8).

#### **Establishment of committees of the governing body**

**63.**—(1) This regulation applies to committees of the governing body subject to regulations 64, 65 and 66.

(2) The governing body must determine the constitution, membership and terms of reference of any committee it decides to establish and review them annually.

(3) A chair must be appointed annually to each committee by the governing body or elected by the committee, as determined by the governing body.

(4) A committee must elect a member of that committee to act as chair in the absence of the chair appointed under paragraph (3).

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(33) Substituted by sections 41 and 47 of the Education and Inspections Act 2006 (c. 40). Further amended by paragraphs 53 and 62 of Part 2 of Schedule 1 to the Education and Skills Act 2008.

(34) Sub-paragraph (1)(b) was substituted by section 41(1) and (8)(a) of the Education and Inspections Act 2006 (c. 40).

(35) Amended by sections 41, 43(4), 50 and 51 of, and paragraph 8 of Schedule 4 to, the 2002 Act; and by section 51(1) of the Education and Inspections Act 2006 (c. 40). Further amended by section 152 of the Education and Skills Act 2008.

(36) Amended by section 53 of, and Part 3 of Schedule 21 to, the 2002 Act.

(37) Amended by section 49 of the Education and Inspections Act 2006 (c. 40).

(5) No person who is employed to work at the federation or a federated school, nor a registered pupil of the federation or a federated school may act as chair of a committee.

(6) The governing body may remove the chair to any committee from office at any time.

(7) The membership of a committee may include associate pupil governors and persons who are not governors and the extent to which such members are entitled to vote is to be determined by the governing body.

(8) The majority of members on any committee must be governors excluding associate pupil governors.

### **Staff disciplinary and dismissal committee and disciplinary and dismissal appeals committee**

**64.**—(1) The following functions of the governing body of a federation must be delegated to a committee, to be known as the staff disciplinary and dismissal committee—

- (a) where a federated school is a community, voluntary controlled or community special school, the initial determination under regulation 17(1) of the Staffing Regulations (as modified by Schedule 8) that any person employed by the local authority to work at the federation or federated school should cease to work there;
- (b) where a federated school is a foundation, voluntary aided or foundation special school, the initial decision that a person employed to work at the federation or federated school should have his or her contract of employment with the governing body terminated or should not have his or her contract renewed (except where the dismissal is pursuant to a direction of the local authority under paragraph 7 of Part 2 of Schedule 2 to the 2002 Act); and
- (c) the hearing of representations in relation to a decision which must be delegated under this paragraph.

(2) The hearing of any appeal in respect of a decision that must be delegated under paragraph (1) must be delegated to a committee, known as the disciplinary and dismissal appeals committee.

(3) The staff disciplinary and dismissal committee must include not less than three governors, but where allegations are made against a member of staff that involve issues of child protection the committee must include not less than two governors and an independent person who is not a governor.

(4) The disciplinary and dismissal appeals committee must include no fewer governors than the staff disciplinary and dismissal committee whose decision is subject to appeal and where allegations are made against a member of staff that involve issues of child protection the committee must include an independent person who was not involved in the staff disciplinary and dismissal committee's decision.

(5) For the purposes of paragraphs (3) and (4) a person is to be regarded as independent in the following circumstances—

- (a) where the person is not a governor of the federation or a federated school;
- (b) where the person is not a parent of a current or former pupil at the federated school;
- (c) where the person is not a current or former member of staff at the federation or the federated school in question;
- (d) where the person is not currently employed by the local authority that maintains the federated school in question.

(6) The quorum for a meeting of the staff disciplinary and dismissal committee and the disciplinary and dismissal appeals committee and any vote on any matter at the committees is the same as the minimum requirements for the composition of those committees specified in this regulation.

(7) Where a disciplinary and dismissal appeals committee is considering an appeal against a decision of the staff disciplinary and dismissal committee, no member of the staff disciplinary and dismissal committee whose decision is subject to appeal may take part in the proceedings of the disciplinary and dismissal appeals committee.

(8) Neither the head teacher of the federation or a federated school nor an associate pupil governor may be a member of the staff disciplinary and dismissal committee or the disciplinary and dismissal appeal committee.

(9) No member of the staff disciplinary and dismissal committee or the disciplinary and dismissal appeals committee who is not a governor is entitled to vote in any proceedings of the committee in question, save for the independent member of each committee appointed in accordance with paragraph (3) or (4).

