STATUTORY INSTRUMENTS

2003 No. 348

School Governance (Constitution) (England) Regulations 2003

PART 5

Instrument of Government

Interpretation of "appropriate diocesan authority" and "appropriate religious body"

27. In this Part,

"appropriate diocesan authority" shall have the meaning given by section 142(1) and (4) of the 1998 Act;

"appropriate religious body", in relation to a school designated under section 69(3) of the 1998 Act as having a religious character that is not a Church of England school or a Roman Catholic Church school, means the body that the Secretary of State considers appropriate in relation to the religion or religious denomination to which the school belongs.

Duty to have regard to guidance

28. In respect of the making of instruments of government, the matters to be dealt with in such instruments, the form of such instruments, and the review and variation of such instruments, governing bodies and local education authorities must have regard to any guidance given from time to time by the Secretary of State.

Contents and form of instrument of government

29.—(1) The instrument of government for a maintained school must set out—

(a) the name of the school;

(b) the category of school to which the school belongs;

(c) the name of the governing body of the school;

(d) the manner in which the governing body is to be constituted in accordance with Part 3, specifying—

(i) the number of governors in each category of governor, and

(ii) the total membership of the governing body, including any sponsor governors and additional foundation governors appointed in accordance with regulation 16(2)(b);

(e) where the term of office for a category of governor is to be less than four years, the length of that term of office;

(f) where the school has foundation governors—

(i) the name of any person who is entitled to appoint such governors and, if there is more than one such person, the basis upon which such appointments are made,

(ii) details of any foundation governorship to be held ex officio by the holder of a named office, and

(iii) the name of any person who is entitled to request the removal of any ex officio foundation governor and to appoint any substitute governor;

(g) where the school has sponsor governors, the name of any sponsor who is entitled to nominate persons for appointment as such governors under Schedule 5;

(h) where the school is a maintained special school, the name of any body entitled to nominate a person for appointment as a community governor under Schedule 3;

(i) where there is a trust relating to the school, that fact;

(j) where the school is a foundation or a voluntary school which has a religious character, a description of the religious ethos of the school; and

(k) the date when the instrument of government takes effect, which must not be earlier than 1st September 2003.

(2) The manner in which the governing body is to be constituted, as set out in accordance with sub-paragraph (1) (d), must accord with the provisions of these Regulations as they apply to a school of the category to which the school belongs.

(3) The instrument of government must (subject to any statutory provision) comply with any trust relating to the school.

Procedure for making an instrument

30.—(1) Subject to paragraph (6), the governing body must prepare a draft of the instrument of government and submit it to the local education authority.

(2) Where the school has foundation governors, the governing body must not submit the draft to the local education authority unless it has been approved by—

(a) the foundation governors;

(b) any trustees of any trust relating to the school;

(c) in the case of a Church of England school or Roman Catholic Church school, the appropriate diocesan authority; and

(d) in the case of any other school designated under section 69(3) of the 1998 Act as having a religious character, the appropriate religious body.

(3) On receiving the draft the local education authority must consider whether it complies with all applicable statutory provisions, and if—

(a) it is content that the draft so complies, or

(b) there is agreement between it, the governing body and (if the school has foundation governors) the persons mentioned in paragraph (2) that the draft should be revised to any extent and the revised draft complies with all the applicable statutory provisions,

the instrument of government must be made by it in the form of the draft or (as the case may be) in the form of the revised draft.

(4) If, in the case of a school which has foundation governors, at any time the persons listed in paragraph (2) disagree with the draft, any of those persons may refer it to the Secretary of State who will give such direction as he thinks fit having regard, in particular, to the category of school to which the school belongs.

(5) If neither of sub-paragraphs (a) and (b) of paragraph (3) applies in the case of a school which does not have foundation governors, the local education authority must—

(a) inform the governing body of the reasons why it is not content with the draft instrument of government, and

(b) give the governing body a reasonable opportunity to reach agreement with it on revising the draft;

and the instrument of government must be made by it either in the form of a revised draft agreed between it and the governing body or (in the absence of such agreement) in such form as it thinks fit having regard, in particular, to the category of school to which the school belongs.

(6) In the case of a maintained nursery school, the local education authority must prepare and make the first instrument of government, which must comply with all statutory provisions.

Review of instruments of government

31.—(1) The governing body or the local education authority may review the instrument of government at any time after it is made.

(2) Where on any review the governing body or the local education authority decides that the instrument of government should be varied, the governing body or (as the case may be) the local education authority shall notify the other of its proposed variation together with its reasons for proposing such a variation.

(3) Where the governing body has received notification under paragraph (2), it must inform the local education authority as to whether or not it is content with the proposed variation and, if not content, its reasons.

(4) Where the school has foundation governors, the governing body must not give the local education authority—

(a) any notification under paragraph (2), or

(b) inform the authority under paragraph (3) that it is content with the authority's proposed variation,

unless the persons listed in regulation 30(2) have approved the proposed variation.

(5) If—

(a) whichever of the governing body and the local education authority is the recipient of a notification under paragraph (2) agrees with the proposed variation, or

(b) there is agreement between the local education authority, the governing body and (if the school has foundation governors) the other persons listed in regulation 30(2) that some other variation should be made instead,

the instrument of government must be varied accordingly by the local education authority.

(6) If, in the case of a school which has foundation governors, at any time the persons listed in regulation 30(2) disagree with the proposed variation any of those persons may refer it to the Secretary of State; and on such a reference the Secretary of State will give such direction as he thinks fit having regard, in particular, to the category of school to which the school belongs.

(7) If neither sub-paragraphs (a) and (b) of paragraph (5) applies in the case of a school which does not have foundation governors, the local education authority must—

(a) inform the governing body of the reasons—

(i) why it is not content with the governing body's proposed variation, or as the case may be,

(ii) why it wishes to proceed with its own variation, and

(b) give the governing body a reasonable opportunity to reach agreement with it with regard to the variation;

and the instrument of government must be varied by it either in the manner agreed between it and the governing body or (in the absence of such agreement) in such manner as it thinks fit having regard, in particular, to the category of school to which the school belongs.

(8) Nothing in this regulation is to be taken as requiring the local education authority to vary the instrument of government if it does not consider it appropriate to do so.

(9) The requirement under regulation 30(3) for the local education authority to consider compliance with all applicable statutory provisions, applies in relation to a proposed variation of an instrument of government as it applies in relation to a draft of such an instrument.

(10) Where an instrument of government is varied under this regulation the instrument must set out the date on which the variation takes effect.

Other requirements relating to instruments of government

32.—(1) The local education authority must ensure that the persons set out in paragraph (2) are provided (free of charge) with—

(a) a copy of the school's instrument of government, and

(b) where any variation is made to the school's instrument of government, a consolidated version of the instrument of government incorporating all variations made by order of the local education authority (other than any variations which have ceased to have effect).

(2) The persons who are to be provided with the information referred to in paragraph (1) are—

(a) every member of the governing body of the school;

(b) the head teacher, whether or not the head teacher is a member of the governing body;

(c) the trustees of any trust relating to the school;

(d) in the case of a Church of England school or Roman Catholic Church school, the appropriate diocesan authority; and

(e) in the case of any other school designated under section 69(3) of the 1998 Act as having a religious character, the appropriate religious body.

Duty to secure making of instruments of government

33. A local education authority shall make an instrument of government in accordance with these Regulations for each school which is maintained by them, no later than 31st August 2006.