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STATUTORY INSTRUMENTS

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**2003 No. 1558**

**New Schools (General) (England) Regulations 2003**

**PART 6**

**General Conduct of New Schools**

**Interpretation and application of Part 6**

**29.** In this Part “proposed school” means a school which has not yet opened for which there is a temporary governing body constituted in accordance with arrangements under section 34 of the 2002 Act.

**30.** This Part does not apply to any committee established by the temporary governing body to exercise functions relating to the appointment, grievance, conduct and discipline, capacity, suspension or dismissal of individual members of the school staff.

**Conduct of the school before the school opening date**

**31.** Section 61 of the 1998 Act and sections 27 and 28 of, and Schedule 1 to, the 2002 Act shall apply in relation to a proposed school<sup>(1)</sup> with the following modifications—

- (a) references to governing body shall be treated as references to temporary governing body;
- (b) references to a maintained school shall be treated as including a reference to a proposed maintained school;
- (c) references to the instrument of government shall be treated as a reference to the instrument of government whether or not it has taken effect; and
- (d) section 61(3)(b) and (7) of the 1998 Act and paragraphs 2(2) and 2(3) of Schedule 1 to the 2002 Act shall not apply.

**Conduct of the school on or after the school opening date**

**32.—(1)** During the period—

- (a) beginning with the school opening date; and
- (b) ending with the time when the governing body are constituted for the school under an instrument of government,

Schedule 1 to the 2002 Act shall apply<sup>(2)</sup> with the modifications set out in paragraph (2).

(2) The modifications are as follows—

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- (1) Section 34(7) of the 2002 Act provides that for the purposes of section 30(3) of that Act and sections 495 to 498 of the 1996 Act, the temporary governing body shall be treated as if they were the governing body at any time before the school opening date.
  - (2) Under section 34(7) of the 2002 Act, the temporary governing body of a school shall be treated for the purposes of the Education Acts as if they were the governing body during the period beginning with the school opening date and ending with the time the governing body are constituted under an instrument of government; subject to section 34(8) under which Schedule 1 does not apply to temporary governing bodies unless provided for in regulations made under section 34(5).

- (a) for references to “governing body” there shall be substituted references to “temporary governing body”;
- (b) in paragraph 2(1) of Schedule 1 to the 2002 Act, the words “as for the time being set out in the school’s instrument of government” shall be omitted; and
- (c) paragraphs 2(2) and 2(3) of Schedule 1 to the 2002 Act shall not apply.

### **Execution of documents by the temporary governing body**

**33.**—(1) Only the chair of the temporary governing body, or where that is not reasonably practicable the vice-chair, may make and issue instruments on behalf of the temporary governing body.

(2) Every document purporting to be an instrument made or issued by or on behalf of the temporary governing body and to be signed or executed by the chair or vice chair of the temporary governing body shall be received in evidence and be treated, without further proof, as being so made or issued unless the contrary is shown.

### **Preparation of the curriculum**

**34.** The head teacher of a proposed school shall, in preparing to discharge his functions under Part 6 of the 2002 Act in relation to the curriculum for the school, consult the temporary governing body and the local education authority.

### **School terms, holidays and sessions**

**35.**—(1) In the case of a proposed school which will be a community, voluntary controlled, community special school or maintained nursery school—

- (a) the local education authority shall determine the dates when the school terms and holidays are to begin and end; and
- (b) the temporary governing body shall determine the times of the school sessions after consultation with the authority.

(2) In the case of a proposed school which will be a foundation, voluntary aided or foundation special school, the temporary governing body shall determine—

- (a) the dates and times when the school terms and holidays are to begin and end; and
- (b) the times of the school sessions.

(3) In this regulation “the times of the school sessions” means the times at which each of the school sessions (or, if there is only one, the school session) is to begin and end on any day.

### **Chair and vice chair of temporary governing body**

**36.**—(1) The members of the temporary governing body shall, at their first meeting, elect a chair and vice-chair from among their number, subject to paragraph (6).

(2) The chair or vice-chair of a temporary governing body may at any time resign his office by giving notice in writing to the clerk to the temporary governing body.

(3) The chair or vice-chair of the temporary governing body shall cease to hold office as such if—

- (a) he ceases to be a member of the temporary governing body;
- (b) he is paid to work at the new school;
- (c) he is removed from office in accordance with regulation 38; or

(d) in the case of a vice-chair, he is elected in pursuance of paragraph (4) to fill a vacancy in the office of chair.

