
STATUTORY INSTRUMENTS

1998 No. 1969

EDUCATION, ENGLAND AND WALES

The Education (Allocation of Grant-maintained and Grant-maintained Special Schools to New Categories) Regulations 1998

Made - - - - *10th August 1998*
Laid before Parliament *12th August 1998*
Coming into force - - *7th September 1998*

In exercise of the powers conferred on the Secretary of State by paragraphs 4, 5, 6, 8 and 10 of Schedule 2 to, and section 138(7) of, the School Standards and Framework Act 1998⁽¹⁾ the Secretary of State for Education and Employment, as respects England, and the Secretary of State for Wales, as respects Wales, hereby make the following Regulations:

PART I
INTRODUCTION

Citation, commencement and application

1.—(1) These Regulations may be cited as the Education (Allocation of Grant-maintained and Grant-maintained Special Schools to New Categories) Regulations 1998 and shall come into force on 7th September 1998.

(2) These Regulations apply to grant-maintained and grant-maintained special schools, within the meaning of the Education Act 1996⁽²⁾, save that regulations 4(1) (to the extent that that paragraph relates to notifying and giving information to the persons referred to in regulation 4(3)(a)) and (2)(c) to (h), 5 to 12, 13(2) and (3), 14(5) and 16(2)(a) do not apply to a grant-maintained special school which is established in a hospital.

Interpretation

2.—(1) In these Regulations—

(1) 1998 c. 31; for the meaning of “prescribed” and “regulations” see section 142(1).
(2) 1996 c. 56.

Status: This is the original version (as it was originally made).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

- “the Act” means the School Standards and Framework Act 1998;
- “the ballot administration company” means Electoral Reform (Ballot Services) Limited;
- “the 1994 Regulations” means the Education (Grant-maintained Special Schools) Regulations 1994(3);
- “Church school” means a Church of England school, a Church in Wales school or a Roman Catholic Church school;
- “electoral list” means a list of names and addresses of registered parents of registered pupils at the school who are eligible to vote in a ballot held pursuant to regulation 8;
- “funding authority” means in relation to a school in England, the Funding Agency for Schools(4) and, in relation to a school in Wales, the Secretary of State;
- “notice” means notice in writing and references to “notify” and “notification” shall be construed accordingly;
- “parental list” means a list of the names and addresses of registered parents of registered pupils at a school produced in accordance with regulation 5;
- “registered” means, in the context of registered parents of registered pupils at a school and subject to regulations 6(2) and 9(2), shown in the register kept under section 434 of the Education Act 1996 and the Education (Pupil Registration) Regulations 1995(5); and
- “school” means, unless the context otherwise requires, any grant-maintained or grant-maintained special school within the meaning of the Education Act 1996.

(2) The words or expression used in these Regulations in the first column in the table below have the meaning given by the statutory provision referred to in the second column of that table:

“appointed day”	section 20(7) of the Act;
“appropriate diocesan authority”	section 142(1) and (4) of the Act;
“Church of England school”	section 142(1) of the Act;
“Church in Wales school”	section 142(1) of the Act;
“final decision”	paragraph 5(4) of Schedule 2 to the Act;
“foundation”	section 21(3) of the Act;
“foundation body”	section 21(4) of the Act;
“indicative allocation”	paragraph 3 of Schedule 2 to the Act;
“parent”	section 576 of the Education Act 1996;
“promoters”	section 212(1) of the Education Act 1996;
“preliminary decision”	paragraph 4(1) of Schedule 2 to the Act;
“Roman Catholic Church school”	section 142(1) of the Act;
“school day”	section 579(1) of the Education Act 1996;
“transfer agreement”	paragraph 4(4) or 7(4), as the case may be, of Schedule 21 to the Act.

(3) S.I. 1994/653, amended by S.I. 1994/1231, 1994/2003 and 1996/111.

(4) The Funding Agency for Schools was established under section 3 of the Education Act 1993 (c. 35), which Act was repealed by Part I of Schedule 38 to the Education Act 1996. Section 20 of that Act provides for the continued existence of the Funding Agency for Schools.

(5) S.I. 1995/2089, amended by S.I. 1997/2624.

