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STATUTORY INSTRUMENTS

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**1999 No. 362**

**The Education (Transition to New Framework) (New Schools, Groups and Miscellaneous) Regulations 1999**

**PART II**

**NEW LEA MAINTAINED SCHOOLS**

**Allocation of new LEA maintained schools to new categories**

- 6.—(1) This regulation applies to a proposed school proposals for the establishment of which—
- (a) have been approved, or have effect under section 504(3) of the 1996 Act as if approved, under section 37, 43 or 340(4) of that Act before the appointed day, or
  - (b) have been determined to be implemented by the local education authority, under section 38 of that Act, before the appointed day,

but have not been implemented before the appointed day and for which a temporary governing body have been constituted under section 96 or 97 of, and Schedule 9 to, the 1996 Act.

(2) In relation to any proposed school to which this regulation applies, such proposals, if published under section 35(1) of the 1996 Act or if having effect under section 504(3) of the 1996 Act as having been made by a local education authority shall, on the appointed day, be treated as—

- (a) published under section 28(1)(a) of the 1998 Act as proposals to establish a new community school, and
- (b) approved, or determined to be implemented, under paragraph 3 or 4 or, as the case may be, paragraph 8 or 9 of Schedule 6 to the 1998 Act,

and accordingly the proposals shall, on the appointed day, fall to be implemented under paragraph 5 or 10 of Schedule 6 to the 1998 Act and the school when open shall be a community school and treated as established as such under section 28 of that Act.

(3) In relation to any proposed school to which this regulation applies, such proposals, if published under section 41(1) of the 1996 Act, shall on the appointed day, be treated—

- (a) where the Secretary of State has made an order under section 48(1)(a) of the 1996 Act as—
  - (i) proposals published under section 28(2)(a) of the 1998 Act to establish a new voluntary controlled school, and
  - (ii) approved under paragraph 3 of Schedule 6 to the 1998 Act or, as the case may be, approved or determined to be implemented under paragraph 8 or 9 of that Schedule,and accordingly the proposals shall, on the appointed day, fall to be implemented under paragraph 5 or 10 of Schedule 6 to the 1998 Act and the school when open shall be a voluntary controlled school and treated as established as such under section 28 of that Act; and
- (b) where the Secretary of State has made an order under section 48(1)(b) of the 1996 Act, as—

- (i) proposals published under section 28(2)(a) of the 1998 Act to establish a new voluntary aided school, and
- (ii) approved under paragraph 3 or, as the case may be, approved or determined to be implemented under paragraph 8 or 9 of Schedule 6 to the 1998 Act,

and accordingly the proposals shall, on the appointed day, fall to be implemented under paragraph 5 or 10 of Schedule 6 to the 1998 Act and the school when open shall be a voluntary aided school and treated as established as such under section 28 of that Act.

(4) In relation to any proposed school to which this regulation applies, if notice of the proposal to establish the school was served pursuant to section 339(1)(a) of the 1996 Act, or if the proposals have effect under section 504(3) of the 1996 Act as having been made by the local education authority in exercise of their powers to establish a school which is specially organised to make special educational provision for pupils with special educational needs, the proposals shall on the appointed day, be treated as—

- (a) published under section 31(1)(a) of the 1998 Act to establish a new community special school; and
- (b) approved or determined to be implemented under paragraph 3 or 4 or, as the case may be, paragraph 8 or 9 of Schedule 6 to the 1998 Act,

and accordingly the proposals shall, on the appointed day, fall to be implemented under paragraph 5 or 10 of Schedule 6 to the 1998 Act and the school when open shall be a community special school and treated as established as such under section 31 of that Act.

(5) Without prejudice to regulation 13(5), where proposals fall to be implemented under paragraph 5 or 10 of Schedule 6 to the 1998 Act by virtue of this regulation, section 44 of the 1998 Act(1) shall not apply.(2)

### **Making instrument of government**

7.—(1) A local education authority shall secure that by 1st June 1999, or the school's opening date if later, an instrument of government has been made in accordance with Schedule 12 to the 1998 Act(3) for each new LEA maintained school which will be or is maintained by them.

