
STATUTORY INSTRUMENTS

1993 No. 3101

EDUCATION, ENGLAND AND WALES

**The Education (Schools Conducted by Education Associations)
(Initial Articles of Government) Regulations 1993**

<i>Made</i>	- - - -	<i>8th December 1993</i>
<i>Laid before Parliament</i>		<i>10th December 1993</i>
<i>Coming into force</i>	- -	<i>1st January 1994</i>

In exercise of the powers conferred by sections 223(3) and (4) and 301(6) of the Education Act 1993⁽¹⁾, the Secretary of State for Education, as respects England, and the Secretary of State for Wales, as respects Wales, hereby make the following Regulations:—

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Education (Schools Conducted by Education Associations) (Initial Articles of Government) Regulations 1993 and shall come into force on 1st January 1994.

(2) In regulations 2 and 3 below, references to the 1993 Act are to the Education Act 1993.

Initial articles of government

2. For the purposes of section 223(3) of the 1993 Act, the initial articles of government for a school conducted by an Education Association shall be as set out in the Schedule to these Regulations.

Provisions of initial articles of government having effect before transfer date

3. In relation to any school in respect of which an order under section 220 of the 1993 Act has been made the following provisions of the initial articles of government shall have effect from the date of the order: Articles 1, 2, 4, 5, 7, 8, 12, 15, 17, 18, 19, 20, 21 and 22, paragraph 2 of Appendix 1 and Appendices 2 and 3.

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SCHEDULE

Regulation 2

INITIAL ARTICLES OF GOVERNMENT

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Explanatory Note

Interpretation

1.—(1) In these Articles—

“the 1988 Act” means the Education Reform Act 1988(2);

(2) 1988 c. 40.

“the 1993 Act” means the Education Act 1993(3);

“approved admission number” shall be interpreted in accordance with section 149 of the 1993 Act(4);

“funding authority” has the meaning assigned to it by section 5(1) of the 1993 Act;

“the Education Association” means the Education Association by which any school to which these Articles apply by virtue of section 223(3) of the 1993 Act is conducted;

“the Head Teacher” means the person appointed to be the head teacher or acting head teacher of the School;

“relevant age group” shall be interpreted in accordance with section 155(4) of the 1993 Act;

“registered”, in relation to parents or pupils, means shown in the register kept under section 80 of the Education Act 1944(5);

“the School” in relation to any school conducted by an Education Association means that school; and

“school holidays” includes any school holidays which are not less than five days in length and which take place during the course of a school term.

(2) In these Articles, unless the context otherwise requires, “parent”, in relation to a pupil at the School, includes any person—

- (a) who is not a parent of his but who has parental responsibility for him, or
- (b) who has care of him, a person if he is an individual.

(3) For the purposes of paragraph (2) above—

- (a) “parental responsibility” has the same meaning as in the Children Act 1989(6); and
- (b) in determining whether an individual has care of a pupil, any absence of the pupil at a hospital or boarding school and any other temporary absences shall be disregarded.

Transitional provisions in connection with the commencement of the 1993 Act

2. The following provisions of these Articles are subject to their provisions of Appendix 1 to these Articles (which relate to the commencement of various provisions of the 1993 Act).

General responsibilities of the Education Association and the Head Teacher with respect to the conduct of the School

3.—(1) Subject to paragraph (2) below, the conduct of the School shall be under the direction of the education association.

(2) Paragraph (1) above is subject to—

- (a) any provision of these Articles conferring specific functions on any person other than the education association; and
- (b) any other provision affecting the conduct of the School made by or under the Education Acts 1944 to 1993 or any other enactment.

(3) Subject to paragraph (4) below, the Head Teacher shall be responsible for the internal organisation and management of the School, and for deploying and managing the staff of the School.

(3) 1993 c. 35.

(4) Section 149(2) of the Act is modified by Schedule 3 to the Education (Schools Conducted by Education Associations) Regulations 1993, S.I.1993/3103.

(5) 1944 c. 31; section 80 was amended by paragraph 5 of Schedule 12 to the Education Reform Act 1988 (c. 40).

(6) 1989 c. 41, section 3.

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(4) In exercising his functions under paragraph (3) above the Head Teacher shall comply with any direction given by the Education Association.

(5) The Head Teacher shall furnish the Education Association with such reports in connection with the discharge of his functions as the Education Association may require.

(6) It shall be the duty of the Education Association and the Head Teacher to exercise their functions with respect to the conduct of the School with a view to—

- (a) securing that there are good relations and mutual respect and tolerance between the staff and pupils at the School and other persons in the local community served by it; and
- (b) promoting among the pupils at the School a regard for good relations and mutual respect and tolerance between—
 - (i) persons belonging to different racial groups;
 - (ii) persons of different genders;
 - (iii) persons of different ages; and
 - (iv) persons of different creeds, beliefs and opinions.

(7) It shall be the duty of the Head Teacher to exercise his functions in relation to the School with a view to assisting the Education Association in complying with the provisions of sections 22 and 25 of the Sex Discrimination Act 1975(7) and sections 17 and 19 of the Race Relations Act 1976(8) (which are concerned respectively with preventing sex discrimination and racial discrimination in the field of education).