(3) Notwithstanding any provision of the instrument of government for a grant-maintained school (made pursuant to Chapter IV of Part I of the Education Reform Act 1988⁽⁶⁾, Chapter V of Part II of the Education Act 1993⁽⁷⁾, or Chapter V of Part III of the Education Act 1996) or for a grant-maintained special school (made pursuant to Part III of the Education Act 1993 or Chapter II of Part IV of the Education Act 1996), in so far as these Regulations make different provision to the instrument of government, these Regulations are to apply instead.

(4) In these Regulations, unless the context otherwise requires, a reference to a numbered regulation is a reference to a regulation in these Regulations so numbered and any reference to a paragraph is to a paragraph of the regulation in which the reference is made, and any reference to a sub-paragraph is a reference to a sub-paragraph of the paragraph in which the reference is made.

(5) A failure by any person to discharge any duty under these Regulations within a time limit prescribed by these Regulations shall not relieve such a person of that duty.

PART II

PROCEDURE FOR ALLOCATION TO NEW CATEGORIES

Meetings to take preliminary decision

3.—(1) The governing body of a school shall take on or before 20th November 1998 a decision (their “preliminary decision”) under paragraph 4 of Schedule 2 to the Act on the question whether—

- (a) to accept the school’s allocation to a particular category of schools in accordance with the indicative allocation set out in paragraph 3 of Schedule 2 to the Act, or
- (b) to opt for it to be allocated to a different category.

(2) The chairman of the governing body shall direct the clerk to the governing body as to the date for the meeting at which the governing body are to take their preliminary decision and the clerk shall, when convening that meeting, comply with such direction.

(3) Without prejudice to their obligation under paragraph (1), the governing body of a school may not take their preliminary decision at any meeting unless—

- (a) the clerk to the governing body, has given to every member of the governing body at least five school days notice of the meeting and that notice shall be given together with a copy of the agenda for the meeting which shall include the consideration of the governing body’s preliminary decision referred to in paragraph (1) as a specific item of business for the meeting; and
- (b) the clerk to the governing body has given at least twenty school days notice of the meeting—
 - (i) in the case of a Church school, to the appropriate diocesan authority; and
 - (ii) in the case of any school where any person holds land on trust for the purposes of the school, to such a person;

and the notice under sub-paragraph (b) shall state that any representations in response to the notice shall be sent to the clerk to the governing body no later than five school days before the date of the meeting.

(6) 1988 c. 40; the relevant provisions of Chapter IV of Part I were repealed by sections 303 and 307 of, and Schedule 21 to, the Education Act 1993. The instrument of government continues to have effect by virtue of Schedule 39 to the Education Act 1996.

(7) 1993 c. 35; the Education Act 1993 was repealed by section 582 of, and Schedule 38 to, the Education Act 1996. The instrument of government continues to have effect by virtue of Schedule 39 to the Education Act 1996.

(4) The clerk to the governing body shall give to every member of the governing body, at least two school days before the date of the meeting, a copy of any written representations received by him at any time up to five school days before the meeting, in response to the notice given under paragraph (3)(b).

(5) The governing body shall at the meeting to consider their preliminary decision take into account any representations made in response to the notice given under paragraph (3)(b).

Notification of preliminary decision

4.—(1) Following the taking of their preliminary decision, the governing body shall, no later than five school days following the date of the meeting at which that decision was taken—

- (a) notify the persons referred to in paragraph (3) of their preliminary decision, and
- (b) give the persons referred to in paragraph (3)(a) the information referred to in paragraph (2) and give the persons referred to in paragraph (3)(b) to (d) the information referred to in paragraph (2)(a) and (b).