- (a) (2) (a) The instrument of government shall take effect from the date of making for the purpose of constituting the governing body but shall not affect the constitution or name of the governing body conducting the new LEA maintained school pending constitution of the permanent governing body under the instrument of government.
- (b) For all other purposes, the instrument of government shall take effect—
  - (i) if made before the appointed day, from the appointed day or the school's opening date if later;
  - (ii) if made on or after the appointed day, from the date of making or the school's opening date if later.

(3) The temporary 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.

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(1) Section 44 of the 1998 Act is not yet in force, except for section 44(5) and (6).  
 (2) The proposed school already has a temporary governing body constituted under the 1996 Act which continues as a transitional governing body from the appointed day under this Part. This Part provides for the making of the instrument of government and constitution of the governing body under the 1998 Act.  
 (3) As modified by regulation 8 or 9 of these Regulations depending on whether the instrument is made before or on or after the appointed day.

### **Modifications to the 1998 Act to enable the instrument of government to be made before the appointed day**

8.—(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 new LEA maintained school to be made before 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 expressed) shall be treated as references to the area which it appears to the local education authority will be served by the new LEA maintained school when it is a maintained school.

(3) In relation to a new LEA maintained school which will be a community special school not established in a hospital, paragraph 10 of Schedule 9 to the 1998 Act shall apply as if there were substituted for sub-paragraph (6)(a) the following—

“(a) if a voluntary organisation is designated by the local education authority, in relation to the school or proposed school which will be a community special school, as the appropriate voluntary organisation concerned with matters in respect of which the community special school will be specially organised, a representative governor shall be appointed by that organisation; or”.

(4) 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 temporary governing body so determine”.

(5) 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—

(a) “(2A) Where an instrument of government is made before the appointed day for a school which will have a temporary governing body (within the meaning of the Education Act 1996) immediately before the appointed day, such instrument of government:

(i) 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 under this Act;

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

(iii) shall take effect from the date of making for the purpose of constituting the governing body under the instrument of government but shall not affect the constitution or name of the governing body conducting the school pending constitution of the permanent governing body under the instrument of government; and

(iv) for all other purposes, shall take effect from the appointed day or the school’s opening date if later.

(b) In this sub-paragraph and sub-paragraphs (3) and (4), references to “school” include a proposed school.”; and

(c) for sub-paragraph (3), there were substituted the following sub-paragraph—

“(3) Where, for the purposes of any provision of Part II of Schedule 9, it is material to determine the number of registered pupils at a school referred to in paragraph (2A),

the school shall be treated as having as registered pupils the maximum number of pupils referred to in the relevant proposals within the meaning of section 181(2) of the Education Act 1996) or, if no such number is referred to, such number as the local education authority may determine.”.

- (6) References in paragraph 3 of Schedule 12 to the 1998 Act to—
- (a) “the governing body” and “foundation governors” shall be treated as references to the temporary governing body and temporary foundation governors within the meaning of the 1996 Act (as the case may be);
  - (b) “the school” shall be treated as including the proposed school; and
  - (c) “the category of school to which the school belongs” shall be treated as references to the category of school to which the school or proposed school will belong when it is a maintained school.

**Modifications to the 1998 Act to enable the instrument of government to be made on or after the appointed day**

9.—(1) Section 141 of, and Schedules 9 and 12 to, the 1998 Act shall apply with the following modifications to enable the instrument of government for a new LEA maintained school to be made on or after the appointed day.

- (2) Regulation 8(2) shall apply.
- (3) Regulation 8(3) shall apply, subject to the omission of “school or” before “proposed school”.
- (4) 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”.
- (5) 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 paragraph (2A), the date or 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 school or proposed school which had a temporary governing body immediately before the appointed day, such instrument of government:

    - (a) in the case of a proposed school, shall determine the constitution of the governing body and other matters relating to the proposed school as a maintained school of the category to which it will belong under regulations made under paragraph 10 of Schedule 2 to this Act;
    - (b) in the case of a proposed school, shall include a description of the ethos of the school, if it is anticipated that the school will become a voluntary school with a religious character (provided that such description shall be of no effect if the school does not become a voluntary school with a religious character);
    - (c) shall take effect from the date of making for the purpose of constituting the governing body under the instrument of government but shall not affect the constitution or name of the governing body conducting the proposed school or school pending constitution of the permanent governing body under the instrument of government; and
    - (d) for all other purposes, shall take effect from the date of making, or the school’s opening date if later.”; and
  - (c) for sub-paragraph (3), there were substituted the following sub-paragraph—

“(3) Where, for the purposes of any provision of Part II of Schedule 9, it is material to determine the number of registered pupils at a school or proposed school referred to in paragraph (2A), the school or proposed school shall be treated as having as registered pupils the maximum number of pupils referred to in the relevant proposals (within the meaning of section 181(2) of the Education Act 1996, whether or not that section is still in force) or, if no such number is referred to, such number as the local education authority may determine.”.