(8) In this Article the reference to “racial groups” shall be interpreted in accordance with section 3 of the Race Relations Act 1976.

Curriculum: general

4.—(1) The Education Association and the Head Teacher, in exercising their functions with respect to the conduct of the School, shall secure that they discharge the duties imposed on them under Chapter I of Part I of the 1988 Act relating to the curriculum for the School.

(2) Subject to the provisions of Chapter I of Part I of the 1988 Act (which require the provision in schools of a basic curriculum including the National Curriculum), the content of the secular curriculum for the School shall be under the control of the Education Association.

(3) The Education Association shall, when considering the content of the secular curriculum for the School, have regard to any representations with respect to that curriculum—

- (a) which are made to them by any persons connected with the community served by the School; or
- (b) which are made to them by the chief officer of police and are connected with his responsibilities.

(4) The Education Association shall make, and keep up to date, a written statement of what in their opinion should be the aims of the secular curriculum for the School, and shall furnish the Head Teacher and the Secretary of State with a copy of that statement.

(5) Where the School is a primary school, the Education Association shall—

- (a) consider separately the question of whether sex education shall form part of the secular curriculum for the School; and
- (b) make, and keep up to date, a separate written statement—

(7) 1975 c. 65; sections 22 and 25 were amended by paragraphs 15 and 16 of Schedule 12 to the Education Reform Act 1988 (c. 40) respectively.

(8) 1976 c. 74; sections 17 and 19 were amended by paragraphs 18 and 19 of Schedule 12 to the Education Reform Act 1988 (c. 40) respectively.

- (i) of their policy with regard to the content and organisation of the relevant part of the curriculum; or
 - (ii) where they conclude that sex education should not form part of the secular curriculum, of that conclusion; and
- (c) furnish the Head Teacher and the Secretary of State with a copy of that statement.
- (6) Save as otherwise expressly provided, the Head Teacher shall be allocated by the Education Association such functions as will, subject to the resources available, enable him to determine and organise the secular curriculum and secure that it is followed within the School.
- (7) The Head Teacher shall make available for inspection at the School (at all reasonable times) to all persons wishing to inspect it a copy of any statement made by the education association in accordance with paragraph (4) or (5) above.

Curriculum: complaints

5.—(1) The Education Association shall make arrangements for the consideration and disposal of complaints relating to any matter concerning the curriculum followed within the School including, in particular, the discharge by the education association of the duties imposed on them under Chapter I of Part I of the 1988 Act.

- (2) The arrangements referred to in paragraph (1) above must, in particular, provide—
- (a) for any complaint to be made in the first instance in writing to the Head Teacher for his consideration; and
 - (b) if the complainant is dissatisfied with the response to his complaint from the Head Teacher, or he does not receive any such response within a period specified under the arrangements, for the complainant to be able to refer the matter to the Education Association for their consideration.

(3) The Education Association may from time to time revise the arrangements made by them under this Article; and any such arrangements (whether as initially determined or as revised by the Education Association) shall not have effect unless they have been approved by the Secretary of State.

Admissions: reduction of approved admission number

- 6.—(1) This Article applies where—
- (a) the Education Association intend in accordance with section 149(4) of the 1993 Act to apply to the Secretary of State for his approval for a variation in the approved admission number of any relevant age group; and
 - (b) the effect of the variation would be to reduce the approved admission number in relation to that age group.

(2) Before applying to the Secretary of State for the approved admission number to be reduced in relation to any relevant age group, the Education Association shall publish their proposals in accordance with paragraph (3) below.

- (3) The proposals shall be published—
- (a) in at least one newspaper circulating in the area served by the School;
 - (b) by being posted in at least one conspicuous place within that area; and
 - (c) by being posted at or near the main entrance to the School, or (if there is more than one main entrance) all of them.

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(4) The published proposals shall be accompanied by a statement which explains the effect of paragraphs (5) and (6) below.

(5) Within the period of two months beginning with the date of publication of the proposals, objections to the proposals may be submitted to the Education Association by any of the following—

- (a) if the proposals affect the provision of education to which section 2(1) of the Further and Higher Education Act 1992⁽⁹⁾ applies, the appropriate further education funding council;
- (b) any ten or more local government electors for the area of the local education authority in which the School is situated;
- (c) the governing body of any School affected by the proposals; and
- (d) any local education authority concerned.

(6) The Education Association shall not apply to the Secretary of State for the approved admission number for any relevant age group to be reduced until after the period referred to in paragraph (5) above has expired; and, where they do so, they shall send to the Secretary of State copies of all the objections made to their proposals (and not withdrawn in writing) together with their observations on them.

(7) If an order under section 12(1) of the 1993 Act applies to the area of the local education authority in which the School is situated, this Article shall have effect as if the references to the Secretary of State were to the funding authority.