(2) The information referred to in paragraph (1) is the following information—

- (a) in the case where the governing body's preliminary decision is to opt for the school to be allocated to a category other than its indicative allocation, the governing body's reasons for their preliminary decision;
- (b) the date on which the governing body took their preliminary decision;
- (c) that a ballot of parents will be required to be held on the question of the choice of category for the school if a petition from parents is received which meets the requirements of regulation 6;
- (d) a statement which sets out regulation 6 of these Regulations or a statement to the like effect;
- (e) the number, as determined in accordance with regulation 5(1)(a) and (b), of registered parents of registered pupils at the school required for such parents to be able to obtain a copy of the parental list;
- (f) a statement that the only purposes for which the parental list may be obtained are for raising a petition in relation to the choice of category for the school or for circulating information where a ballot is to be held on that question;
- (g) a statement that a registered parent of a registered pupil at the school is entitled to have his name and address excluded from the parental list where, no later than the end of the period of ten school days beginning with the date on which the governing body took their preliminary decision, he requests the governing body not to disclose that information; and
- (h) the last date by which the petition may be received by the governing body pursuant to regulation 6(5).

(3) The persons referred to in paragraph (1) are—

- (a) registered parents of registered pupils at the school;
- (b) the local education authority for the area in which the school is situated;
- (c) in the case of a Church school, the appropriate diocesan authority; and
- (d) any person holding land on trust for the purposes of the school.

Parental list

5.—(1) Where—

- (a) any ten or more registered parents of registered pupils at a school, or (if fewer)

(b) a number of such parents equal to at least 20 per cent. of the number of registered pupils at the school, or

(c) in the case of a Church school, the appropriate diocesan authority.

so request and paragraph (2) applies, the governing body of the school shall, subject to paragraph (4), provide one of those parents (who is nominated by those parents for the purpose) or the appropriate diocesan authority, as the case may be, with a list containing the name and address of every registered parent of a registered pupil at the school.

(2) This paragraph applies if the request is made for the purpose of—

(a) raising a petition on the question of the category to which the school should be allocated in accordance with Schedule 2 to the Act and regulation 17, or

(b) circulating information to any registered parent of a registered pupil at the school where a ballot of such parents is required to be held on that question pursuant to regulation 8.

(3) If a registered parent so requests, the governing body shall inform him of the number of registered pupils at the school.

(4) The governing body shall not disclose to a parent or the appropriate diocesan authority under paragraph (1) the name and address of any person who has, no later than the end of the period of ten school days beginning with the date on which the governing body took their preliminary decision, requested the governing body not to disclose that information; and accordingly, the name and address of that person shall be excluded from the list there mentioned.

(5) A governing body who in pursuance of paragraph (1) provide copies of the list there mentioned may charge such fee as they think fit (not exceeding the cost of supply) in respect of each copy so supplied.

Parental Petition

6.—(1) Regulation 8 applies where the governing body of a school receive the first, but not any subsequent, petition which meets the requirements of this regulation.

(2) The petition must be signed by a number of registered parents of registered pupils at the school equal to at least 20 per cent. of the number of registered pupils at the school; and in this paragraph “registered” means shown in the register kept under section 434 of the Education Act 1996 and the Education (Pupil Registration) Regulations 1995 as that register has effect on the date on which the petition is received.

(3) The petition must include the name and address of each such parent who signs it and must indicate the name and address of the person who has organised the making of the petition.

(4) The petition must state that those who sign it—

(a) disagree with the governing body’s preliminary decision (which decision shall be stated in the petition);

(b) prefer the school to be allocated to a different category, in accordance with Schedule 2 to the Act and regulation 17 (which category shall be stated in the petition); and

(c) seek a ballot of parents as to the category to which the school should be allocated.

(5) The petition must be received by or on behalf of the governing body on or before the date which is thirty-five school days following the date of the meeting at which the governing body took their preliminary decision.

(6) For the purposes of paragraph (1), “petition” includes the aggregation of any number of petitions so received where the petitions are in favour of the same category of schools in accordance with paragraph (4)(b).

7. Within three school days following the date of receipt of a petition as to the category to which the school should be allocated, the governing body shall inform the person who organised the making of the petition whether or not it meets the requirements of regulation 6.

Ballots of parents

8.—(1) Where a petition meets the requirements of regulation 6, a ballot of parents shall be held in accordance with regulations 9 and 10 on the question of the category to which the school should be allocated in accordance with Schedule 2 to the Act and regulation 17.

