
STATUTORY INSTRUMENTS

1999 No. 2262

The Education (New Schools) (England) Regulations 1999

PART V

**TRANSITION FROM A TEMPORARY GOVERNING
BODY TO A PERMANENT GOVERNING BODY**

Interpretation of Part V

30. In this Part “new school” has the meaning in section 72(3) of the 1998 Act and shall include any school or proposed school to which Part II of the School Organisation Regulations applies but not any school or proposed school to which regulation 13 of the Second Transitional Regulations applies⁽¹⁾.

Making of instrument of government

31.—(1) The local education authority shall secure that an instrument of government has been made for each new school in accordance with Schedule 12 to the 1998 Act⁽²⁾ before the school opening date.

(2) 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 temporary governing body conducting the new school pending constitution of the permanent governing body under the instrument of government.

(3) For all other purposes, the instrument of government shall take effect from the school opening date.

(4) The temporary 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.

Modifications to the 1998 Act

32.—(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 school to be made.

(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 school when it is a maintained school.

(3) In relation to a new 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 subparagraph (6)(a) the following—

(1) This Part does not apply to schools with transitional governing bodies within the meaning in regulation 13 of the Second Transitional Regulations because constitution of permanent governing bodies under instruments of government for such schools is dealt with in the Second Transitional Regulations.

(2) As modified by regulation 32 of these Regulations.

“(a) if a voluntary organisation is designated by the local education authority, in relation to the 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 of any proposed school 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 dates”;

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

“(2A) Where an instrument of government is made for a proposed school, such instrument of government:

(a) 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 when it opens;

(b) shall include a description of the ethos of the school, if the proposed school will be a foundation or voluntary school having a religious character⁽³⁾;

(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 temporary 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 school opening date.”; 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 proposed school referred to in sub-paragraph (2A), the proposed school shall be treated as having as registered pupils the number of pupils determined from the proposals for the establishment of the school.”.

(6) References in paragraph 3 of Schedule 12 to the 1998 Act to—

(a) “the governing body” shall be treated as references to the temporary governing body;

(b) “foundation governors” shall be treated as references to temporary foundation governors (within the meaning of Part III of these Regulations, or, in the case of a proposed school to which regulation 13 of the School Organisation Regulations applies, governors who were appointed as temporary foundation governors under the 1996 Act);

(c) “the school” shall be treated as references to the new school;

(d) “Church of England” and “Roman Catholic” school shall be treated as references to new schools which will be such schools when they open;

(e) “the appropriate diocesan authority” shall be treated as references to the authority which will be the appropriate diocesan authority when the new school opens; and

(f) “the category of school to which the school belongs” shall be treated as references to the category of school to which the new school will belong when it opens.

(3) Regulation 9 of *S./I. 1998/2535* makes provision for the religious character of 13 proposed schools to be designated under section 69(3) of the 1998 Act. Regulation 9 is amended by Part VIII.

Additional co-opted governors

33.—(1) Schedule 1 to the Main School Government Regulations shall apply with the modifications set out in paragraph (2) below for the purpose of making provision for the number of additional co-opted governors which may be required by the instrument of government for a new school 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 the categories of person from whom or from amongst whose members nominations for such appointments are to be sought.

(2) For the purpose of paragraph (1) above, Schedule 1 to the Main School Government Regulations shall apply with the following modifications—

- (a) references to “school” shall be treated as references to the new school;
- (b) references to “the governing body” (without more) shall be treated as references to the temporary governing body; and
- (c) references to “the governing body of the school” shall be treated as references to the permanent governing body.

Substitutes for ex officio foundation governors

34. The instrument of government for a new school 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

35.—(1) The instrument of government for a new school shall be made in the form and in accordance with the directions set out in the Schedule which are relevant to the category of maintained school to which the new school will belong when it opens.

(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 the Schedule.

Constitution of the governing body under the instrument of government

36.—(1) For the purposes of this Part, in relation to any new school, the incorporation date means such date (as soon as reasonably practicable after the school opening date and in any event no later than the last day of the term in which the school first admits pupils) as the local education authority shall notify in writing to the temporary governing body.

(2) The local education authority shall secure that appointments or elections of governors required by the instrument of government for a new school take place in accordance with that instrument before the incorporation date with effect from that date.(4)

(3) On the incorporation date the governing body of a new school shall be constituted under the instrument of government, and incorporated under section 36(1) of the 1998 Act.

