
STATUTORY INSTRUMENTS

1994 No. 1041

The Education (Groups of Grant-maintained Schools) Regulations 1994

PART IV

PROCEDURE FOR A SCHOOL TO LEAVE A GROUP

Initiating procedure for leaving a group

31.—(1) This regulation applies where the governing body of a group receive a written request to hold a ballot of parents on the question whether a school (not being a hospital special school) should seek to leave that group.

(2) A request under paragraph (1) must be signed (or otherwise endorsed in such manner as the governing body may require) by a number of registered parents of registered pupils at the school equal to at least 20% of the number of registered pupils at the school; and in this sub-paragraph “registered” means shown in the register kept under section 80 of the Education Act 1944 as that register has effect on the date on which the request is received.

(3) The governing body shall—

- (a) secure that the ballot is held in accordance with regulation 6 within the period of 10 weeks beginning with the date on which the request was received, and
- (b) if the school is a foundation school give notice that the ballot is to be held to any person holding property on trust for the purposes of the school.

(4) Notice under paragraph 3(b) must be given within the period of 5 days beginning with the date on which the request was received; but in determining that period no account shall be taken of—

- (a) Saturday, Sunday, Good Friday, and Christmas Day or
- (b) any day which is a bank holiday in England and Wales.

(5) Paragraph (3) does not apply if in the case of the school in question a ballot has been held on the question whether the school should leave the group of which it is a member within the period of 12 months ending with the date immediately preceding the date on which the request is received, unless the Secretary of State gives consent in writing for a new ballot to be held.

(6) A request under paragraph (1) shall be taken to have been received by a governing body if given or sent to the chairman of the governing body or to the clerk of the governing body.

(7) Section 27 of the 1993 Act (information to parents of registered pupils) shall apply if a request is made by a parent of a registered pupil at a school in connection with any proposal that a ballot should be held under this regulation in respect of that school.

(8) Section 28 of the 1993 Act shall apply in relation to the duty to hold any ballot under this regulation as if the reference in subsection (3)(a) to the prescribed information were to the information contained in Part II of Schedule 1 to these Regulations and the reference in subsection (6) were to the case for the school leaving the group and becoming a grant-maintained school outside the group.

(9) Section 29 of the 1993 Act applies as if the reference to the relevant resolution or request were to a request under paragraph (1) above.

(10) Sections 30 and 31 of the 1993 Act shall apply to any ballot held under this regulation.

Procedure for hospital special school to leave a group

32. Where the governing body of a group decide by a resolution passed at a meeting of the governing body that a hospital special school should leave the group and at a further meeting of the governing body held not less than 28 days following the first meeting pass a resolution to the same effect they shall publish proposals in accordance with regulation 33 below.

Publication of proposals for leaving a group

33.—(1) Paragraph (2) applies where the result of a ballot held in accordance with regulation 6 shows a simple majority of votes cast (by persons eligible to vote in the ballot) in favour of a school leaving a group, or where a second resolution has been passed in accordance with regulation 32.

(2) Before the end of the period of four months beginning with the date on which the result of the ballot is determined or, as the case may be, the second resolution is passed in accordance with regulation 32 the governing body of the group shall—

- (a) publish proposals for the school to continue as a grant-maintained school outside the group in accordance with Part I of Schedule 3 to the 1993 Act with the modifications referred to in paragraph (5) below,
- (b) publish any notice in respect of the proposals for the time being required by any such provision, and
- (c) submit to the Secretary of State a copy of the published proposals.

(3) The duty under paragraph (2) above also applies in respect of a school in the group where that school would otherwise be the only school in the group in respect of which no proposals to leave the group are published.

(4) In these Regulations references to proposals published under this regulation include references to any proposals which have been modified by the Secretary of State.

(5) The modifications to Schedule 3 to the 1993 Act are—

- (a) for paragraph 1(3)(c) there is substituted:
 - “(c) state that, if the proposals are approved, the school will cease to be a member of the group of schools named in the proposals.”;
- (b) for paragraph 2(1)(b) there is substituted:
 - “(b) state whether the school was a county, controlled, aided, maintained special or special agreement school immediately before it became grant-maintained, or, if established as a grant-maintained school, by whom it was established.”;
- (c) in paragraph 3(b) add at the end the words “outside the group”;
- (d) for paragraph 5(b) there is substituted:
 - “(b) any person holding property on trust for the purpose of any school in the group.”.

Approval of proposals for leaving a group

34.—(1) Proposals published under regulation 33 may not be withdrawn except with the consent of the Secretary of State and subject to such conditions as he may impose (which may, in particular,

require further proposals to be published under that regulation within such period as the Secretary of State may specify).