(2) Within five school days following the date of receipt of a petition which meets the requirements of regulation 6, the governing body of the school shall inform the persons referred to in paragraph (3) below of the preferred category for the school stated in the petition and that a ballot of parents is required to be held on the question of the category to which the school should be allocated in accordance with Schedule 2 to the Act and regulation 17.

(3) The persons referred to in paragraph (2) are—

- (a) the local education authority for the area in which the school is situated;
- (b) in the case of a Church school, the appropriate diocesan authority;
- (c) any person holding land on trust for the purposes of the school; and
- (d) the ballot administration company.

(4) Within the same period as is referred to in paragraph (2), the governing body of the school shall notify the ballot administration company of both the governing body's preliminary decision and the school's indicative allocation.

9.—(1) For the purposes of these Regulations a person is eligible to vote in a ballot held pursuant to regulation 8 if he is an individual who is a registered parent of a registered pupil at the school.

(2) In paragraph (1) "registered" means shown in the register kept under section 434 of the Education Act 1996 and the Education (Pupil Registration) Regulations 1995 as that register has effect on the date immediately following the end of the period of ten school days beginning with the date on which a petition which meets the requirements of regulation 6 was received by the governing body.

(3) The governing body of the school shall, after the period referred to in paragraph (2) and no later than the date immediately following the period of fifteen school days beginning with the date on which a petition meeting the requirements of regulation 6 is received by the governing body, provide the ballot administration company with the electoral list which is to be as accurate as the governing body can reasonably secure.

(4) The governing body of a school shall provide such information and give such assistance to the ballot administration company as that company may require in connection with the ballot.

10.—(1) The ballot administration company shall arrange for a secret postal ballot and shall inform those persons eligible to vote in the ballot that they are entitled to do so.

(2) The ballot papers to be sent to parents for the purpose of voting in the ballot shall include the following information—

- (a) the school's indicative allocation;
- (b) the governing body's preliminary decision;
- (c) the choice of categories of schools available in the ballot for parents to vote for in accordance with Schedule 2 to the Act and regulation 17; and
- (d) the date by which ballot papers must be returned (which shall be the end of the period of ten school days beginning with the date on which the ballot papers are sent to parents).

11.—(1) Where the number of votes cast in a ballot held in respect of a school pursuant to regulation 8 shows that more than 50 per cent. of those eligible to vote in the ballot so voted and that, of those votes cast, more than 50 per cent. are in favour of a particular category of schools in accordance with Schedule 2 to the Act and regulation 17, there shall be a result of the ballot for the purposes of these Regulations and Schedule 2 to the Act and the result shall be seen as being in favour of that category.

(2) The date when the ballot outcome is determined is the date on which the governing body receives notification of the outcome of the ballot from the ballot administration company.

12.—(1) Paragraph (3) applies where, within the period of ten school days beginning with the date on which the outcome of the ballot is determined, the Secretary of State receives a complaint about the ballot on any of the grounds referred to in paragraph (2) from any of the following—

- (a) any ten or more registered parents of registered pupils at the school;
- (b) the governing body of the school;
- (c) the local education authority for the area in which the school is situated;
- (d) in the case of a Church school, the appropriate diocesan authority; and
- (e) any person holding land on trust for the purposes of the school.

(2) The grounds referred to in paragraph (1) are the following grounds—

- (a) that any requirements of regulation 9 or 10 have been contravened in the case of a ballot held pursuant to regulation 8;
- (b) that persons other than those eligible to vote in a ballot held pursuant to regulation 8 have purported to vote in the ballot so held; or
- (c) that persons who are eligible to vote in a ballot so held had been prevented or hindered from doing so, or from doing so freely in accordance with their own opinions, by any other person.

(3) Where it appears to the Secretary of State that any of the grounds referred to in paragraph (2) apply and that voting in a ballot is likely to have been influenced to a significant extent as a result, he may by notice given to the governing body of the school and the ballot administration company—

- (a) declare the ballot void; and
- (b) require that a fresh ballot be held before such date as he may specify in the notice.

(4) Where the Secretary of State declares the ballot void and requires that a fresh ballot be held, regulations 9(1), (2) and (4), 10, 11 and this regulation shall apply to that fresh ballot as they apply in respect of the ballot so declared void.

