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STATUTORY INSTRUMENTS

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**1998 No. 2535**

**EDUCATION, ENGLAND AND WALES**

**The Religious Character of Schools  
(Designation Procedure) Regulations 1998**

<i>Made</i>	- - - -	<i>8th October 1998</i>
<i>Laid before Parliament</i>		<i>15th October 1998</i>
<i>Coming into force</i>	- -	<i>9th November 1998</i>

In exercise of the powers conferred on the Secretary of State by sections 69(5) and 138(7) of the School Standards and Framework Act 1998(1), the Secretary of State for Education and Employment, as respects England, and the Secretary of State for Wales, as respects Wales, hereby make the following Regulations:

**Citation, commencement and application**

1.—(1) These Regulations may be cited as the Religious Character of Schools (Designation Procedure) Regulations 1998 and shall come into force on 9th November 1998.

(2) These Regulations specify the procedure to be followed in connection with—

- (a) the designation, in an order under section 69(3) of the 1998 Act, of a foundation or voluntary school as having a religious character; and
- (b) the inclusion in such an order, in relation to such a school, of a statement of the religion or religious denomination in accordance with whose tenets religious education is, or may be, required to be provided at the school in accordance with Schedule 19 to the 1998 Act (or, as the case may be, each such religion or religious denomination).

**Interpretation**

2.—(1) In these Regulations—

- (a) “the 1998 Act” means the School Standards and Framework Act 1998;
- (b) “the relevant religion or religious denomination” means the religion or religious denomination in accordance with whose tenets religious education is, or may be, required to be provided at the school in accordance with Schedule 19 to the 1998 Act (or, as the case may be, each such religion or religious denomination).

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(1) 1998 c. 31. For the meaning of “regulations” see section 142(1).

(2) In these Regulations—

- (a) references to a “voluntary or grant-maintained school” are references to such a school within the meaning of the Education Act 1996<sup>(2)</sup> including a new school which has a temporary governing body and which was proposed to be established as a voluntary school;
- (b) references to a “foundation or voluntary school” are references to such a school within the meaning of the 1998 Act including a new school which has a temporary governing body and which will be such a school when established;
- (c) references to a governing body include a temporary governing body;
- (d) references to a numbered regulation are references to the regulation so numbered in these Regulations.

(3) Expressions used in these Regulations set out in the first column of the following table have the meanings attributed to them by the provisions of the 1998 Act set out opposite thereto in the second column.

Church in Wales school	section 142(1)
Church of England school	section 142(1)
Roman Catholic Church school	section 142(1)
appropriate diocesan authority	section 142(1)
foundation governor	paragraph 2 of Schedule 9

#### **Manner of consultation with governing bodies and trustees**

3.—(1) Where these Regulations require the Secretary of State to consult the governing body and any trustees of the school, he shall do so by sending two copies of the document in question (one for the governing body and one for the trustees) to the school.

(2) The governing body of a school may not delegate to a committee of the governing body or to the chairman any decision in relation to their response to a consultation referred to in paragraph (1) above and any such response must indicate that it is the response of all, or the majority of, the members of the governing body and that no decision in relation to that response has been delegated.

#### **Orders made on or before 1st September 1999**

4. Regulations 5 to 7 and 10 set out the procedure to be followed in relation to orders made under section 69(3) of the 1998 Act on or before 1st September 1999.

#### **Basis of designation and statement as to relevant religion or religious denomination**

5.—(1) The Secretary of State shall designate a foundation or voluntary school as a school which has a religious character if he is satisfied that—

- (a) at least one member of the governing body of the school is a person appointed as a foundation governor to represent the interests of one or more religions or religious denominations; or
- (b) the premises provided for the school when first established were so provided on trust so that, in the event of the discontinuance of the school, the property concerned was to be

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(2) 1996 c. 56.

held for, or sold and the proceeds of sale applied for, the benefit of one or more religions or religious denominations; or

(c) the premises provided for the school when first established were so provided on trust in connection with—

- (i) the provision of education, or
- (ii) the conduct of an educational institution,

in accordance with the tenets of one or more religions or religious denominations.