- (2) The Secretary of State—
- (a) may reject any proposals published under regulation 33; or
 - (b) may approve them without any modification or, after consulting with the existing governing body, approve them with such modification as he thinks fit.

Incorporation of governing body of a school leaving a group

35.—(1) Subsections (1) and (2) of section 34 of the 1993 Act shall apply in relation to proposals approved under regulation 34 as they apply to proposals approved under section 33 of that Act.

(2) On the date of implementation of the proposals the governing body of the group shall cease to be the governing body of the school.

Incorporation of governing body of remaining group

36.—(1) Where any proposals are approved under regulation 34, then on the date of their implementation, (except where such proposals, as approved, are for all the schools in the group to leave the group)—

- (a) the persons who, immediately before that date are on the existing governing body excluding any person to whom paragraph (2) applies,
- (b) the existing head teachers of the group (as governors ex officio), unless any choose not to be, and
- (c) any other person named in the proposals as a member of the new governing body of the group,

shall on that date be incorporated as the new governing body of the group under the name given in pursuance of paragraph 4(1)(g) of Schedule 2 to these Regulations.

- (2) This paragraph applies to any person on the existing governing body who—
- (a) is an externally appointed core governor in respect of the departing school;
 - (b) has given notice of his intention to resign from the governing body of the group on the implementation of the proposals, or
 - (c) has not been selected in the circumstances described in paragraph (2) of regulation 44.
- (3) On the date of implementation of the proposals the existing governing body shall be dissolved.

Exercise of powers before proposed date of implementation

37. Paragraphs 1 to 6 of Schedule 4 to the 1993 Act shall apply in relation to the exercise of powers by the new governing body of the departing school or any members of that body in relation to any schools where proposals are approved under regulation 33.

Transfer of property

38.—(1) Where in relation to any school, proposals for leaving a group are approved the property, rights and liabilities mentioned in paragraph (2) below of the governing body of the group shall on the date of implementation of the proposals be transferred and by virtue of these Regulations vest in the new governing body of the school incorporated under these Regulations.

- (2) The property, rights and liabilities referred to in subsection (1) above are—

- (a) all land or property, which, immediately before the date of implementation of the proposals, was property used or held by the existing governing body for the purposes of the school, and
- (b) all rights and liabilities subsisting immediately before the date of implementation of the proposals which were acquired or incurred by the existing governing body for those purposes.

(3) For the purposes of this regulation, any interest in a dwelling-house which, immediately before the date of implementation of the proposals, is used or held for occupation by a person employed to work at the school shall be treated as an interest used or held for the purposes of the school.

(4) This regulation is subject to section 198 of the Education Reform Act 1988 and Schedule 10 to that Act and references in that Schedule as applied by this regulation to the transfer date are to the date of implementation of the proposals.

(5) Any property, rights and liabilities of the existing governing body not passing under the preceding paragraphs of these Regulations shall, on the date of implementation of the proposals, vest in the new governing body of the group.

(6) If as a result of the implementation of the proposals, there remains no schools in the group, any properties, rights and liabilities of the existing governing body not passing under paragraphs (1) to (4) above shall pass to all or any of the new governing bodies of the schools in the group immediately before the implementation of the proposals (“the new governing bodies”)-

- (a) in accordance with any agreement between all the new governing bodies, or
- (b) in default of such agreement, in accordance with the direction of the Secretary of State, and pending such agreement or direction shall pass to all the new governing bodies to be held jointly.

Transfer of staff in respect of a school leaving a group

39.—(1) This regulation applies to any school in respect of which proposals for that school to leave a group have been approved and, subject to paragraph (3) below, applies to any person who immediately before the date of implementation of the proposals-

- (a) is employed by the existing governing body to work solely at the school, or
- (b) is employed by the existing governing body to work at the school and is designated for the purposes of this regulation by an order made by the Secretary of State.

(2) A person employed by the existing governing body in connection with the provision of meals shall not be regarded for the purposes of paragraph (1)(a) above as employed to work solely at a school unless the meals are provided solely for consumption by persons at the school.

(3) This regulation does not apply to-

- (a) any person employed as mentioned in paragraph (1) above whose contract of employment terminated on the day immediately preceding the date of implementation of the proposals, or
- (b) any person employed as mentioned in paragraph (1) above who before that date-
 - (i) has been appointed or assigned by the existing governing body to work solely at another school as from that date, or
 - (ii) has been withdrawn from work at the school with effect as from that date.

(4) A person who before the date of implementation of the proposals has been appointed or assigned by the existing governing body to work at the school as from that date shall be treated for the purposes of this regulation as if he had been employed by that body immediately before that date

to do such work at the school as he would have been required to do on or after that date under his contract of employment with the existing governing body.