Governing body's final decision

13.—(1) Where no ballot of parents is required under regulation 8 to be held or a school is a grant-maintained special school established in a hospital, the governing body of the school shall—

- (a) in the case of a grant-maintained school or a grant-maintained special school not established in a hospital, within the period of twenty school days beginning with the last date by which a petition can be received pursuant to regulation 6(5), or
- (b) in the case of a grant-maintained special school established in a hospital, within the period of fifty-five school days beginning with the date of the meeting at which the governing body took their preliminary decision,

take a decision (referred to as their “final decision”) confirming the governing body's preliminary decision.

(2) Where a ballot of parents has been held by virtue of regulation 8 and the result (if any) of the ballot is not to disagree with the governing body's preliminary decision, the governing body of the school shall, within the period of fifteen school days beginning with the date on which the outcome of the ballot is determined and in any event before 23rd April 1999, take a decision (referred to as their "final decision") confirming the governing body's preliminary decision.

(3) Where a ballot of parents has been held by virtue of regulation 8 and the result of the ballot does not accord with the governing body's preliminary decision, the governing body of the school shall, within the period of fifteen school days beginning with the date on which the outcome of the ballot is determined and in any event before 23rd April 1999, reconsider the question referred to in regulation 3(1) having regard to that ballot result and take a further decision (referred to as their "final decision") on that question.

(4) Subject to regulation 15(1), the chairman of the governing body shall direct the clerk to the governing body as to the date for the meeting at which the governing body are to take their final decision pursuant to paragraph (1), (2) or (3), as the case may be, and the clerk shall, when convening that meeting, comply with such direction.

(5) Subject to regulation 15(1), without prejudice to their obligation under, as the case may be, paragraphs (1), (2) or (3), the governing body of a school may not hold their meeting to take their final decision unless the clerk to the governing body has given every member of the governing body at least five school days notice of that meeting; and that notice shall be given together with a copy of the agenda for the meeting which shall include the consideration of the governing body's final decision as a specific item of business for the meeting.

14.—(1) Within the period of five school days following the date on which the final decision referred to in regulation 13 is taken, the governing body shall inform the persons referred to in paragraph (2) in writing, and notify the Secretary of State, of that final decision**(8)**.

(2) The persons referred to in paragraph (1) are—

- (a) the local education authority for the area in which the school is situated; and
- (b) in the case of a Church school, the appropriate diocesan authority; and
- (c) any person holding land on trust for the purposes of the school.

(3) The governing body's notification to the Secretary of State referred to in paragraph (1) shall give the information referred to in sub-paragraphs (a) to (e) and certify the matters referred to in sub-paragraph (f)—

- (a) the name and address of the school;
- (b) the existing and indicative category in respect of the school;
- (c) the governing body's preliminary decision and the date of the meeting at which the governing body took that decision;
- (d) where there was a ballot required to be held pursuant to regulation 8, the category for the school which was favoured by the result (if any) of the ballot;
- (e) the final decision and the date it was taken; and
- (f) where notice of the governing body's meeting to consider their preliminary decision was required to be given under regulation 3(3)(b), that the notice was given to the persons referred to in regulation 3(3)(b)(i) or (ii) or both as appropriate.

(8) By paragraph 7 of Schedule 2 to the Act, the Secretary of State is to notify the governing body of each school within paragraph 2 of the Schedule of the category to which it is allocated in accordance with that paragraph. Under that paragraph, if the final decision accords with the school's indicative allocation and either the result (if any) of any ballot is not to disagree with that allocation or no ballot is required to be held, the school is to be allocated to the category provided for by its indicative allocation. If the final decision or the result of a ballot does not accord with the school's indicative allocation, the school is to be allocated to such category (whether or not that provided for by its indicative allocation) as the Secretary of State may determine in conformity with these Regulations.

(4) Where the final decision or a ballot result is for a category of schools other than the school's indicative allocation, the governing body shall provide the Secretary of State with a copy of any representations, indicating the maker of any representations, received by the clerk to the governing body in response to the notice given under regulation 3(3)(b).