### **Pupil discipline and exclusions committee**

**65.**—(1) The governing body of a federation must establish a committee, to be known as the pupil discipline and exclusions committee, to discharge the functions conferred on it by or under regulations made under section 52(3) and (4) of the 2002 Act (exclusion of pupils)(**38**).

(2) The pupil discipline and exclusions committee must consist of either three or five governors, but must not include the head teacher of the federation or a federated school or any associate pupil governor.

(3) The quorum for a meeting of the pupil discipline and exclusions committee and any vote on any matter before the committee is three members of the committee.

(4) The chair of the pupil discipline and exclusions committee may exercise any function conferred on the governing body by or under regulations made under section 52(3) and (4) of the 2002 Act (exclusion of pupils) in a case where—

- (a) a pupil has been excluded for a fixed period in circumstances in which he or she would, as a result of the exclusion, lose an opportunity to take any public examination; and
- (b) it appears to the chair that it would not be practical for a quorate meeting of the committee to take place for any purpose referred to in such regulations before the time when the pupil would be due to take that examination.

### **Admissions committee**

**66.**—(1) Where the governing body of a federation is the admissions authority for a federated school it must establish a committee, to be known as the admissions committee, to exercise its powers to determine whether any child should be admitted to the federated school.

(2) A committee established under paragraph (1) must consist of—

- (a) the head teacher of the federated school to which admission is sought (who is entitled to vote whether or not he or she is a governor); and
- (b) at least two other governors (excluding associate pupil governors).

(3) In the case of a federated school which has more than one head teacher, the reference in paragraph (2)(a) to the head teacher is to be interpreted as a reference to one of the head teachers.

(4) The quorum for the admissions committee and any vote on any matter at the committee is the same as the minimum requirement for the composition of the committee specified in this regulation.

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**(38)** See the Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003 (S.I. 2003/3227 (W.308)) as amended by the Education (Pupil Exclusions and Appeals) (Wales) (Miscellaneous Amendments) Regulations 2004 (S.I. 2004/1805 (W.193)).

### **Clerks to committees**

**67.**—(1) The governing body must appoint a clerk to each committee established in accordance with regulations 64 to 66 and may appoint a clerk to any other committee established by it.

(2) Neither the head teacher of the federation or of a federated school nor an associate pupil governor may be appointed as a clerk under paragraph (1).

(3) Notwithstanding paragraph (1), the committee may, if the clerk fails to attend a meeting of theirs, appoint any one of their number (who is not the head teacher of the federation or of a federated school) to act as clerk for the purposes of that meeting.

(4) The governing body may remove any clerk appointed to any of their committees from office at any time.

(5) A clerk appointed to a committee of the governing body must—

- (a) convene meetings of the committee;
- (b) attend meetings of the committee and ensure that minutes of the proceedings are drawn up; and
- (c) perform such other functions with respect to that committee as may be determined by the governing body from time to time.

### **Right of persons to attend meetings of committees**

**68.**—(1) Subject to paragraphs (2) and (3) and Schedule 10 to these Regulations the following persons are entitled to attend any meeting of a committee—

- (a) any member of the committee, provided he or she is not a governor who has been suspended in accordance with regulation 58;
- (b) the head teacher of the federation or of a federated school (whether or not he or she is a member of the committee);
- (c) the clerk to the committee; and
- (d) such other persons as the governing body or the committee may determine.

(2) A committee may exclude a member who is not a governor from any part of its meeting which he or she is otherwise entitled to attend when the business under consideration concerns an individual member of staff or pupil.

(3) Paragraph (1)(b) does not apply in relation to the committees referred to in regulations 64 and 65 or in relation to any committee or selection panel exercising any function under the Staffing Regulations (as modified by Schedule 8).

### **Meetings of committees**

**69.**—(1) Subject to paragraph (2) meetings of a committee must be convened by the clerk to that committee who, when exercising this function, must comply with any direction given by—

- (a) the governing body;
- (b) the chair of that committee, so far as such direction is not inconsistent with any direction given under sub-paragraph (a).

(2) Where a clerk has not been appointed committee meetings must be convened by the chair who, when exercising this function, must comply with any direction given by the governing body.