- (6) References in paragraph 3 of Schedule 12 to the 1998 Act to—
- (a) “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 temporary foundation governors within the meaning of the 1996 Act (as the case may be);
  - (b) “the school” shall be treated as including the proposed school;
  - (c) “the category of school to which the school belongs” shall include references to the category of schools which the proposed school will belong when it is a maintained school.

#### **Additional co-opted governors**

**10.** 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**

**11.** 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**

**12.—(1)** 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 new LEA maintained school will belong or belongs.

(2) It shall be a sufficient compliance with paragraph (1) if the instrument of government is in a form substantially to the like effect to the relevant form set out in Schedule 2.

(3) The temporary governing body or the transitional governing body, as the case may be, shall not delegate decisions relating to the contents or preparation of the instrument of government, the appointment of governors required by the instrument of government, or the date when the governing body are constituted under the instrument of government.

#### **The transitional governing body**

**13.—(1)** The temporary governing body(4) shall continue in existence until the later of—

- (a) the appointed day;

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(4) See the [Education \(Government of New Schools on Transition to New Framework\) Regulations 1998 S.I. 1998 No. 3097](#).

- (b) midnight on the actual incorporation date;
- (c) fulfilment of their obligations under these Regulations and completion of any transfers required by regulations 22 to 25;

as constituted immediately before the appointed day, subject to this regulation.

(2) In this regulation, “the relevant provisions” means:

- (a) the provisions of the 1996 Act relating to the composition of temporary governing bodies, and qualification and disqualification of temporary governors;
- (b) any regulations in force under those provisions immediately before the appointed day; and
- (c) any arrangement under section 96 or 97 of the 1996 Act in force immediately before the appointed day.

(3) The relevant provisions shall have effect for the purpose of determining the composition of the transitional governing body from time to time and the circumstances in which a person is qualified or disqualified for office as a member of the transitional governing body.

(4) For the purposes of this Part, the temporary governing body as constituted under this regulation on and after the appointed day shall be referred to as the transitional governing body.

(5) In any case where the governing body of a new LEA maintained school are not constituted under the instrument of government before the appointed day, from the appointed day until midnight on the actual incorporation date, the transitional governing body shall be treated for the purposes of the Education Acts as if they were a temporary governing body constituted under section 44 of the 1998 Act, except in so far as provision is made in relation to the transitional governing body and the constitution of a permanent governing body under an instrument of government under this Part.

### **Constitution of the governing body under the instrument of government**

**14.**—(1) Any reference in regulations 14(2) to 18 to the temporary governing body shall be construed as a reference to the transitional governing body at any time on or after the appointed day.

(2) For the purposes of this Part, the incorporation date means—

- (a) where the school’s opening date falls on or before 1st June 1999, 31st August 1999;
- (b) in any other case, such date (after 30th August 1999 but within three months after the school’s opening date) as the temporary governing body shall notify in writing to the local education authority.

(3) The temporary governing body shall secure that appointments or elections of governors required by the instrument of government for a new LEA maintained school take place before the incorporation date with effect from—

- (a) midnight on the incorporation date; or
- (b) midnight on the actual incorporation date if the temporary governing body notify such governors and the local education authority that (in default) the actual incorporation date falls after the incorporation date.

(4) The date on which the governing body of a new LEA maintained school are constituted under the instrument of government, and incorporated under section 36(1) of the 1998 Act, is, for the purposes of this Part, referred to as the actual incorporation date.

### **New governors**

**15.**—(1) In the case of the appointment of any governor (other than an additional co-opted governor) referred to in regulation 14(3), the clerk to the temporary governing body shall give written

notice to the person who is to make the appointment unless that person has already notified him of an appointment to fill the vacancy(5).