(5) The governing body of a school shall inform registered parents of registered pupils at the school of the final decision taken pursuant to regulation 13—

- (a) in cases where no ballot was required to be held, on or before 1st April 1999; or
- (b) in cases where a ballot was required to be held, within the period of five school days following the date on which the final decision was taken.

15.—(1) The governing body of a school may delegate their function of taking the final decision referred to in, respectively, regulation 13(1) and (2) to the chairman of the governing body, but may not delegate their function of taking their preliminary decision or the final decision referred to in regulation 13(3); and, where the function of taking the final decision referred to in, respectively, regulation 13(1) and (2) is so delegated, regulation 13(4) and (5) shall not apply.

(2) The quorum for a meeting of the governing body of a school to consider their preliminary or final decision and any vote on those matters thereat shall be two-thirds (rounded up to a whole number) of the persons who are at the time members of the governing body.

16.—(1) The governing body of a school shall keep any responses to the notice given pursuant to regulation 3(3)(b) until at least 1st February 2000.

(2) The governing body of a school shall make all such responses available for inspection at the school at all reasonable times to the following persons—

- (a) registered parents of registered pupils at the school;
- (b) the local education authority in which the school is situated;
- (c) in the case of a Church school, the appropriate diocesan authority; and
- (d) any person holding land on trust for the purposes of the school.

PART III

RESTRICTIONS ON DECISIONS AS TO CATEGORIES

17.—(1) A grant-maintained school shall not be allocated under paragraph 7 of Schedule 2 to the Act to the category of community special school or foundation special school.

(2) A grant-maintained special school shall not be allocated under paragraph 7 of Schedule 2 to the Act to any category other than community special school or foundation special school.

(3) Subject to paragraph (4), a grant-maintained school or a grant-maintained special school shall not be allocated under paragraph 7 of Schedule 2 to the Act to the category of community school or community special school, as the case may be, unless the Secretary of State is satisfied that the execution of a transfer agreement will effect the transfer of any land held by either the governing body or trustees which is needed by the local education authority in order to maintain the school as a community or community special school, as the case may be.

(4) A grant-maintained school at which—

- (a) the provision for religious education for registered pupils at the school, required by section 352(1)(a) of the Education Act 1996 to be included in the school's basic curriculum is, pursuant to section 381(2) of that Act, in accordance with the tenets of a particular religion or religious denomination, or

- (b) the registered parents of any such pupils are able to request, pursuant to section 380(2) and (3) of that Act, that the pupils may receive religious education in accordance with the tenets of a particular religion or religious denomination,

shall not be allocated under paragraph 7 of Schedule 2 to the Act to the category of community school.

(5) Subject to paragraph (6), a grant-maintained school which was not a voluntary school within the meaning of the Education Act 1996 immediately before the school became grant-maintained or which was not established as a grant-maintained school by promoters shall not be allocated under paragraph 7 of Schedule 2 to the Act to the category of voluntary controlled school or voluntary aided school unless—

- (a) it is to belong to a group of schools for which a foundation body is to act under section 21 of the Act; or
- (b) the Secretary of State is satisfied that—
- (i) it has or proposes to have a foundation which is established otherwise than under the Act;
 - (ii) a significant part of the land to be used for the purposes of the school is, or is to be, held by the foundation on trust for those purposes; and
 - (iii) in the case of a grant-maintained school seeking to become a voluntary aided school, the foundation will be able and willing to pay so much as may be necessary of the governing body's expenses in discharging any of their liabilities under Schedule 3 to the Act.

(6) A grant-maintained school whose indicative allocation under paragraph 3 of Schedule 2 to the Act is not voluntary aided school shall not be allocated under paragraph 7 of that Schedule to that category unless the Secretary of State is satisfied that the governing body will be able, with the assistance of grant under Schedule 3 to the Act, to meet the expenses of discharging their liabilities under that Schedule.