(4) Where a vacancy arises in the office of chair or vice-chair, the temporary governing body shall at their next meeting elect one of their members to fill that vacancy subject to paragraph (6).

(5) Where the chairman is absent from any meeting or there is at any time a vacancy in the office of the chair, the vice-chair shall act as the chair for all purposes.

(6) Every member of the temporary governing body of a new school shall be eligible for election as chair or vice-chair of the temporary governing body or as a chair of a meeting except a member who is

- (a) the head teacher or head teacher designate of the new school;
- (b) a person employed to work at the new school or, in the opinion of the other temporary governors, likely to be so employed; or
- (c) a pupil at the new school, or a person who, in the opinion of the other temporary governors, is likely to be such a pupil.

#### **Delegation of functions to the chair and vice-chair in cases of urgency**

**37.**—(1) The chair shall have the power, where in his opinion the circumstances mentioned in paragraph (2) apply, to exercise—

- (a) any function of the temporary governing body which can be delegated to an individual; and
- (b) any function that under regulation 49(2) cannot otherwise be delegated to an individual.

(2) The circumstances are that a delay in exercising the function would be likely to be seriously detrimental to the interests of—

- (a) the new school,
- (b) any pupil of, or person likely to become a pupil of, the new school,
- (c) a parent of any such pupil, or of any person likely to become such a pupil, or
- (d) a person who works, or is likely to work, at the new school.

(3) In paragraph (2) “delay” means delay for a period extending beyond the earliest date on which it would be reasonably practicable for a meeting of the temporary governing body, or a committee of the temporary governing body to which the function in question has been delegated, to be held.

(4) Where it appears to the vice-chair that—

- (a) the circumstances stated in paragraph (2) apply, and
- (b) the chair (whether by reason of a vacancy in his office or otherwise) would be unable to exercise the function in question before the detriment referred to in that paragraph is suffered,

the reference in paragraph (1) to the chair shall be read as if it were a reference to the vice-chair.

#### **Removal of the chair or the vice-chair from office**

**38.**—(1) Subject to paragraph (2), the temporary governing body may remove the chair or vice chair from office.

(2) A resolution to remove the chair or vice-chair from office shall not have effect unless the matter is specified as an item of business on the agenda for the meeting of the temporary governing body, of which notice has been given in accordance with regulation 43(4).

(3) Before the temporary governing body resolve to remove the chair or vice-chair from office, the temporary governor proposing his removal shall at that meeting state his reasons for doing so

and the chair or vice chair (as the case may be) shall be given the opportunity to make a statement in response, before withdrawing from the meeting.

### **Clerk to the temporary governing body**

**39.**—(1) The local education authority shall appoint the first clerk to the temporary governing body of a new school which will be a community, voluntary controlled, or community special school, maintained nursery school or a foundation or foundation special school proposals for the establishment of which were published by the local education authority.

(2) The promoters of the school shall appoint the first clerk to the temporary governing body of a new school which will be a voluntary aided or foundation school or a foundation special school proposals for the establishment of which were published by promoters.

(3) Subject to paragraphs (1) and (2)—

- (a) the local education authority shall appoint a person selected by the temporary governing body to be the clerk to the temporary governing body and to each committee, in the case of a school which is or will be a community, voluntary controlled, community special or maintained nursery school;
- (b) the temporary governing body shall appoint a clerk to the temporary governing body and each committee, in the case of a school which is or will be a foundation, voluntary aided or foundation special school.

(4) The clerk to the temporary governing body must not be—

- (a) a temporary governor;
- (b) a temporary associate member; or
- (c) the head teacher or head teacher designate of the new school.

(5) Notwithstanding paragraph (4), the temporary governing body or a committee may, if the clerk fails to attend a meeting, appoint any one of their number (who is not the head teacher or head teacher designate) to act as clerk for the purposes of that meeting.

### **Functions of the clerk**

**40.** The clerk shall—

- (a) convene meetings in accordance with regulations 43 and 52(1);
- (b) attend meetings and ensure that minutes of the proceedings are produced in accordance with regulations 45(1) and 52(7);
- (c) maintain a register of members of the temporary governing body and of temporary associate members and report any vacancies to the temporary governing body;
- (d) maintain a register of temporary governors' attendance at meetings and report on non-attendance to the temporary governing body;
- (e) give and receive notices in accordance with regulations 23(1) and (3), 24, 36(2), 43(3) and (4), 52(2), 54(2) and paragraph 11 of Schedule 2;
- (f) report to the temporary governing body as required on the discharge of his functions; and
- (g) perform such other functions as shall be determined by the temporary governing body from time to time.