(4) The temporary 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 these Regulations and under section 44(3) of the 1998 Act.

(4) The Main School Government Regulations provide for qualifications and disqualifications for office, and terms of office, of such governors.

New governors

37.—(1) In the case of the appointment of any governor referred to in regulation 36(2), the local education authority shall give written notice to the person who is to make the appointment under the instrument of government, unless that person has already notified them of an appointment to fill the vacancy.

(2) Where any person makes an appointment referred to in paragraph (1), they shall give written notice of the appointment to the local education authority and 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 the incorporation date unless (before the instrument of government is made) he has given written notice to the local education authority and 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 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

38.—(1) The following paragraphs shall apply in relation to the appointment or election of governors referred to in regulation 36(2).

(2) In paragraph 3, “temporary co-opted governor” has the meaning in Part III of these Regulations, or, in the case of a school to which regulation 13 of the School Organisation Regulations applies, means a governor who was appointed as a temporary co-opted governor under the 1996 Act.

(3) Any co-opted governor shall be appointed by members of the temporary governing body, who are not themselves temporary co-opted governors.

(a) (4) (a) Any parent governor shall be either—

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

(ii) appointed (after the school opening date) as a parent governor by the temporary governing body in the circumstances and subject to the provisions set out in Schedule 2 to the Main School Government Regulations (which shall apply for these purposes subject to the modifications in sub-paragraph (b)).

(b) For the purposes set out in sub-paragraph (a)(ii), Schedule 2 to the Main School Government Regulations shall apply as if—

(i) references in that Schedule to the governing body were references to the temporary governing body;

(ii) Schedule 4 to those Regulations had been amended pursuant to regulation 40 of these Regulations.

(a) (5) (a) Any partnership governor shall be a person who (after the school opening date) is nominated as a partnership governor, and appointed as such, in accordance with Schedule 3 to the Main School Government Regulations (which shall apply for these purposes subject to the modifications in sub-paragraph (b)).

(b) For the purposes set out in sub-paragraph (a), Schedule 3 to the Main School Government Regulations shall apply as if references in that Schedule to the governing body were references to the temporary governing body.

(6) Any staff governor shall be elected (after the school opening date) by persons employed to work at the new school otherwise than as teachers, and shall himself be a person so employed at the time when he is elected.

(7) Any teacher governor shall be:

- (a) a person elected (after the school's opening date) by teachers at the new school; and
- (b) such a teacher at the time when he is elected,

and for this purpose "teacher" means a teacher employed under a contract of employment or a contract for services or otherwise engaged to provide his services as a teacher.

Joint appointments

39. If—

- (a) the instrument of government for a new school provides for one or more governors to be appointed by persons acting jointly, and
- (b) for references to a school there shall be substituted references to a new school; and
- (c) those persons fail to make an agreed appointment,

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

Elections

40. Schedule 4 to the Main School Government Regulations applies in relation to the election of governors referred to in regulation 36(2), except that in that Schedule—

- (a) references to a community, community special, voluntary controlled, voluntary aided, foundation or foundation special school include new schools which will be such schools when they open; and
- (b) for references to the governing body there shall be substituted references to the temporary governing body.

Information for successors

41.—(1) Immediately before the 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 school.

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

Property, rights and liabilities

42. On the incorporation date—

- (a) all land and other property which, immediately before the incorporation date, was property of the temporary governing body used or held for the purposes of the new school, and
- (b) all rights and liabilities of the temporary governing body 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

43. Without prejudice to the generality of regulation 42, where that regulation effects a transfer of rights and liabilities under a contract of employment—

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- (a) the contract shall have effect from the incorporation 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.

Registered land and construction of agreements

44.—(1) Where a transfer under regulation 42 relates to registered land, it shall be the duty of the persons who were members of the temporary governing body immediately before the incorporation date—

- (a) to execute any such instrument under the Land Registration Acts 1925 to 1997⁽⁵⁾,
- (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⁽⁶⁾ (construction of agreements) shall apply in relation to transfers effected by regulation 42 as they apply in relation to transfers to which that Schedule applies.

⁽⁵⁾ 1925 c. 21, 1936 c. 26, 1966 c. 39, 1971 c. 54, 1986 c. 26, 1988 c. 3 and 1997 c. 2.
⁽⁶⁾ 1988 c. 40.