PART IV

TRANSITIONAL PROVISIONS

18. The provisions of Schedule 2 to the Act shall not apply in the case of any grant-maintained or grant-maintained special school, as the case may be, where—

- (a) proposals under section 267 or 268 of the Education Act 1996 have been published in respect of the discontinuance of a grant-maintained school and have been approved, or adopted, as the case may be, under section 269 of that Act and the date of discontinuance with respect to the school is on or before 1st September 1999;
- (b) the Secretary of State has given notice under section 272 of that Act to the governing body of a grant-maintained school or, under that section as applied to grant-maintained special schools by the 1994 Regulations, to the governing body of a grant-maintained special school, indicating that the funding authority's duty to maintain the school will cease on a specified date which is on or before 31st March 1999; or
- (c) notice of proposals under section 339 of the Education Act 1996 has been served in respect of the discontinuance of a grant-maintained special school and the proposals have been approved under section 340 of that Act or, as the case may be, adopted pursuant to provisions of section 269 of that Act as applied to those proposals by virtue of the 1994 Regulations and the date of discontinuance with respect to the school is on or before 1st September 1999.

19.—(1) Paragraph (2) applies in any case where—

- (a) proposals under sections 211(3) or 212(1) of the Education Act 1996 have been published for the establishment of a new grant-maintained school and approved or, as the case may be, adopted under section 214 of that Act and there is in existence a governing body of the school incorporated pursuant to section 215 of that Act; or
- (b) notice of proposals under section 339(2)(a) of that Act to establish a new grant-maintained special school has been served and the proposals have been approved under section 340 of that Act and there is in existence a governing body of the school incorporated pursuant to section 339(7) of that Act; and

the school opening date in respect of the school falls on or after 30th September 1998.

(2) Where this paragraph applies, the provisions of paragraphs 4 to 7 of Schedule 2 to the Act shall not apply, but the provisions made by paragraphs (3) to (7) and regulations 20 to 22 shall, in any such case, apply instead.

(3) The governing body of such a school as is referred to in paragraph (1) must take on or before 26th February 1999 a decision (their “decision”) on the question whether—

- (a) to accept the school’s allocation to a particular category of schools in accordance with the indicative allocation set out in paragraph 3 of Schedule 2 to the Act, or
- (b) to opt for it to be allocated to a different category.

(4) The chairman of the governing body shall direct the clerk to the governing body as to the date for the meeting at which the governing body are to take their decision and the clerk shall, when convening that meeting, comply with such direction.

(5) Without prejudice to their obligation under paragraph (3), the governing body may not take their decision at any meeting unless the clerk to the governing body, has given to—

- (a) every member of the governing body; and
- (b) any person holding land on trust for the purposes of the school

at least twenty-one clear days notice of the meeting together with a copy of the agenda for the meeting which includes the consideration of the governing body’s decision referred to in paragraph (3) as a specific item of business for the meeting; and the notice to the persons referred to at sub-paragraph (b) shall state that any representations in response to the notice shall be sent to the clerk to the governing body no later than seven clear days before the meeting.

(6) The clerk to the governing body of a school shall give to every member of the governing body, at least two clear days before the meeting, a copy of any written representations received by him at any time up to seven clear days before the meeting, from any person holding land on trust for the purposes of the school.

(7) The governing body of a school shall, at the meeting to consider their decision, take into account any representations made by any person holding land on trust for the purposes of the school.

20.—(1) Within the period of seven clear days following the date on which the meeting is held at which such a governing body of a school take their decision, the governing body shall notify the persons referred to in paragraph (2) of their decision.

(2) The persons referred to in paragraph (1) are—

- (a) the local education authority for the area in which the school is or is to be situated;
- (b) the Secretary of State; and
- (c) any person holding land on trust for the purposes of the school.

(3) Where the governing body’s decision is for a category which is different to the school’s indicative allocation, the governing body shall provide the Secretary of State with a copy of any

representations, indicating the maker of any representations, received by the clerk to the governing body in response to the notice given under regulation 19(5)(b).

21.—(1) If the decision of the governing body of a school accords with the school’s indicative allocation, the school shall be allocated to that category provided for by the indicative allocation, pursuant to paragraph 2 of Schedule 2 to the Act, on the appointed day.

(2) If the decision by the governing body of a school does not accord with the school’s indicative allocation, the school shall be allocated, subject to regulation 17, to such category as the Secretary of State may determine, pursuant to paragraph 2 of Schedule 2 to the Act, on the appointed day.