### **Removal of the clerk**

**41.**—(1) This regulation is without prejudice to any rights and liabilities which the clerk may have under any contract with the temporary governing body or with the local education authority.

(2) The temporary governing body may by resolution remove from office the clerk to the temporary governing body or any clerk appointed to any of their committees.

(3) If at any time the new school does not have a delegated budget, the local education authority, having consulted the temporary governing body, may remove the clerk to the temporary governing body or the clerk of any committee of the temporary governing body and appoint a substitute.

### **Rights of persons to attend meetings of the governing body**

**42.**—(1) Subject to regulation 46 and to Schedule 3—

- (a) the following persons shall be entitled to attend any meeting of the temporary governing body or their committees—
  - (i) subject to regulation 47, a temporary governor;
  - (ii) the head teacher or head teacher designate of the new school, whether or not he is a temporary governor of that school;
  - (iii) the clerk to that meeting; and
  - (iv) such other persons as the temporary governing body may determine;
- (b) a temporary associate member shall be entitled to attend—
  - (i) any meeting of the temporary governing body; and
  - (ii) any meeting of a committee to which he has been appointed.

(2) The temporary governing body may exclude a temporary associate member from any part of their meeting or from a meeting of a committee of the temporary governing body when the business under consideration concerns a person who is, or is likely to become, a member of staff or pupil at the new school.

### **Convening meetings of the temporary governing body**

**43.**—(1) A temporary governing body shall hold a meeting as often as occasion may require.

(2) Meetings of the temporary governing body shall be convened by the clerk; and, without prejudice to paragraph (3), in exercising this function the clerk shall comply with any direction given by—

- (a) the temporary governing body;
- (b) the chair, so far as such direction is not inconsistent with any direction given under subparagraph (a).

(3) Any three members of the temporary governing body may requisition a meeting by giving written notice to the clerk that includes a summary of the business to be transacted; and it shall be the duty of the clerk to convene a meeting as soon as is reasonably practicable.

(4) The clerk shall give written notice of the meeting, a copy of the agenda for the meeting and any reports or other papers to be considered at the meeting at least seven clear days in advance to—

- (a) each temporary governor;
- (b) the head teacher or head teacher designate (if he is not a temporary governor); and
- (c) each temporary associate member (if any),

provided that where the chair so determines on the ground that there are matters demanding urgent consideration, it shall be sufficient if the written notice of the meeting states that fact and the notice, copy of the agenda, reports and other papers to be considered are given within such shorter notice period as he directs.

(5) The power of the chair to direct that a meeting be held within a shorter period shall not apply in relation to any meeting at which the chair's removal from office (under regulation 38) or the suspension of any temporary governor (under regulation 47) is to be considered.

### **Proceedings of the temporary governing body**

**44.**—(1) The quorum for a meeting of the temporary governing body and for any vote on any matter at such a meeting, shall be one half (rounded up to a whole number) of the membership of the temporary governing body when complete.

(2) Every question to be decided at a meeting of the temporary governing body shall be determined by a majority of the votes of the temporary governors present and voting on the questions.

(3) Where there is an equal division of votes the chair or, as the case may be, the person who is acting as chair for the purposes of the meeting (provided that such person is a governor), shall have a second or casting vote.

(4) The proceedings of the temporary governing body of a school shall not be invalidated by—

- (a) any vacancy among their number;
- (b) any defect in the election, appointment or nominations of any temporary governor; or
- (c) any defect in the appointment of any chair or vice-chair.

### **Minutes and papers**

**45.**—(1) The clerk (or the person appointed to act as clerk for the purpose of the meeting in accordance with regulation 39(5)) shall ensure that minutes of the proceedings of a meeting of the governing body are drawn up and signed (subject to the approval of the temporary governing body) by the chair of the next meeting.

(2) Subject to paragraph (3), the temporary governing body shall, as soon as reasonably practicable, make available for inspection by any interested person, a copy of —

- (a) the agenda for every meeting;
- (b) the signed minutes of every such meeting; and

(3) The temporary governing body may exclude from any item required to be made available in pursuance of paragraph (2) any material relating to—

- (a) a named person who works, or who it is proposed should work, at the new school;
- (b) a named pupil at, or candidate for admission to, the new school;
- (c) any other matter that, by reason of its nature, the temporary governing body is satisfied should remain confidential.