(8) In paragraph (5) above—

- (a) the reference to “the date of publication of proposals” is—
 - (i) to the date on which the requirements of paragraph (3) above are satisfied; or
 - (ii) where different requirements are satisfied on different dates, to the last of those dates; and
- (b) the reference to “the appropriate further education funding council” is—
 - (i) where the School is situated in England, to the Further Education Funding Council for England; and
 - (ii) where the School is situated in Wales, to the Further Education Funding Council for Wales.

Admissions: arrangements for admission of pupils to the School

7.—(1) The Education Association shall determine, and may from time to time revise, the arrangements for the admission of pupils to the School in any school year.

(2) The arrangements for the admission of pupils to the School (whether as initially determined or as revised by the Education Association) shall not have effect unless they have been approved by the Secretary of State.

(3) The arrangements for the admission of pupils to the School shall include—

- (a) the number of pupils intended to be admitted to the School in any school year in each relevant age group;
- (b) the arrangements which are to apply with respect to the making of applications for admission to the School;
- (c) the policy to be followed in deciding admissions (“admissions policy”);
- (d) any arrangements which may be adopted by the Education Association, with the approval of the Secretary of State, for preserving the particular religious character of the School; and

(9) 1992 c. 13.

(e) where pupils are to be selected for admission to the School wholly or partly on the basis of ability or aptitude, the arrangements made for that purpose.

(4) For the purposes of paragraph (3)(c) above, the admissions policy shall include the criteria to be applied in deciding admissions where the number of applications for admission of pupils in a relevant age group in any school year which do not fall to be rejected in accordance with (as the case may be) Article 8(1)(a) or (c) below is greater than the number of pupils intended to be admitted in that age group in that year.

Admissions: determining applications for admission

8.—(1) Where an application for admission has been made in accordance with the arrangements for admission of pupils to the School, the Education Association shall admit the child concerned unless—

- (a) his admission would be incompatible with the arrangements for the admission of pupils to the School, including in particular—
 - (i) any arrangements for preserving the particular religious character of the School made in accordance with Article 7(3)(d); and
 - (ii) any arrangements for selecting pupils by reference to ability or aptitude made in accordance with Article 7(3)(e);
- (b) his admission would prejudice the provision of efficient education or the efficient use of resources at the School; or
- (c) a local education authority maintain a statement of special educational needs for him under section 168 of the 1993 Act, and that statement names another school.

(2) For the purposes of paragraph (1)(b) above, no such prejudice shall be taken to arise from the admission of a child to the School if, were he admitted to the school, the number of pupils within the relevant age group to which he would be admitted in the school year in which he would be admitted would not exceed the number of pupils intended to be admitted to the School in that age group in that year.

(3) Where a child has been refused admission to the School, the Education Association shall secure that the parent of the child is informed of—

- (a) his right to appeal against that decision; and
- (b) the arrangements made by the Education Association, pursuant to Article 12, for enabling appeals to be made against decisions refusing admission to the School.

Discipline: general duties in relation to pupils

9.—(1) Subject to paragraph (2) below, the Head Teacher shall determine measures (which may include the making of rules and provision for enforcing them) to be taken with a view to—

- (a) promoting, among pupils at the School, self-discipline and proper regard for authority;
- (b) encouraging good behaviour and respect for others on the part of those pupils;
- (c) securing that the standard of behaviour of those pupils is acceptable; and
- (d) otherwise regulating the conduct of those pupils.

(2) In determining any such measures, the Head Teacher shall—

- (a) act in accordance with any written statement of general principles provided for him by the Education Association; and
- (b) have regard to any guidance that they may offer in relation to particular matters.

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(3) It shall be the duty of the Head Teacher to make such measures generally known within the School.

(4) For the purposes of paragraph (1) above, the standard of behaviour which is to be regarded as acceptable at the School shall be determined by the Head Teacher, so far as it is not determined by the Education Association.

(5) The power to exclude a pupil from the School (whether by suspension, expulsion or otherwise) shall be exercisable only by the Head Teacher.

Exclusion of pupils

10.—(1) It shall be the duty of the Head Teacher—

- (a) where he excludes from the School a pupil who is under the age of eighteen years, to take (without delay) reasonable steps to inform a parent of the pupil of the period of the exclusion and the reasons for it; and
- (b) where he decides that any exclusion of such a pupil from the School which was originally for a fixed period should be made permanent, to take (without delay) reasonable steps to inform a parent of the pupil of his decision and the reasons for it.

(2) Where the Head Teacher excludes any pupil from the School, he shall (without delay) take reasonable steps to inform the pupil, if he is aged eighteen years or over, or, if he is not, a parent of his, that the pupil or (as the case may be) the parent may make representations about the exclusion to the Education Association.

(3) It shall be the duty of the Head Teacher, where he excludes a pupil from the School—

- (a) for more than five school days (in the aggregate) in any one school term: or
- (b) in such circumstances in which the pupil would, as a result of his exclusion from the School, lose an opportunity to take any public examination,

to inform (without delay) the Education Association of the period of the exclusion and of the reasons for it, and where he decides that any exclusion of a pupil from the School which was originally for a fixed period should be made permanent, to inform them (without delay) of his decision and the reasons for it.

