
STATUTORY INSTRUMENTS

1998 No. 2763

**The Education (School Government) (Transition
to New Framework) Regulations 1998**

PART II

MAKING OF THE INSTRUMENT OF GOVERNMENT

Time limits

5.—(1) Subject to paragraph (3), a local education authority shall secure that, by 1st June 1999, an instrument of government has been made in accordance with Schedule 12 to the 1998 Act⁽¹⁾ for each school which will be maintained by them on the appointed day.

(2) Paragraph (3) applies in the case of a grant-maintained or grant-maintained special school which will be, or a former grant-maintained or grant-maintained special school which is, maintained by a local education authority on the appointed day, where a determination by the Secretary of State as to the school's new category required by paragraph 7(2) of Schedule 2 to the 1998 Act has not been made on or before 7th May 1999.

(3) In any case to which this paragraph applies, the Secretary of State shall notify the local education authority of the date on which he makes the determination required by paragraph 7(2) of Schedule 2 to the 1998 Act and the local education authority shall secure that, by the end of a 3 months period beginning on the date of the determination, an instrument of government has been made in accordance with Schedule 12 to the 1998 Act⁽²⁾ for the school.

(4) The instrument of government shall take effect from the date of making for the purpose of reconstituting the governing body but, except in so far as required by regulation 18(2)(a), shall not affect the constitution of the governing body conducting the school pending full reconstitution under the instrument of government.

(5) For all other purposes, the instrument of government shall take effect—

- (a) if made before the appointed day, from the appointed day; or
- (b) if made on or after the appointed day, from the date of making.

(6) The current governing body, or, where the instrument of government is not made before the appointed day, the transitional governing body, shall exercise their functions under the 1998 Act and under these Regulations in a manner calculated to enable the local education authority to fulfil their duties under this regulation and under regulation 20.

⁽¹⁾ As modified by regulation 6 of these Regulations.

⁽²⁾ As modified by regulation 6 or 7 of these Regulations depending on whether the instrument is made before or on or after the appointed day.

Modifications to the 1998 Act where the instrument of government is made before the appointed day

6.—(1) Section 141 of, and Schedules 9 and 12 to, the 1998 Act shall apply with the following modifications to enable an instrument of government for a school to be made before the appointed day in preparation for the appointed day.

(2) In section 141 of, and paragraph 15 of Schedule 9 to, the 1998 Act, references to the area served by a school (however framed) shall be treated as references to the area which it appears to the local education authority will be served by the school when it is a maintained school.

(3) In paragraph 15(1) of Schedule 9 to the 1998 Act, the reference to “If the governing body of any maintained school so determine” shall be treated as if it were a reference to “If the current governing body so determine”.

(4) Paragraph 1 of Schedule 12 to the 1998 Act shall have effect as if—

(a) in sub-paragraph (1)(h) there were substituted for “the date”, the words “in accordance with sub-paragraph (2A), the dates”;

(b) after sub-paragraph (2) there were inserted the following sub-paragraph—

“(2A) Where an instrument of government is made before the appointed day for a school which will be a maintained school from the appointed day, such instrument of government—

(a) shall determine the constitution of the governing body and other matters relating to the school as a maintained school of the category to which it will belong in accordance with Schedule 2 to this Act;

(b) shall include a description of the ethos of the school, if it is anticipated that the school will become a foundation or voluntary school with a religious character (provided that such description shall be of no effect if the school does not become a foundation or voluntary school with a religious character with effect from the appointed day);

(c) shall take effect from the date of making for the purpose of reconstituting the governing body under the instrument of government but shall not (subject to any regulations made under paragraph 1(4) of Schedule 10 to this Act), affect the constitution of the governing body conducting the school pending full reconstitution under the instrument of government; and

(d) shall take effect from the appointed day for all other purposes..”

(5) References in paragraph 3 of Schedule 12 to the 1998 Act to “the governing body” and “foundation governors” shall be treated as references to the current governing body and members of the current governing body who are foundation governors within the meaning of the 1996 Act (as the case may be).

Modifications to the 1998 Act where the instrument of government is made on or after the appointed day

7.—(1) Schedules 9 and 12 to the 1998 Act shall apply with the following modifications to enable the instrument of government for a school to be made on or after the appointed day.

(2) In paragraph 15(1) of Schedule 9 to the 1998 Act, the reference to “If the governing body of any maintained school so determine” shall be treated as if it were a reference to “If the transitional governing body so determine”.

(3) Paragraph 1 of Schedule 12 to the 1998 Act shall have effect as if—

(a) in sub-paragraph (1)(h) there were substituted for “the date”, the words “in accordance with sub-paragraph (2A), the dates”;

(b) after sub-paragraph (2) there were inserted the following sub-paragraph—

“(2A) Where an instrument of government is made on or after the appointed day for a maintained school which was a county, voluntary, maintained special, grant-maintained or grant-maintained special school (within the meaning of the Education Act 1996) immediately before the appointed day, such instrument of government—

(a) shall take effect from the date of making for the purpose of reconstituting the governing body under the instrument of government but shall not affect the constitution of the governing body conducting the school pending full reconstitution under the instrument of government; and

(b) shall take effect from the date of making for all other purposes..”

(4) References in paragraph 3 of Schedule 12 to the 1998 Act to “the governing body” and “foundation governors” shall be treated as references to the transitional governing body and members of the transitional governing body who were when appointed foundation governors within the meaning of the 1996 Act (as the case may be).

Additional co-opted governors

8. Schedule 1 makes provision for the number of additional co-opted governors which may be required by the instrument of government by virtue of paragraph 15(1) and (2) of Schedule 9 to the 1998 Act, for the circumstances in which provision for such governors is authorised to be made, and for the categories of person from whom or from amongst whose members nominations for such appointments are to be sought.

Substitutes for ex officio foundation governors

9. The instrument of government shall name the person or persons who shall be entitled to appoint a foundation governor to act in the place of an ex officio foundation governor in any case where—

(a) that ex officio foundation governor is unable or unwilling to act as such; or

(b) there is a vacancy in the office by virtue of which such a governorship exists.

Instrument of government pro-formas

10. The instrument of government shall be made in the form and in accordance with the directions set out in Schedule 2 which are relevant to the category of maintained school to which the school will belong or belongs.