### **Restrictions on persons taking part in proceedings of the temporary governing body or their committees**

**46.**—(1) In this regulation and in Schedule 3—

- (a) “relevant person” means a temporary governor, a temporary associate member, the head teacher or head teacher designate (if he is not a governor) or any person appointed as clerk to the temporary governing body or to a committee;
- (b) any reference to “meeting of the new school” is a reference to a meeting of the temporary governing body, or of a committee.

(2) Subject to paragraph (4), where —

- (a) in relation to any matter there may be a conflict between the interests of a relevant person and the interests of the temporary governing body; or

- (b) a fair hearing is required and there is any reasonable doubt about a relevant person's ability to act impartially in relation to any matter,

that person, if present at a meeting of the new school at which the matter is the subject of consideration, shall withdraw from the meeting and not vote on the matter in question.

(3) Nothing in this regulation or in Schedule 3 shall be construed as precluding the temporary governing body, or a committee of the temporary governing body, from—

- (a) allowing a person who appears to them to be able to give evidence to attend any hearing conducted by them into any matter and to present his evidence; or
- (b) hearing representations from a relevant person acting in a capacity other than that of a relevant person.

(4) A person who is acting as the clerk to a meeting of the new school shall not be required to withdraw from a meeting by this regulation or by Schedule 3 unless his appointment to office, his remuneration or disciplinary action against him is the subject of consideration, but if this regulation or Schedule 3 would have otherwise required him to withdraw, he shall not act in any capacity other than that of a clerk.

(5) Where there is any dispute as to whether a relevant person is required by this regulation or by Schedule 3 to withdraw from a meeting of the new school and not vote, that question shall be determined by the other temporary governors present at the meeting.

(6) Schedule 3 makes provision in connection with specified conflicts of interest and cases where a relevant person is required to withdraw from a meeting of the new school and not vote.

### **Suspension of temporary governors**

**47.**—(1) Subject to paragraphs (2), (3) and (4) the temporary governing body may by resolution suspend a temporary governor for all or any meetings of the temporary governing body or of any of their committees for a fixed period of up to 6 months on one or more of the following grounds—

- (a) that the temporary governor, being a person paid to work at the new school, is the subject of disciplinary proceedings in relation to his employment;
- (b) that the temporary governor is the subject of proceedings in any court or tribunal, the outcome of which may be that he is disqualified from continuing to hold office as a governor under Schedule 2;
- (c) that the temporary governor has acted in a way that is inconsistent with the ethos or with the religious character of the school and has brought or is likely to bring the school or the temporary governing body or his office into disrepute; or
- (d) that the temporary governor is in breach of his duty of confidence to the new school or to the staff or pupils.

(2) A resolution to suspend a temporary governor from office shall not have effect unless the matter is specified as an item of business on the agenda for the meeting of which notice has been given in accordance with regulation 43(4).

(3) Before a vote is taken on a resolution to suspend a temporary governor, the temporary governor proposing the suspension shall at that meeting state his reasons for doing so, and the temporary governor who is the subject of the resolution shall be given the opportunity to make a statement in response before withdrawing from the meeting in accordance with paragraph 2(2) of Schedule 3.

(4) Nothing in this regulation shall be read as affecting the right of a temporary governor who has been suspended to receive notices of, and agendas and reports or other papers for, meetings of the temporary governing body during the period of his suspension.

### Delegation of functions

**48.**—(1) Subject to regulation 49, the temporary governing body of a new school may establish committees and delegate any of their functions to—

- (a) a committee,
- (b) any temporary governor, or
- (c) the head teacher or head teacher designate.

(2) Where the temporary governing body has delegated functions to an individual or to a committee this shall not prevent the temporary governing body from exercising those functions.

(3) The temporary governing body shall review the exercise of functions it has delegated annually.

### Restrictions on delegation

**49.**—(1) The temporary governing body may not delegate to an individual functions relating to powers conferred and the duties imposed on temporary governing bodies by or under:

- (a) the local education authority's scheme under section 48(1) of the 1998 Act, to the extent that it requires the temporary governing body to give their approval to the first formal budget plan of the financial year;
- (b) section 61(1) to (3) of the 1998 Act (*School discipline policies*); or
- (c) section 88, 89, 89A(3), 90 (8) or 91(4) of the 1998 Act, section 3(1)(cc) of the Diocesan Boards of Education Measure 1991(5)(*Determination of admission arrangements*), section 90(1) of the 1998 Act (*Decision to object to admission arrangements of another admissions authority*), or section 94(6) of the 1998 Act (in so far as it relates to the determination of appeal arrangements by the temporary governing body).