(2) If the Secretary of State is not so satisfied he may nevertheless designate a foundation or voluntary school as having a religious character if he considers it appropriate to do so having regard to the practice as to religious education observed at the school before it first became a voluntary school within the meaning of the Education Act 1996 and to any representations made by any of the religious bodies set out in the Schedule hereto.

(3) The Secretary of State shall state as the relevant religion or religious denomination, the religion or religious denomination or religions or religious denominations which he considers relevant to whichever of the provisions of paragraphs (1) and (2) above is the basis for his decision to designate the school as having a religious character.

## **Procedure**

6.—(1) The Secretary of State shall prepare a list (“the list”) setting out—

- (a) each voluntary or grant-maintained school, which, if it becomes a foundation or voluntary school and satisfies one or more of the requirements in regulation 5(1) and (2), he proposes to designate as a school having a religious character; and
- (b) the relevant religion or religious denomination which he proposes to state in relation to each such school in accordance with section 69(4) of the 1998 Act.

(2) The Secretary of State shall send a copy of the list, or such part of it as he considers appropriate in any particular case, to the religious bodies set out in the Schedule hereto.

(3) The Secretary of State shall give those bodies to whom he has sent a copy of the list, or a part of it, an opportunity to make representations and he shall revise the list (“the revised list”) in the light of any such representations in so far as he considers it appropriate to do so.

(4) After taking the steps referred to in paragraphs (1) to (3) above, the Secretary of State shall consult the governing body and any trustees of each school in the revised list which he proposes to designate as a foundation or voluntary school which has a religious character as to—

- (a) the proposed designation; and
- (b) the proposed statement as to the relevant religion or religious denomination.

(5) If, as a result of the consultation referred to in paragraph (4) above, he is minded to alter the proposed designation of the religious character of the school, or the statement as to the relevant religion or religious denomination, set out in the revised list, the Secretary of State shall consult such of the religious bodies set out in the Schedule hereto as he considers appropriate.

(6) The Secretary of State shall make an order or orders under section 69(3) of the 1998 Act on or before 1st September 1999, in accordance with the criteria set out in regulation 5, on the basis of the revised list as further modified as he considers appropriate in the light of the consultations under paragraphs (4) and (5) above.

(7) Obligations imposed on the Secretary of State by paragraphs (1) to (5) above may be satisfied by actions taken by him before these Regulations come into force.

### **Outstanding Decisions**

7. The Secretary of State may, in cases where he has not before 1st September 1999 come to a decision as to whether a school will, as a foundation or voluntary school, have a religious character or as to the relevant religion or religious denomination, designate it and make such statement as to the relevant religion or religious denomination on a provisional basis as he considers appropriate.

### **Orders made after 1st September 1999**

8. Regulations 9 and 10 set out the procedure to be followed in relation to orders made under section 69(3) of the 1998 Act after 1st September 1999.

### **Procedure for new schools**

9.—(1) Where proposals to establish a new foundation or voluntary school are approved under paragraph 3 or 8 of Schedule 6 to the 1998 Act, or where the promoters by whom such proposals were published determine under paragraph 9(1) of that Schedule that the proposals should be implemented, the Secretary of State shall designate it as a school which has a religious character if the requirements set out in this regulation are satisfied.

(2) The promoters must have applied to him for the school to be designated as a school which has a religious character and, in the case of a Church of England school, a Church in Wales school or a Roman Catholic Church school, such application must have been approved by the appropriate diocesan authority.

(3) A temporary governing body must have been constituted for the school.

(4) The proposals published under section 28 of the 1998 Act to establish the school must specify—

- (a) that the school is intended to be a school which has a religious character; and
- (b) the religion or religious denomination or religions or religious denominations with which the school is to be associated.

(5) The terms or the proposed terms of—

- (a) the trust deed; and
- (b) the instrument of government for the school,

must be consistent with the published proposals.

(6) The Secretary of State must be satisfied as to one or more of the following matters—

- (a) at least one member of the governing body of the school is a person appointed as a foundation governor to represent the interests of one or more religions or religious denominations; or
- (b) the premises provided or to be provided for the school are or are to be held on trust so that, in the event of the discontinuance of the school, the property concerned is held for, or is to be sold and the proceeds of sale applied for, the benefit of one or more religions or religious denominations; or
- (c) the premises provided or to be provided for the school are or are to be held on trust in connection with—
  - (i) the provision of education, or
  - (ii) the conduct of an educational institution,in accordance with the tenets of one or more religions or religious denominations.