Reinstatement of excluded pupils

11.—(1) It shall be the duty of the Education Association where they have been informed of the permanent exclusion of a pupil from the School—

- (a) to consider whether he should be reinstated immediately, reinstated by a particular date or not reinstated;
- (b) where they consider he should be reinstated, to give the appropriate direction to the Head Teacher; and
- (c) where they consider he should not be reinstated, to inform—
 - (i) the pupil, if he is aged eighteen years or over, or, if he is not, a parent of his; and
 - (ii) the Head Teacher,of their decision.

(2) In any case to which paragraph (1)(c) applies, the Education Association shall also inform the pupil or (as the case may be) his parent of—

- (a) his right to appeal against the decision permanently to exclude the pupil; and

- (b) the arrangements made by the Education Association in accordance with Article 12 for enabling an appeal to be made against any decision permanently to exclude a pupil from the School.
- (3) The Head Teacher shall comply with any direction given by the Education Association in accordance with paragraph (1)(b) above.
- (4) It shall be the duty of the Head Teacher, where he has excluded a pupil from the School for a fixed period—
 - (a) for more than five school days (in the aggregate) in any one school term; or
 - (b) in circumstances in which the pupil would, as a result of his exclusion from the School, lose an opportunity to take any public examination,to comply with any direction for the reinstatement of the pupil given by the Education Association.
- (5) Where the Head Teacher has been informed by the Education Association in accordance with paragraph (1)(c) above that a pupil is not to be reinstated, he shall (without delay) inform the local education authority to whose area the pupil belongs of the decision to exclude him from the School.
- (6) For the purposes of paragraph (5) above, any question whether a pupil belongs to the area of a particular local education authority shall be determined by the Head Teacher, as it would for the purposes of the Education Act 1980, in accordance with the regulations made under section 38(5) of that Act⁽¹⁰⁾.

Appeals against admissions decisions and decisions permanently to exclude pupils

- 12.**—(1) The Education Association shall make arrangements for enabling—
- (a) a person, if he is aged eighteen years or over, or, if he is not, a parent of his, to appeal against any decision made by the education association in accordance with Article 8(3) refusing him admission to the School; and
 - (b) a pupil if he is aged eighteen years or over, or, if he is not, a parent of his, to appeal against any decision by the Education Association in accordance with Article 11(1) not to reinstate the pupil following his permanent exclusion from the School.
- (2) For the purposes of paragraph (1) above, the Education Association may make joint arrangements with the governing body of one or more grant-maintained schools or with one or more other education associations.
- (3) Any appeal by virtue of this Article shall be to an appeal committee constituted in accordance with the provisions of Appendix 2 to these Articles; and Appendix 3 to these Articles shall have effect in relation to any such appeal.
- (4) The decision of an appeal committee on any such appeal shall be binding on the persons concerned.
- (5) Where, in the case of an appeal against a decision not to reinstate a pupil following his permanent exclusion from the School, the appeal committee determines that the pupil in question should be reinstated, it shall direct that he be reinstated immediately or direct that he be reinstated on or before such date as is specified in the direction.

Annual report to parents

- 13.**—(1) The Education Association shall prepare, once in every school year, a report (“the annual report”) containing—

⁽¹⁰⁾ The regulations in force at the date of these Regulations are the Education (Areas to which Pupils and Students Belong) Regulations 1989, S.I. 1989/2037, amended by S.I. 1990/361 and 1990/1653.

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- (a) a summary of the steps taken by the Education Association in the discharge of their functions during the period since their last report; and
 - (b) the information referred to in paragraph (2) below.
- (2) Subject to paragraph (6) below, the annual report shall—
- (a) be as brief as is reasonably consistent with the requirements as to its contents;
 - (b) give details of the date, time and place for the next annual parents' meeting and its agenda;
 - (c) indicate that the purpose of that meeting will be to discuss both the annual report and the discharge by the Education Association and the head teacher of their functions in relation to the School;
 - (d) report on the consideration which has been given to any resolutions passed at the previous such meeting;
 - (e) give the name of each member of the Education Association;
 - (f) give, in relation to each such member, the date on which his term of office comes to an end;
 - (g) name, and give the address of, the chairman of the Education Association;
 - (h) give such information in relation to public examinations as is required to be published in accordance with regulations made under section 153(1) of the 1993 Act⁽¹¹⁾ ;
 - (i) describe what steps have been taken by the Education Association to develop or strengthen the School's links with the community (including links with the police);
 - (j) give particulars of the dates of the beginning and end of each school term and of each holiday for the school year immediately following the school year in which the report has been prepared; and
 - (k) provide a summary of any changes to the information contained in the school prospectus since it was last published.
- (3) The Education Association may produce their annual report in such language or languages (in addition to English) as they consider appropriate.
- (4) The Education Association shall take such steps as are reasonably practicable to secure that—
- (a) the registered parents of all registered pupils at the school and all persons employed at the school are given (free of charge) a copy of the annual report;
 - (b) copies of the report are available for inspection (at all reasonable times and free of charge) at the School; and
 - (c) subject to paragraph (6) below, copies of the report are given to parents in accordance with sub-paragraph (a) above not less than two weeks before the annual parents' meeting at which that report is to be considered.
- (5) There shall be annexed to any copy of the annual report made available for inspection in accordance with paragraph (4)(b) above the audited accounts of the School for the financial year ending with 31st March in the school year immediately preceding the school year in which the report is prepared.
- (6) The requirements imposed by paragraph (2)(b) to (d) and paragraph (4)(c) above shall not apply where in accordance with Article 14(10) the Education Association have determined to refrain from holding the next annual parents' meeting.
- (7) The Education Association shall furnish the Secretary of State with a copy of any annual report produced by them.
- (8) In paragraph (5) above, “financial year” means a period of twelve months ending with 31st March.