(2) Where any person makes an appointment referred to in paragraph (1) they shall give written notice of the appointment to the clerk to the temporary governing body, specifying the name and usual place of residence of the person appointed.

(3) The head teacher will be a governor from midnight on the actual incorporation date unless (before the instrument of government is made) he has given written notice to the clerk to the temporary governing body that he chooses not to be a governor from that date.

(4) Paragraph (3) is without prejudice to the head teacher's right after the actual incorporation date to give written notice to the clerk to the governing body to the effect that he chooses to be or not to be a governor.

### **Appointment or election of new governors**

**16.**—(1) The following paragraphs apply in relation to the appointment or election of governors referred to in regulation 14(3).

(2) Any co-opted governor (other than an additional co-opted governor) shall be appointed by members of the temporary governing body, who were not themselves appointed as temporary co-opted governors under the 1996 Act, in accordance with Schedule 3 to these Regulations.

(3) Any additional co-opted governor shall be appointed by members of the temporary governing body who were not themselves appointed as temporary co-opted governors under the 1996 Act.

(4) Any parent governor shall be either—

(a) elected (after the school's opening date) by parents of registered pupils at the new LEA maintained school and himself such a parent at the time when he is elected; or

(b) appointed as a parent governor (after the school's opening date) by the temporary governing body in the circumstances and subject to the provisions set out in Schedule 4.

(5) Any staff governor shall be elected (after the school's opening date) by persons employed (under a contract of employment or a contract for services) to work at the new LEA maintained school otherwise than as teachers, and shall himself be a person so employed at the time when he is elected.

(6) Any teacher governor shall be—

(a) a person elected (after the school's opening date) by teachers at the new LEA maintained school; and

(b) such a teacher at the time when he is elected.

(7) The quorum for a meeting of the temporary governing body to consider appointment of parent governors or co-opted governors (other than co-opted governors who are foundation governors) and any vote in connection with such appointments shall be any two-thirds (rounded up to a whole number) of the governors entitled to vote on those respective matters.

### **Joint appointments**

**17.** If—

(a) the instrument of government provides for one or more governors to be appointed by persons acting jointly, and

(b) those persons fail to make an agreed appointment,

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(5) In the case of additional co-opted governors, the governors making the appointment are required to seek nominations by virtue of paragraph 15 of Schedule 9 to the 1998 Act.

the appointment shall be made by, or in accordance with a direction given by, the Secretary of State.

### **Information for successors**

**18.**—(1) Immediately before the actual incorporation date, the temporary governing body shall prepare, for the purpose of assisting the governing body who will succeed them, a brief report of the action which they have taken in the discharge of their functions relating to the new LEA maintained school.

(2) All minutes and papers of a temporary governing body relating to the new LEA maintained school, including the report prepared under paragraph (1), shall be made available to their successors.

### **Elections**

**19.**—(1) This regulation applies in relation to the election of governors referred to in regulation 14(3).

(2) Subject to paragraph (4), in this regulation, “appropriate authority” means—

- (a) in relation to a new LEA maintained school which will be or is a community, community special or voluntary controlled school, the local education authority, and,
- (b) in relation to a new LEA maintained school which will be or is a voluntary aided school, the temporary governing body before the appointed day and the transitional governing body on and after that day.

(3) Where a local education authority are the appropriate authority in relation to a school, that authority may delegate to the head teacher of the school any of their functions under this regulation, except their functions under paragraph (5).

(4) The local education authority shall be the appropriate authority in relation to a school within paragraph (2)(b), if the temporary governing body or the transitional governing body (as the case may be) and the local education authority so agree.

(5) The appropriate authority shall determine—

- (a) for the purposes of an election of parent governors, any question whether a person is a parent of a registered pupil at the school;
- (b) for the purposes of an election of teacher governors, any question whether a person is a teacher at the school; and
- (c) for the purposes of an election of staff governors, any question whether a person is employed under a contract of employment or a contract for services to work at the school otherwise than as a teacher.

(6) The appropriate authority shall make all necessary arrangement for, and determine all other matters relating to, an election of parent governors, teacher governors, or staff governors.

(7) The power conferred by paragraph (6)—

- (a) includes power to make provision as to qualifying dates, but
- (b) 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) Any election of parent governors, teacher governors or staff governors which is contested shall be held by secret ballot.