### Changes in designations and statements

10.—(1) Where the Secretary of State is at any time of the opinion that—

- (a) a school has been incorrectly designated or not designated, or that the statement as to the relevant religion or religious denomination is incorrect, whether under the procedure set out in regulations 5 to 7 or the procedure set out in regulation 9 as appropriate; or
- (b) he can now take a decision in relation to a school where he has previously made a provisional designation or statement under regulation 7,

he shall amend the order in question or make another order as he considers appropriate.

(2) Before taking the steps referred to in paragraph (1) above the Secretary of State shall consult—

- (a) the governing body and any trustees of the school; and
- (b) such religious bodies set out in the Schedule hereto as he considers appropriate.

(3) In so far as the Secretary of State makes an order under section 69(3) which—

- (a) does not change the designation of a school, or the statement as to the relevant religion or religious denomination in relation to that school, made in a previous order (other than a provisional designation or statement); or
- (b) removes an entry on the discontinuance of the school,

he need undertake no consultation in relation to that particular designation or statement before making such an order.

6th October 1998

*Estelle Morris*  
Minister of State,  
Department for Education and Employment

8th October 1998

*Peter Hain*  
Parliamentary Under Secretary of State, Welsh  
Office

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

## SCHEDULE

Regulations 5(2), 6(2) and (5) and 10(2)

The Church of England General Synod Board of Education.  
The Board of Mission of the Church in Wales.  
The Catholic Education Service.  
The Methodist Church.  
The Free Church Federal Council.  
The Seventh-Day Adventist Church.  
The Board of Deputies of British Jews.  
The Association of Muslim Schools.

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## EXPLANATORY NOTE

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

These Regulations set out the procedure to be followed by the Secretary of State in making an order or orders designating foundation or voluntary schools as schools which have a religious character under section 69 of the School Standards and Framework Act 1998 (“the Act”).

Designation as a school which has a religious character is relevant for a number of purposes, notably:

- (a) as part of the mechanism for determining the form of religious education to be provided under Schedule 19 to the Act;
- (b) as part of the mechanism for determining the form of collective worship to be provided under Schedule 20 to the Act;
- (c) as part of the mechanism for determining school staffing matters under sections 58 to 60 of the Act;
- (d) as part of the mechanism for determining the criteria for the admission of pupils to schools under section 91 of the Act;
- (e) for the purposes of the disposition of assets under paragraph 5 of Schedule 3 to the Act, so that assets can be re-assigned for the benefit of schools of the same religion or religious denomination;
- (f) the inclusion of a description of the ethos of the school in the instrument of government under paragraph 1(1)(g) of Schedule 12 to the Act.

It should be noted that section 554 of the Education Act 1996 (power to make new provision as to the use of endowments held or used wholly or partly for or in connection with the provision at a school of religious education in accordance with the tenets of a particular religion or religious denomination) makes no reference to a school having a religious character.

Religious character is not acquired or lost by virtue of being designated or not designated under the procedure set out in these Regulations. Designation is the recognition of a religious character which a school already has as a question of fact. Under the Act a school must first close if it wishes to acquire or change religious character.

These Regulations make special provision for cases where a final decision has not been made by 1st September 1999 as to whether or not a particular school has a religious character and the religion or religious denomination (or religions or religious denominations) in question.

Those religions in accordance with whose tenets religious education is, or may be, required to be provided at the school in accordance with Schedule 19 to the 1998 Act are currently the Christian, Jewish and Muslim religions. The relevant religious denominations within Christianity are the Church of England, the Church in Wales, the Roman Catholic Church, the Methodist Church, the United Reformed Church and the Seventh-Day Adventist Church.

A statement in relation to a school that the religious denomination in accordance with whose tenets religious education is, or may be, required to be provided at the school in accordance with Schedule 19 to the 1998 Act, is Roman Catholic does not determine whether or not the school is a Catholic school according to canon law.