⁽¹¹⁾ Section 153(1) of the Education Act 1993 (c. 35) is not in force at the date of the making of these Regulations.

Annual parents' meeting

14.—(1) Subject to paragraph (10) below, the Education Association shall hold a meeting once in every school year (“the annual parents' meeting”) which is open to—

- (a) all parents of registered pupils at the School; and
- (b) such other persons as the Education Association may invite.

(2) The purpose of the meeting shall be to provide an opportunity for the discussion of—

- (a) the annual report;
- (b) the audited accounts annexed to that report in accordance with Article 13(5); and
- (c) the discharge by the Education Association and the head teacher of their functions in relation to the School.

(3) The proceedings at any annual parents' meeting shall be under the control of the Education Association.

(4) No person who is not a parent of a registered pupil may vote on any question put to such a meeting.

(5) Where the required number of parents of registered pupils at the School are present at any annual parents' meeting, the meeting may pass (by simple majority) resolutions on any matters which may properly be discussed at the meeting.

(6) The Education Association shall—

- (a) consider any such resolution which is duly passed at such a meeting and which they consider is a matter for them; and
- (b) send to the Head Teacher a copy of any such resolution which they consider is a matter for him.

(7) The Education Association shall comment (in writing) on any such resolution which they consider is a matter for them, for inclusion in their next annual report.

(8) The Head Teacher shall consider any such resolution a copy of which has been sent to him by the Education Association and shall provide the Education Association with a brief comment on it (in writing) for inclusion in their next annual report.

(9) For the purposes of this Article, any question whether a person is a parent of a registered pupil at the School shall be determined by the Education Association.

(10) Where—

- (a) the Education Association are of the opinion that it would be impracticable to hold an annual parents' meeting in a particular year;
- (b) at least fifty per cent of the registered pupils at the School are boarders at the time when the Education Association form that opinion; and
- (c) an annual parents' meeting was held by the Education Association in the immediately preceding school year,

they may refrain from holding such a meeting.

(11) In paragraph (5) above, “the required number” means any number equal to at least twenty per cent of the number of registered pupils at the School.

Terms, holidays and sessions

15. It shall be the duty of the Education Association to determine—

- (a) the dates at which the school terms and holidays are to begin and end; and

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- (b) the times at which the school session or, if there is more than one session, each school session is to begin and end on any day.

School premises

16.—(1) Subject to the following provisions of this Article, the occupation and use of the premises of the School shall be under the control of the Education Association.

(2) The Education Association, in exercising control of the use of the premises of the School, shall have regard to the desirability of the premises being made available for community use.

(3) Subject to paragraph (4), the Education Association shall have power to enter into a transfer of control agreement with any body or person if their purpose, or one of their purposes, in doing so is to promote community use of the whole or any part of the premises of the School; and

- (a) they may do so notwithstanding that any trust deed relating to the School would, apart from this provision, expressly or impliedly preclude them from entering into such an agreement with that body or person or from conferring control on the controlling body in question; but
- (b) they shall not enter into a transfer of control agreement unless the use to which the premises may be put under the agreement is in all other respects in conformity with any such requirements, prohibitions or restrictions imposed by the trust deed as would obtain if control were being exercised by the Education Association.

(4) The Education Association shall not enter into any transfer of control agreement which makes or includes provision for the use of the whole or any part of the premises of the School during school hours unless they have first obtained the appropriate authority's consent to the agreement in so far as it makes such provision.

(5) In paragraph (4) above, the reference to the appropriate authority is—

- (a) where an order has been made under section 12(1) of the 1993 Act (transfer to the funding authority of responsibility for providing sufficient school places) in respect of the area of the local education authority in which the School is situated, to the funding authority; or
- (b) in any other case, to the Secretary of State.

(6) A transfer of control agreement shall be taken to include the following terms, namely—

- (a) that the controlling body, in exercising control of the use of any premises subject to the agreement shall have regard to the desirability of the premises being made available for community use; and
- (b) that, if reasonable notice is given in writing by the Education Association to the controlling body that such of the premises subject to the agreement as may be specified in the notice are reasonably required for the use by or in connection with the School at such times or may be so specified, then—
 - (i) the use of the specified premises at those times shall be under the control of the Education Association; and
 - (ii) accordingly, those premises may be used at those times by or in connection with the School for such purposes as may be specified in the notice,

notwithstanding that their use at those times would, apart from this sub-paragraph, be under the control of the controlling body.