(2) Except as provided by regulation 37, the temporary governing body may not delegate to an individual functions relating to powers conferred and duties imposed on it by or under Regulations made under section 52(3) and (4) of the 2002 Act (*Exclusion of pupils*)(7).

(3) The temporary governing body may not delegate to an individual any power of the temporary governing body to determine whether any child should be admitted to the school.

(4) The temporary governing body may not delegate functions relating to powers conferred and the duties imposed on temporary governing bodies by or under:

- (a) regulations 19(2), 20(2), 21(2) and 22(2) (*appointment of temporary sponsor governors or additional temporary foundation governors*); or
- (b) regulation 39 (*appointment of clerk*).

### Reporting to the temporary governing body following the exercise of delegated functions

**50.**—(1) This regulation applies where any function of the temporary governing body has been delegated to or is otherwise exercisable by a temporary governor (including the chair or vice-chair), the head teacher, head teacher designate or a committee.

(2) Any individual or committee to whom a function of the temporary governing body has been delegated or who has otherwise exercised a function of the temporary governing body shall report

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(3) Section 89A was inserted by section 47 of the 2002 Act.

(4) Section 91 was repealed by section 49 of the 2002 Act but continues to have effect in relation to any school year earlier than 2004-05 (see paragraph 7 of the Schedule to the [Education Act 2002 \(Commencement No. 2 and Savings and Transitional Provisions\) Order 2002, SI 2002 No. 2439](#)).

(5) [No. 2 of 1991](#). Section 3(1)(cc) was inserted by paragraph 13 of Schedule 4 to the 2002 Act.

(6) Section 94 was amended by section 50 of the 2002 Act.

(7) See the Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002 ([SI 2002/3178](#)).



to the temporary governing body in respect of any action taken or decision made with respect to the exercise of that function.

### **Proceedings of committees of the temporary governing body**

**51.** Save as otherwise provided by these Regulations—

- (a) the temporary governing body shall determine the constitution, membership and proceedings of any committee of the temporary governing body;
- (b) the membership of any committee of the temporary governing body may include temporary associate members provided that a majority of members of any such committee shall be temporary governors;
- (c) the quorum for any meeting of a committee and for any vote at such a meeting shall be one half of the number of temporary governors who are members of the committee (rounded up to the nearest whole number) or three temporary governors, whichever is the greater; and
- (d) the temporary governing body shall appoint a chair to each committee and may remove him from office at any time.

### **Meetings of committees**

**52.—**(1) Meetings of a committee shall be convened by the clerk to that committee who, when exercising this function, shall comply with any direction given by—

- (a) the temporary governing body;
- (b) the chair of that committee so far as such direction is not inconsistent with any direction given under sub-paragraph (a).

(2) Subject to any direction given in accordance with paragraph (1), at least seven clear days in advance the clerk shall give to each member of the committee and to the head teacher or head teacher designate (whether or not he is a member of the committee)—

- (a) a written notice of the meeting;
- (b) a copy of the agenda of the meeting, and
- (c) any reports or other papers to be considered at the meeting;

provided that where the chair to the committee so determines, on the ground that there are matters demanding urgent consideration, it shall be sufficient if the written notice of the meeting states that fact and the notice, agenda, reports and papers are given within such shorter notice period as he directs.

(3) The proceedings of a committee shall not be invalidated by—

- (a) any vacancy among their number; or
- (b) any defect in the appointment of any member of the committee.

(4) No vote on any matter shall be taken at a meeting of a committee unless the majority of members of the committee present are temporary governors.

(5) Every question to be decided at a meeting of a committee shall be determined by a majority of the votes of the members of the committee present and voting on the question.

(6) Where there is an equal division of votes the person who is acting as chair for the purposes of the meeting shall have a second or casting vote, provided that such person is a temporary governor.

(7) Minutes of the proceedings of a meeting of a committee shall be drawn up by the clerk to the committee or by the person acting as the clerk for the purposes of the meeting; and shall be signed (subject to the approval of the committee) by the chair of the next meeting of the committee.

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

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(8) Subject to paragraph (9) the committee shall, as soon as reasonably practicable, make available for inspection by any interested person a copy of—

- (a) the agenda for every committee meeting;
- (b) the signed minutes of every such meeting; and
- (c) any report or other such paper considered at any such meeting.

(9) There may be excluded from any item required to be made available in pursuance of paragraph (8) any material relating to—

- (a) a named person who works, or who it is proposed should work, at the school;
- (b) a named pupil at, or candidate for admission to, the school;
- (c) any other matter that, by reason of its nature, the committee is satisfied should remain confidential.