(3) The Secretary of State shall notify the governing body of a school of the category to which it is allocated in accordance with this regulation.

22.—(1) The governing body of a school may not delegate their function of taking their decision.

(2) The quorum of a meeting of the governing body of a school to consider their decision and any vote on the matter thereat shall be two-thirds (rounded up to a whole number) of the persons who are at the time members of the governing body.

7th August 1998

Tessa Blackstone
Minister of State,
Department for Education and Employment

10th August 1998

Peter Hain
Parliamentary Under Secretary of State, Welsh
Office

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, made under Schedule 2 to the School Standards and Framework Act 1998 (“the Act”), apply in respect of the allocation of grant-maintained and grant-maintained special schools to new categories of schools under that Act.

Section 20 of the Act makes provision for new categories of schools to be maintained by a local education authority on or after the appointed day. (The “appointed day” means, under section 20(7) of the Act, a day appointed by order made by the Secretary of State and no such date has been appointed as at the date that these Regulations have been made).

Schools maintained by a local education authority on or after the appointed day are to be divided into the following categories—

- (a) community schools;
- (b) foundation schools;
- (c) voluntary schools, comprising—
 - (i) voluntary aided schools, and
 - (ii) voluntary controlled schools;
- (d) community special schools; and
- (e) foundation special schools.

Paragraph 2 of Schedule 2 to the Act requires grant-maintained and grant-maintained special schools to become, on the appointed day, schools of the category to which they are allocated in accordance with the Schedule. Paragraph 3 of the Schedule lists their indicative allocations.

Paragraph 4(1) of the Schedule requires governing bodies of grant-maintained and grant-maintained special schools to take a preliminary decision on the question whether—

- “(a) to accept the school’s allocation to a particular category in accordance with its indicative allocation, or
- (b) to opt for it to be allocated to a different category”.

Pursuant to paragraph 4, these Regulations include provision as to the procedure to be followed by governing bodies of grant-maintained and grant-maintained special schools in connection with the taking of their preliminary decision. They must take their preliminary decision on or before 20th November 1998 (*regulation 3(1)*). They must notify certain persons of their preliminary decision (*regulation 4*).

Parents of pupils at a grant-maintained or grant-maintained special school may raise a petition for the purpose of requiring a ballot of parents on the issue of the choice of category for the school. The petition must meet certain requirements in order to trigger a ballot (*regulation 6*). The provisions in the Regulations relating to petitions and ballots do not apply in the case of any grant-maintained special school which is established in a hospital (*regulation 1(2)*).

Parents can obtain a list containing the names and addresses of registered parents of registered pupils at the school for the purpose of raising the petition or for circulating information for the ballot. Parents can, request, and have, their names and addresses excluded from the list.

The Secretary of State can declare a ballot void in certain circumstances and require a fresh one to be held (*regulation 12*).

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

Whether or not a ballot is required at any school, governing bodies are required, pursuant to paragraph 5 of Schedule 2 to the Act, to take a final decision on the question of the choice of category for the school. Where there is no ballot, this decision is to be taken within the period of twenty school days beginning with the last date by which a petition can be received; in the case of a grant-maintained special school established in a hospital, that period is fifty-five school days beginning with the date of their preliminary decision. Where a ballot is held, the governing body's final decision must be taken within the period of fifteen school days beginning with the date on which the outcome of the ballot is determined and in any event before 23rd April 1999 (*regulation 13*).

Following the governing body's final decision, the governing body must notify the Secretary of State of their final decision (*regulation 14*).

The governing body may delegate only the function of taking their final decision to the chairman of the governing body in the case where either there is no need for a ballot or the result of the ballot does not disagree with the governing body's preliminary decision (*regulation 15*).

Governing bodies are required to keep responses to certain notices relating to the taking of their preliminary decision until at least 1st February 2000 (*regulation 16(1)*).

Restrictions applying as to the choice of category for a grant-maintained or a grant-maintained special school are set out in regulation 17.

Transitional provisions are made for certain cases (*regulations 18 to 22*).