(7) Where a transfer of control agreement makes provision for the use of any premises which are subject to the agreement to be occasionally under the control of the Education Association, instead of the controlling body, in such circumstances, at such time or for such purposes as may be provided by or under the agreement, paragraph (5)(b) above shall not have effect in relation to that agreement if, at the time of entering into it, the Education Association were of the opinion that the express

provision would be more favourable to the interests of the School than the term that would otherwise be included by virtue of that provision.

(8) Where any trust deed relating to the School provides for any person other than the Education Association to be entitled to control the occupation and use of the premises of the School to any extent, then, if and to the extent that, disregarding any transfer of control agreement, the use of those premises is or would be under the control of such a person, this Article shall have effect with the substitution for references to the Education Association of references to that person.

(9) Where, in accordance with section 38 of the 1993 Act, the rights and liabilities of the former governing body of the School under a transfer of control agreement relating to the whole or any part of the premises of the School are transferred to the Education Association, the power of the Education Association to control the use and occupation of those premises shall be subject to the terms of that agreement.

(10) Where in an agreement made under paragraph 1 or 2 of Schedule 10 to the 1988 Act, or under a determination made in accordance with paragraphs 62 to 64 of Schedule 8 to the Further and Higher Education Act 1992, arrangements are made with respect to the use of the whole or any part of the premises of the School, the power of the Education Association to control the use and occupation of those premises shall be subject to the terms of those arrangements.

(11) In this Article—

“community use” means the use of the premises of the School (when not required by or in connection with the School) by members of the local community;

“the controlling body” means the body or person (other than the Education Association) which has the control of the use of the whole or any part of the premises of the School under the transfer of control agreement in question;

“school hours” means any time during a school session or during a break between sessions on the same day, and “outside school hours” shall be construed accordingly; and

“school session” means a school session beginning and ending at such times as may from time to time be determined in accordance with Article 15.

(12) In this Article, “transfer of control agreement” means—

(a) in paragraph (8), a transfer of control agreement entered into in accordance with (as the case may be) section 22 of the Education Act 1944 or section 42 of the Education (No. 2) Act 1986; or

(b) in any other case, an agreement which, subject to paragraph (5) above, provides for the use of so much of the premises of the School as may be specified in the agreement to be under the control, at such times as may be so specified, of such body or person as may be so specified.

Appointment of the head teacher and deputy head teacher

17.—(1) This Article applies in relation to the appointment of any person to fill a vacancy in the post of head teacher or deputy head teacher of the School.

(2) Before appointing any person as head teacher or deputy head teacher, the Education Association shall advertise the vacancy in such publications circulating throughout England and Wales as they consider appropriate.

(3) The Education Association shall—

(a) interview such applicants for the post as they think fit; and

(b) where they consider that it is appropriate to do so, appoint one of the applicants interviewed by them.

(4) If the Education Association do not appoint one of the applicants interviewed by them, they—

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- (a) may, if they think fit, re-advertise the vacancy in the manner required by paragraph (2) above; and
- (b) whether or not they re-advertise the vacancy, may repeat the steps mentioned in paragraph (3) above.

(5) Where the post of head teacher or, as the case may be, deputy head teacher has not been filled, or it appears to the Education Association that the post will not be filled, by an appointment made in accordance with the preceding provisions of this Article before the date on which the post falls vacant, the Education Association may, pending the making of such an appointment, appoint a person as acting head teacher or, as the case may be, acting deputy head teacher.

(6) Any person employed to work at the School in accordance with this Article shall be employed under a written contract of employment.

Appointment of staff other than the head teacher and deputy head teacher

18.—(1) This paragraph applies in relation to the appointment of persons to work at the School (other than the head teacher and the deputy head teacher).

(2) Subject to the following provisions of this regulation, the Education Association may appoint such persons to work at the School as they think fit.

(3) Except where the Education Association delegate a person’s selection to the Head Teacher, the persons making the selection shall consider any advice given by the Head Teacher before selecting any person to work at the School.

(4) Subject to paragraph (5) below, where there is a vacancy in a teaching post at the School, the Education Association shall, unless they decide to fill the vacancy by the appointment of a person who is already employed to work at the School, advertise the vacancy as they think fit.

(5) Where the Education Association advertise a vacancy in accordance with paragraph (4) above, they shall not be required to appoint a person who has applied for the vacancy in response to their advertisement.

(6) Any person employed to work at the School in accordance with this Article shall be employed under a written contract of employment.

Staff: discipline

19.—(1) Subject to paragraphs (2) and (3) below and Articles 20 and 21, the Education Association shall have control of all matters relating to the conduct and discipline of persons employed to work at the School.

(2) The Education Association shall establish disciplinary rules and procedures in relation to the persons employed to work at the School and shall take such steps as appear to them to be appropriate for making them known to such persons.

(3) The Education Association shall consult the Head Teacher before taking any disciplinary action in relation to a person employed to work at the School.