(5) The contract of employment between a person to whom this regulation applies and the existing governing body shall have effect from the date of implementation of the proposals as if originally made between him and the governing body of the school.

(6) Without prejudice to paragraph (5) above—

(a) all the existing governing bodies' rights, powers, duties and liabilities under or in connection with the contract of employment shall be transferred to the governing body of the school on the date of implementation of the proposals;

(b) anything done before that date by or in relation to the existing governing body shall be deemed from that date to have been done by or in relation to that governing body.

(7) This regulation is without prejudice to any right of an employee to terminate his contract of employment if a substantial change is made to his detriment in his working conditions, but no such rights shall arise by reason only of the change in employer effected by these Regulations.

(8) An order under this regulation may designate a person either individually or as a member of a class or description of employees and shall be made in the same way as an order made under section 39(1)(b)(ii) of the 1993 Act⁽¹⁾.

Transfer of staff to new governing body of group

40.—(1) Subject to regulation 39, a contract of employment between any person and the existing governing body of the group shall have effect from the date of implementation of the proposals as if originally made between him and the new governing body of the group.

(2) This regulation is without prejudice to any right of an employee to terminate his contract of employment if a substantial change is made to his detriment in his working conditions, but no such rights shall arise by reason only of the change in employer effected by these Regulations.

Determination of initial parent and teacher governors of a school leaving a group

41.—(1) Where proposals are required to be published under regulation 32 this regulation applies for the purpose of determining the persons who are to be named in the proposals as proposed initial governors of any elected category in respect of the departing school.

(2) Any person who on the date of publication of the proposals is an eligible governor of an elected category on the existing governing body shall be named in the proposals as published as a proposed initial governor of that category.

(3) If the number of governors of any elected category to be named in the proposals in accordance with paragraph (2) is less than the number to be specified in the proposals the existing governing body shall secure that the remainder are elected by registered parents of registered pupils at the school or, as the case may be, by teachers at the school.

(4) The duty under paragraph (2) above shall be performed before the proposals are published or, as soon as possible thereafter.

(5) It shall be for the governing body to determine any question as to whether a person is a registered parent of a registered pupil or whether a person is a teacher at the school.

(6) Subject to the provisions of this regulation, it shall be for the governing body to make all necessary arrangements for, and to determine, all other matters relating to any such election.

(1) For the making of orders under that section see section 301(1) and (2) of the 1993 Act.

(7) The powers conferred by paragraph (6) above include power to make provision as to qualifying date but does not include power to impose any requirement as to the minimum number of votes required to be cast for a candidate to be elected.

(8) An election of parent or teacher governors which is contested must be held by secret ballot.

(9) The arrangements under paragraph (6) above shall, in the case of an election of a parent governor, provide for every person who is entitled to vote to have an opportunity to do so by post or, if he so prefers, by having his ballot paper returned to the school by a registered pupil at that school.

(10) For the purposes of this regulation an eligible governor of an elected category means a person who—

- (a) was at the time of his most recent election or appointment a registered parent of a registered pupil at the departing school or is a teacher at that school,
- (b) is a governor of an elected category on the existing governing body whose term of office as a governor is due to end after the date of implementation of the proposals, and
- (c) has notified the existing governing body that he is willing to serve on the proposed governing body and has not withdrawn that notification.

Determination of initial governors in respect of a school leaving a group

42.—(1) Sections 73, 74 and 75 of the 1993 Act shall apply in relation to proposals required to be published under regulation 33 with the following modifications—

- (a) references to a county school shall be to a school which immediately before it acquired grant-maintained status was a county or a maintained special school or to a school established pursuant to proposals published under section 48 of the 1993 Act, and
- (b) references to a voluntary school shall be to a foundation school.

Notice to the Secretary of State of subsequent governors

43. Where an election or appointment required for determining a proposed initial governor of any category in respect of a departing school is held or made in respect of a person who is not named in the proposals published under regulation 33, the existing governing body shall give the Secretary of State notice in writing of the relevant particulars in respect of the person elected or appointed.

Determination of initial governors on the governing body of the new group

44.—(1) Any person who on the date of publication of proposals under regulation 33 is a governor on the existing governing body shall be named in the proposals as a governor on the governing body of the new group unless—

- (a) he is an externally appointed core governor in respect of the departing school,
- (b) he has notified the existing governing body that he will not be willing to serve on the new governing body of the group and has not withdrawn that notification, or
- (c) he is not selected in the circumstances described in paragraph (2) below.

(2) If the number of parent governors or core governors on the existing governing body on the date of publication of the proposals (after deducting the relevant number of governors specified in items (a) and (b) in paragraph (1) above) exceeds the number of governors in that category specified in the proposals, the existing governing body shall select the number of governors required in that category from those on the governing body.