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

(10) Where a vacancy for a parent governor is required to be filled by election, the appropriate authority shall take such steps as are reasonably practicable to secure that every person who is known to them to be a parent of a registered pupil at the school is—

- (a) informed of the vacancy and that it is required to be filled by election; and
- (b) informed that he is entitled to stand as a candidate, and vote, at the election; and
- (c) given an opportunity to do so.

(11) Where a local education authority are the appropriate authority, that authority shall exercise their functions under this regulation in a manner calculated to enable the temporary governing body or transitional governing body, as the case may be, to fulfil their respective duties under regulation 14(3).

### **Tenure of office**

**20.**—(1) Any governor required by the instrument of government for a new LEA maintained school other than—

- (a) the head teacher;
- (b) a co-opted governor (not including an additional co-opted governor);
- (c) an ex officio foundation governor; or
- (d) a substitute governor;

shall hold office for a term of four years.

(2) Any co-opted governor required by the instrument of government for a new LEA maintained school (other than an additional co-opted governor) shall hold office for the term of one year.

(3) For the purposes of this regulation, “substitute governor” means any foundation governor appointed to act in the place of an ex officio foundation governor by virtue of regulation 11, and “the original governor” means the ex officio foundation governor in whose place the substitute governor is appointed to act.

(4) The substitute governor shall hold office until the earlier of the following—

- (a) the expiry of four years from the date of his appointment;
- (b) the date when the original governor gives written notice to the clerk to the governing body to the effect that he is able and willing to act as a foundation governor; or
- (c) the date when a person other than the original governor takes office in the post by virtue of which the ex officio governorship exists.

(5) This regulation shall not prevent a governor—

- (a) from being elected or appointed for a further term; or
- (b) from being disqualified, by virtue of provision made under these regulations, for continuing to hold office.

### **Qualifications and disqualifications**

**21.** Schedule 6 sets out the circumstances in which a person is qualified or disqualified for holding or continuing in office, or for being elected, appointed or nominated, as a governor of a new LEA maintained school required by an instrument of government.

### **Property, rights and liabilities**

**22.** On the transfer date—

- (a) all land and other property which, immediately before the transfer date, was property of the temporary or transitional governing body (as the case may be) used or held for the purposes of the new LEA maintained school, and
- (b) all rights and liabilities of the temporary or transitional governing body (as the case may be) subsisting immediately before that date which were acquired or incurred for those purposes,

shall be transferred to and, by virtue of this regulation, vest in the governing body constituted under the instrument of government.

### **Rights and liabilities under contract of employment**

**23.** Without prejudice to the generality of regulation 22, where that regulation effects a transfer of rights and liabilities under a contract of employment—

- (a) the contract shall have effect from the transfer date as if originally made between the employee and the incorporated governing body, and
- (b) without prejudice to sub-paragraph (a) above, anything done before that date by or in relation to the former employer in respect of that contract or the employee shall be deemed from that date to have been done by or in relation to the incorporated governing body,

but no right of the employee to terminate his contract of employment if a substantial change is made to his detriment in his working conditions shall arise by reason only of the change of employer effected by that regulation.

### **Definitions for regulations 22 and 23**

**24.** In regulations 22 and 23 “transfer date” in relation to a school means the appointed day or the day after the actual incorporation date, if different.

### **Registered land and construction of agreements**

**25.—(1)** Where a transfer under regulation 22 relates to registered land, it shall be the duty of the transitional governing body—

- (a) to execute any such instrument under the Land Registration Acts 1925 to 1997<sup>(6)</sup>,
- (b) to deliver any such certificates under those Acts; and
- (c) to do such other things under those Acts,

as they would be required to execute, deliver or do in the case of a transfer by agreement between the transferor and the transferee.

(2) Paragraphs 6 to 8 of Schedule 10 to the Education Reform Act 1988<sup>(7)</sup> (construction of agreements) shall apply in relation to transfers effected by regulation 22 as they apply in relation to transfers to which that Schedule applies.

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<sup>(6)</sup> 1925 c. 21, 1936 c. 26, 1966 c. 39, 1971 c. 54, 1986 c. 26, 1988 c. 3 and 1997 c. 2.

<sup>(7)</sup> 1988 c. 40.