(3) Subject to any direction given in accordance with paragraphs (1) or (2), at least five clear working days in advance the clerk must give to each member of the committee and to the head teacher of the federation or of a federated school (whether or not he or she is a member of the committee)—

- (a) written notice of the meeting;

- (b) a copy of the agenda for the meeting; and
- (c) any reports or other papers to be considered at the meeting;

but where the chair of the committee so determines on the ground that there are matters demanding urgent consideration, it is sufficient if the written notice of the meeting states that fact and the notice, agenda and reports or other papers to be considered at the meeting are given within such shorter period as he or she directs or decides (as the case may be).

(4) The proceedings of a committee are not invalidated by—

- (a) any vacancy among their number; or
- (b) any defect in the appointment of any member of the committee.

(5) Subject to regulations 64(6), 65(3) and 66(4), the quorum for a meeting of a committee and for any vote on any matter at such a meeting is one half (rounded up to a whole number) of the membership of the committee excluding any vacancies and any associate pupil governors.

(6) Subject to paragraph (8) no vote on any matter may be taken at a meeting of a committee unless the majority of members of the committee present are governors excluding associate pupil governors.

(7) Every question to be decided at a meeting of a committee is to be determined by a majority of the votes of the members of the committee present and voting on the question.

(8) Where there is an equal division of votes the person who is acting as chair for the purposes of the meeting has a second or casting vote, provided that such person is a governor excluding associate pupil governors.

### **Minutes of meetings of committees**

**70.**—(1) Minutes of the proceedings of a meeting of a committee must be drawn up by the clerk to the committee or by the person acting as the clerk for the purposes of the meeting; and must be signed (subject to the approval of the committee) by the chair of the next meeting of the committee.

(2) Any committee of the governing body must supply their local authority with a copy of the draft or signed minutes of any meeting of theirs on request by that local authority.

### **Publication of minutes and papers**

**71.**—(1) Subject to paragraph (2) the committee must, as soon as reasonably practicable, make available for inspection at each of the federated schools forming part of the federation by any interested person a copy of—

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

(2) The committee may exclude 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 federation or a federated school;
- (b) a named pupil at, or candidate for admission to, the federation;
- (c) any other matter that, by reason of its nature, the committee is satisfied should remain confidential.

## PART 10

### RESTRICTIONS ON PERSONS TAKING PART IN PROCEEDINGS OF THE GOVERNING BODY OR ITS COMMITTEES

#### Restrictions on persons taking part in proceedings

72.—(1) In this regulation and in Schedule 10—

- (a) “relevant person” (“*person perthnasol*”) means a governor, a member of a committee who is not a governor, the head teacher of the federation or of a federated school (whether or not he or she is a governor) or any person appointed as clerk to the governing body or to a committee; and
- (b) any reference to “meeting of the federation or a federated school” (“*cyfarfod o'r ffederasiwn neu ysgol ffederal*”) is a reference to a meeting of the governing body or of a committee, including a selection panel established under the Staffing Regulations (as modified by Schedule 8).

(2) Subject to paragraph (4), where—

- (a) in relation to any matter there may be a conflict between the interests of a relevant person and the interests of the governing body;
- (b) a fair hearing is required and there is any reasonable doubt about a relevant person’s ability to act impartially in relation to any matter; or
- (c) a relevant person has a pecuniary interest in any matter;

that person, if present at a meeting of the federation or a federated school at which the matter is the subject of consideration, must disclose his or her interest, withdraw from the meeting and not vote on the matter in question.

(3) Nothing in this regulation or in Schedule 10 is to be construed as precluding—

- (a) the governing body, or a committee, from—
  - (i) allowing a person who appears to them to be able to give evidence to attend any hearing conducted by them into any matter and to present his or her evidence; or
  - (ii) hearing representations from a relevant person acting in a capacity other than that of a relevant person; or
- (b) a relevant person from entering into a contract with the governing body from which he or she is entitled to profit.

(4) A person who is acting as the clerk to a meeting of the federation or a federated school is not required to withdraw from a meeting by this regulation or Schedule 10 unless his or her appointment to office, his or her remuneration, or disciplinary action against him or her is the subject of consideration, but if this regulation or Schedule 10 would have otherwise required him or her to withdraw, he or she may not act in any capacity other than that of a clerk.