(4) For the purposes of paragraph (3) above, “disciplinary action” includes any action relating to the suspension or dismissal of any person employed to work at the School.

Staff: suspension

20.—(1) Subject to paragraph (2) below, the Education Association and the Head Teacher shall both have power to suspend any person employed to work at the School where, in the opinion of the Education Association or the Head Teacher, as the case may be, his exclusion from the School is required.

(2) Where the Head Teacher suspends any person in accordance with paragraph (1) above, he shall immediately inform the Education Association of that fact and the reasons for his decision.

(3) Any suspension under this Article may be ended only by the Education Association; and the Education Association shall, on ending such a suspension immediately inform the Head Teacher.

(4) In these Articles, “suspend” means suspend without loss of emoluments.

Staff: dismissal

21.—(1) The Education Association shall have power to determine that any person employed to work at the School should be dismissed.

(2) The Education Association shall secure that, before determining that any person employed to work at the School should be dismissed, the person concerned is given at least seven days' written notice of any meeting at which they are to consider any proposal to dismiss him.

(3) Where the Education Association are to consider the dismissal of any person employed to work at the School, they shall secure that, before reaching a decision on whether to dismiss the person concerned—

- (a) he is given at least seven days' written notice of the meeting at which his dismissal is to be considered;
- (b) he is informed at the same time of his right to make representations (including oral representations) to the Education Association to be considered by them at that meeting; and
- (c) they have regard to any representations made by him.

(4) The Head Teacher shall be entitled to attend any such meeting as is referred to in paragraph (3) above; and, except where it concerns his dismissal, the Education Association shall have regard to any advice given by the Head Teacher before reaching their decision.

(5) The Education Association shall make arrangements for enabling any person employed to work at the School to appeal against a decision of the Education Association to dismiss him.

(6) Any appeal by virtue of this Article shall be to an appeal committee consisting of an odd number of eligible members appointed by the education association; and Appendix 3 to these Articles shall have effect in relation to any such appeal.

(7) For the purposes of paragraph (6) above any person is an eligible member if—

- (a) he is not the head teacher or otherwise employed as a member of the staff at the school;
- (b) he was not among those who made the decision under appeal; and
- (c) he took no part in discussions as to whether the decision should be made.

(8) The decision of an appeal committee under this Article on any such appeal shall be binding on the persons concerned.

(9) Where in accordance with the preceding provisions of this Article it is determined by the Education Association that any person employed to work at the School should be dismissed, the Education Association shall either give that person such notice terminating his contract of employment with them as is required under that contract or terminate that contract without notice if the circumstances are such that they are entitled to do so by reason of his conduct.

(10) For the purposes of paragraph (9) above any determination made by the Education Association in accordance with the preceding provisions of this Article shall not have effect until—

- (a) where an appeal is made against the decision of the Education Association, that appeal has been determined; or
- (b) in any other case, the period for making such an appeal has expired,

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and in any case to which paragraph (a) above applies, any such determination shall not thereafter have effect where the appeal is successful.

Staff: grievance procedures

22. The Education Association shall establish procedures for giving members of the staff at the School opportunities for seeking redress of any grievances relating to their employment.

Staff: induction and training of teaching staff

23. It shall be the duty of the Education Association to make arrangements with respect to—

- (a) the induction of newly qualified teachers at the School; and
- (b) the in-service training and professional development of teachers at the School.

Duty to make available copies of the articles of government

24. The Education Association shall secure that copies of these Articles are made available for inspection at the School (at all times and free of charge) by any parent of a registered pupil or person employed to work at the School.

APPENDIX 1

TRANSITIONAL PROVISIONS IN CONNECTION WITH THE COMMENCEMENT OF THE 1993 ACT

Curriculum: provision of sex education

1. Until the entry into force of section 241(1) and (5) of the 1993 Act, paragraph (5) of Article 4 shall have effect as if the first seven words were omitted.

Admissions

2.—(1) Until the entry into force of section 149 of the 1993 Act—

- (a) Article 1 shall have effect as if the reference in the definition of “approved admissions number” to that section were a reference to section 83 of the 1988 Act⁽¹²⁾; and
- (b) Article 6(1)(a) shall have effect as if the reference to section 149(4) of the 1993 Act were a reference to section 83(3) of the 1988 Act.

(2) Until the entry into force of section 168 of the 1993 Act, Article 8(1)(c) shall have effect as if the reference to section 168 of the 1993 Act were a reference to section 7 of the Education Act 1981⁽¹³⁾.

Exclusion of pupils

3. Until the entry into force of section 261 of the 1993 Act—

- (a) paragraphs (1)(b) and (3) of Article 10 shall have effect as if there were inserted after “fixed” the words “or indefinite”;
- (b) Article 11(1) shall have effect as if for “the permanent exclusion of a pupil from the School” there were substituted the words “the exclusion of a pupil from the School which is for an indefinite period or is permanent”;
- (c) Article 11(2) shall have effect as if after “applies” there were inserted the words “and where the exclusion is permanent”; and
- (d) Article 11(5) shall have effect as if after “a pupil” there were inserted the words “who has been permanently excluded”.