(5) Where there is any dispute as to whether a relevant person is required by this regulation, or by Schedule 10 to withdraw from a meeting of the federation or a federated school and not vote, that question is to be determined by the other governors present at the meeting.

(6) Schedule 10 makes provision about pecuniary interests and other specified conflicts of interest.



## PART 11

### INFORMATION AND FUNDING

#### Information for the governing body of a federation

73.—(1) Immediately before the federation date, the governing body of a school which is to become a federated school must prepare, for the purpose of assisting the governing body of the federation, a written report on the action which they have taken in the discharge of their functions relating to the school.

(2) All minutes and papers of a governing body of a school which is to become a federated school on the federation date, including the report prepared under paragraph (1), is to be made available to the governing body of the federation.

#### Financing of federations

74. Except as provided by regulation 75, Chapter 4 of Part 2 of the 1998 Act (financing of maintained schools) applies to federated schools and their governing bodies as it applies to other maintained schools and their governing bodies.

75.—(1) In its application to a federated school in Wales, other than one for which a temporary governing body is established pursuant to regulation 77 or 82, section 50(39) of the 1998 Act (effect of financial delegation) is to have effect subject to the following modifications.

(2) In subsection (1), for “maintained” substitute “federated”.

(3) In subsection (2) for “any amounts are made available by the authority to the governing body” substitute “any amounts in respect of a federated school are made available by the local authority to the governing body of a federation”.

(4) In subsection (3)—

(a) for “the governing body may spend any such amounts” substitute “the governing body of a federation may spend any amounts made available under subsection (2), or previously made available to the governing bodies of the federated schools before federation”; and

(b) for paragraph (a) substitute—

“(a) for any purposes of the federated school to which the amounts relate;

(ab) for any purposes of any other federated school within the federation;

(ac) for any purposes of the federation; or”.

(5) In subsection (4) for “In subsection (3) “purposes of the school” does not include” substitute “In subsection (3)(a), (ab) and (ac) any reference to the purposes of a federated school or a federation does not include”.

(6) In subsection (6), for “the head teacher” substitute “the head teacher of the federation or to the head teachers of federated schools”.

(7) In subsection (7), for “school” substitute “federation”.

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(39) Subsection (1) was amended by section 40 of, and Schedule 3 to, the 2002 Act. Subsection (4)(za) was inserted by section 40 of, and Schedule 3 to, the 2002 Act. Subsection (5) was amended by paragraph 10 of Schedule 21 to the 2002 Act. Subsection (1) was further amended by section 117 of, and Schedule 18 to, the Education Act 2005 (c. 18).

## PART 12

### FEDERATED SCHOOLS LEAVING FEDERATIONS

#### **Procedure for a school to leave a federation**

**76.**—(1) This regulation applies to a request made to a governing body of a federation for a federated school (“the relevant school”) to leave the federation.

(2) The request must be made in writing and signed by—

- (a) two or more governors;
- (b) one fifth of the parents of registered pupils at the relevant school;
- (c) two fifths of staff who are paid to work at the relevant school;
- (d) the local authority;
- (e) the trustees of the relevant school; or
- (f) a body entitled to appoint foundation governors to the governing body of the federation.

(3) The governing body of the federation must give notice of the request to—

- (a) all relevant local authorities;
- (b) the head teacher of the federation and the head teacher of each federated school;
- (c) where the relevant school is a foundation or voluntary school with a religious foundation, any trustees of a trust relating to the relevant school and, in the case of a Church in Wales or Roman Catholic Church school, the appropriate diocesan authority, or the appropriate religious body in the case of all other such schools;
- (d) all staff paid to work at the relevant school;
- (e) every person known by them to be a parent of a registered pupil at the relevant school;
- (f) every trade union known by them to have members paid to work at any of the schools; and
- (g) such other persons as the governing body of the federation consider appropriate.

(4) Notice under paragraph (3) must be given within the period of five clear working days beginning with the date on which the request was received.

(5) A request under paragraph (1) is to be taken to have been received by a governing body of a federation if given or sent to the chair or to the clerk of the governing body of a federation.

(6) Not less than fourteen clear working days after the governing body of a federation have given notice of the request in accordance with paragraph (3), the governing body must consider the request and all responses received from the persons to whom notification of the request was sent and must decide whether—

- (a) subject to paragraph (9), the relevant school should leave the federation and, if so, on what date it should do so (“the de-federation date”) (“*y dyddiad dadffedereiddio*”);
- (b) the federation should be dissolved, and if so, on what date; or
- (c) the relevant school should not leave the federation.

(7) Such a decision does not have effect unless the matter is specified as an item of business on the agenda for the meeting of which notice has been given in accordance with regulation 54(4).

(8) The governing body of a federation must give notice in writing of their decision under paragraph (6) within five clear working days to those persons referred to in paragraph (3).

(9) The de-federation date specified by the governing body must be not less than 125 days after the day on which notice of the governing body decision under paragraph (8) was given.

### **Decision to permit federated school to leave a federation**

77.—(1) Upon notification that a governing body of a federation have resolved that a federated school should leave a federation paragraphs (2) or (3) are to apply.

(2) Where one of only two federated schools is to leave a federation, the federation is to be dissolved in accordance with Part 13.

(3) Where paragraph (2) does not apply,

(a) the local authority must—

- (i) establish a temporary governing body in respect of the school leaving the federation in accordance with Parts 3 and 4 of the New Maintained Schools Regulations; and
- (ii) issue a new instrument of government for that school in accordance with Part 5 of the Government of Maintained Schools Regulations;

(b) the governing body of the federation must review the instrument of government of the federation in accordance with regulation 42.

(4) For the purpose of paragraph (3)(a)(ii)—

- (a) the reference in regulation 32 of the Government of Maintained Schools Regulations to “governing bodies” is treated as a reference to “temporary governing bodies”; and
- (b) references in regulation 34 of the Government of Maintained Schools Regulations to—
  - (i) “governing body” are treated as references to “temporary governing body”; and
  - (ii) “foundation governors” are treated as references to “temporary foundation governors”.

### **Availability of amounts representing budget share**

78. Subject to any provision made by or under a scheme made under section 48(1) of the 1998 Act, the temporary governing body of a school leaving a federation may spend any sum made available by the local authority under section 50(1) of that Act<sup>(40)</sup> to the governing body of the federation in respect of the school leaving the federation, as they think fit for any purposes of that school.

### **Incorporation of governing body of a school leaving a federation**

79. On the de-federation date the temporary governing body of the de-federated school are incorporated as the governing body of that school under the name given in the school’s instrument of government.

### **Transfer of property**

80.—(1) On the de-federation date—

- (a) all land or property, which, immediately before the de-federation date, was held by the governing body of the federation for the purposes of the de-federated school transfers to, and by virtue of these Regulations vests in, the governing body incorporated under regulation 79; and
- (b) all rights and liabilities subsisting immediately before the de-federation date which were acquired or incurred by the governing body of the federation for the purposes of the de-federated school transfer to the governing body incorporated under regulation 79.

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<sup>(40)</sup> As modified by regulation 75 of these Regulations.

(2) Section 198 of and Schedule 10 to the Education Reform Act 1988<sup>(41)</sup> (which make provision in relation to transfers of property, rights and liabilities) apply in relation to transfers effected by this regulation as they apply in relation to transfers to which that section and Schedule apply.

## PART 13

### DISSOLUTION OF FEDERATIONS

#### Dissolution of federations

**81.**—(1) Where—

- (a) a governing body of a federation decide that the federation should be dissolved; or
- (b) a governing body of a federation decide that one of only two federated schools should leave the federation,

the governing body of a federation must give notice of the fact and the proposed date of dissolution to the persons mentioned in paragraph (2) within fourteen clear working days.

(2) The persons to be notified are—

- (a) all relevant local authorities;
- (b) the head teacher of the federation and each head teacher of a federated school;
- (c) every member of staff paid to work at the federation or a federated school;
- (d) every person known by the governing body to be a parent of a registered pupil at a federated school;
- (e) where a federated school is a foundation or voluntary school with a religious foundation, the foundation governors, any trustees of a trust relating to the federated school and, in the case of a Church in Wales or Roman Catholic Church school, the appropriate diocesan authority, or the appropriate religious body in the case of all other such schools;
- (f) every trade union known to them to have members paid to work at any of the schools; and
- (g) such other persons as the governing body of the federation consider appropriate.

#### Establishment of temporary governing body

**82.** Upon receipt of the notice issued under regulation 81 the relevant local authority or local authorities must—

- (a) establish a temporary governing body in respect of each school in accordance with Parts 3 and 4 of the New Maintained Schools Regulations; and
- (b) issue a new instrument of government for each school in accordance with Part 5 of the Government of Maintained Schools Regulations.