⁽¹²⁾ Section 83 is modified by Schedule 2 to the Education (Schools Conducted by Education Associations) Regulations 1993, S.I. 1993/3103.

⁽¹³⁾ 1981 c. 60.

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APPENDIX 2

CONSTITUTION OF APPEAL COMMITTEES

1. An appeal committee shall consist of an odd number of persons.
- 2.—(1) Subject to sub-paragraphs (2) and (3) below, the persons appointed—
 - (a) may include one or more members of the Education Association, and
 - (b) shall include persons who have experience in education, are acquainted with the educational conditions in the area or are parents of registered pupils at a school.(2) A person shall not be appointed in pursuance of sub-paragraph (1) above, if he is employed as a teacher or otherwise at the School.
 - (3) A person shall not be appointed in pursuance of sub-paragraph (1)(b) above, if he—
 - (a) has ever been a member of the Education Association, or
 - (b) is a parent of a registered pupil at the School.
3. A person shall not be a member of an appeal committee for the consideration of any appeal against a decision if he was among those who made the decision or took part in discussions as to whether the decision should be made.
- 4.—(1) Subject to sub-paragraph (2) below, the members of an appeal committee shall appoint a person from among their number to be chairman of the committee.
 - (2) None of the members of the Education Association may be chairman of an appeal committee.
5. The members of the appeal committee shall select a person, who is not from among their number, to act as the clerk to the committee; and the Education Association shall appoint any person who has been so selected so to act.
6. The Education Association shall have power to pay to the members of an appeal committee such travelling, subsistence or other allowances as they may determine.
7. An appeal pursuant to joint arrangements made by virtue of paragraph 12(2) of these Articles—
 - (a) by the Education Association and another such association shall be to an appeal committee constituted as provided in the preceding paragraphs of this Appendix, taking references to the Education Association as references to both or all the associations; and
 - (b) by the Education Association and the governing body of one or more grant-maintained schools shall be to an appeal committee constituted in accordance with either Appendix 3 to Schedule 1 of the Education (Grant-maintained Schools) (Initial Governing Instruments) Regulations 1993⁽¹⁴⁾, taking references to the Governing Body as references to that body (or those bodies) and the education association, or any succeeding provisions of the instrument of government of the school in question.

(14) S.I. 1993/3102.

APPENDIX 3

APPEAL COMMITTEES: PROCEDURE

1. This Appendix shall have effect with respect to the procedure of an appeal to an appeal committee established in accordance with any arrangements made by the education association in pursuance of Article 12.

2. An appeal shall be made by notice in writing setting out the grounds on which it is made.

3.—(1) An appeal committee shall afford the appellant the opportunity of making representations including (if he so wishes) oral representations.

(2) The appeal committee shall afford the Head Teacher and a member of the Education Association the opportunity of making written representations.

(3) Where in accordance with sub-paragraph (1) above the appellant decides to appear before the appeal committee in order to make oral representations to them—

- (a) they shall afford the Head Teacher and a member of the Education Association the opportunity of appearing and making oral representations;
- (b) they may allow the appellant to be accompanied by a friend or to be represented; and
- (c) they may allow the Education Association to be represented.

4. In the event of a disagreement between the members of an appeal committee the appeal under consideration shall be decided by a simple majority of the votes cast and in the case of an equality of votes the chairman of the committee shall have a second or casting vote.

5. The decision of an appeal committee and the grounds on which it is made shall be communicated by the committee in writing to the appellant, the Education Association and the head teacher.

6. All appeals shall be held in private except when otherwise directed by the Education Association, but any member of the Council on Tribunals may attend as an observer any meeting of an appeal committee at which an appeal is considered.

7. Subject to paragraphs 2 to 6 above, all matters relating to the procedure on appeals, including the time within which they are to be brought, shall be determined by the Education Association.

8.—(1) Subject to sub-paragraph (2) below, where joint arrangements for appeals have been made in accordance with Article 12(2), paragraphs 2 to 7 above shall have effect in respect of any appeal made under these Articles to an appeal committee established in accordance with those arrangements.

(2) In the case of any appeal to which sub-paragraph (1) above applies, paragraphs 6 and 7 above shall have effect as if for “the Education Association” there were substituted the words “the Education Associations, or the Education Association or associations and the governing body or bodies of the other school or schools (as the case may be), which are parties to the arrangements, acting jointly”.

6th December 1993

John Patten
Secretary of State for Education

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8th December 1993

John Redwood
Secretary of State for Wales

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe the initial articles of government for schools conducted by education associations pursuant to orders made under section 220 of the Education Act 1993. The articles deal with the general responsibilities of the education association and head teacher with respect to the conduct of the school and make provision concerning the curriculum at the school (including provision for dealing with complaints concerning the curriculum), arrangements for determining admissions to the school and the exclusion of pupils from the school (including arrangements for appeals), the preparation of an annual report to parents, the holding of an annual parents' meeting, the use of the school premises and the appointment and dismissal of staff.

The Regulations also prescribe the provisions of the articles of government which are to have effect from the date of an order under section 220 in respect of a school.