**83.** For the purposes of regulation 82(b)—

- (a) the reference in regulation 32 of the Government of Maintained Schools Regulations to “governing bodies” is treated as a reference to “temporary governing bodies”; and
- (b) references in regulation 34 of the Government of Maintained Schools Regulations to—
  - (i) “governing body” are treated as references to “temporary governing body”; and
  - (ii) “foundation governors” are treated as references to “temporary foundation governors”.

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(41) 1988 c. 40.

### **Availability of amounts representing budget share**

**84.** Subject to any provision made by or under a scheme made under section 48(1) of the 1998 Act, the temporary governing body of each school may spend any sum made available by the local authority under section 50(1) of that Act<sup>(42)</sup> to the governing body of the federation in respect of each school, as they think fit for any purposes of that school.

### **Incorporation of governing body of a school leaving a federation**

**85.** On the date of dissolution the temporary governing body of each federated school is incorporated as the governing body of each de-federated school under the name given in the school's instrument of government.

### **Transfer of property**

**86.—**(1) On the date of dissolution—

- (a) all land or property which, immediately before the date of dissolution, was held by the governing body of the federation for the purposes of each de-federated school, transfers to, and by virtue of these Regulations vests in, the new governing body of each de-federated school incorporated under regulation 85; and
- (b) all rights and liabilities subsisting immediately before the date of dissolution which were acquired or incurred by the governing body of the federation for the purposes of each de-federated school transfer to the new governing body of each de-federated school incorporated under regulation 85.

(2) Section 198 of and Schedule 10 to the Education Reform Act 1988<sup>(43)</sup> (which make provision in relation to transfers of property, rights and liabilities) are to apply in relation to transfers effected by this regulation as they apply in relation to transfers to which that section and Schedule apply.

## **PART 14**

### **MISCELLANEOUS AMENDMENTS TO REGULATIONS**

#### **Amendments to the Government of Maintained Schools Regulations**

**87.—**(1) Schedule 5 to the Government of Maintained Schools Regulations is amended as follows—

- (a) in sub-paragraph (a) of paragraph 6, after “rescinded” insert “or a moratorium period under a debt relief order applies in relation to him or her”;
- (b) in sub-paragraph (c) of paragraph 9, substitute “sections 28, 29 or 29A” for “sections 28 and 29”;
- (c) after sub-paragraph (bb) of paragraph 9 insert—
  - “(bc) disqualified from registration under Part XA of the Children Act 1989<sup>(44)</sup> for childminding or providing day care;
  - (bd) disqualified from registration under Part 3 of the Childcare Act 2006<sup>(45)</sup>”;

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<sup>(42)</sup> As modified by regulation 75 of these Regulations.

<sup>(43)</sup> 1988 c. 40.

<sup>(44)</sup> 1989 c. 41.

<sup>(45)</sup> 2006 c. 21.

(d) in sub-paragraph (1) of paragraph 10, for “Subject to sub-paragraph (6)” substitute “Subject to sub-paragraph (5)”; and

(e) in paragraph 10, for sub-paragraph (5) substitute—

“(5) For the purposes of sub-paragraphs (2) to (4) above, any conviction by or before a court outside the United Kingdom of an offence which, if the facts giving rise to the offence had taken place in any part of the United Kingdom, would not have constituted an offence in that part of the United Kingdom under the law in force at the time the facts given rise to the offence had taken place, must be disregarded.”

(2) In sub-paragraph (b) of paragraph 1, of Schedule 7 to the Government of Maintained Schools Regulations, after “relevant person is a” insert “business”.

### **Amendment to the Education (Foundation Body) (Wales) Regulations 2001**

**88.** In sub-paragraph (a) of paragraph 2, of Schedule 2 to the Education (Foundation Body) (Wales) Regulations 2001<sup>(46)</sup>, for “rescinded;” substitute “rescinded or a moratorium period under a debt relief order applies in relation to him or her; or”.

7 March 2010

*Leighton Andrews*  
Minister for Children, Education and Lifelong  
Learning, one of the Welsh Ministers

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<sup>(46)</sup> 2001 (S.I. 2001/2709 (W.228)).