

2002 No. 2113

EDUCATION, ENGLAND

**The Education Act 2002 (Transitional Provisions etc.)
(England) Regulations 2002**

<i>Made</i> - - - - -	<i>8th August 2002</i>
<i>Laid before Parliament</i>	<i>12th August 2002</i>
<i>Coming into force</i> - -	<i>2nd September 2002</i>

In exercise of the powers conferred on the Secretary of State by section 44(5) and (6) of the School Standards and Framework Act 1998(a) and section 214 of the Education Act 2002(b), the Secretary of State for Education and Skills hereby makes the following Regulations.

Citation, Commencement and Interpretation

1. These Regulations may be cited as the Education Act 2002 (Transitional Provisions etc.) (England) Regulations 2002 and shall come into force on 2nd September 2002.
2. In these Regulations—
 - “the 2002 Act” means the Education Act 2002;
 - “the 1998 Act” means the School Standards and Framework Act 1998;
 - “the 1996 Act” means the School Inspections Act 1996(c); and
 - “an inspector’s report” means a report made under section 2(2)(b), section 13 or section 14 of the 1996 Act.

Temporary modification of sections 27 and 28 of, and Schedule 1 to, the 2002 Act

- 3.—(1) Prior to the coming into force of section 39 of the 2002 Act, “maintained school” in section 27 of, and (to the extent that it is in force) paragraph 3 of Schedule 1 to, the 2002 Act means a maintained school as defined by section 20(7) of the 1998 Act.
- (2) Prior to the coming into force of section 21 of the 2002 Act, section 28(3) shall have effect as if the reference within it to section 21(2) were a reference to section 38(2) of the 1998 Act.
- (3) Prior to the coming into force of paragraph 1 of Schedule 1 to the 2002 Act, paragraph 3 of that Schedule (to the extent that it is in force) shall have effect as if references to the governing body were to the governing body of a maintained school incorporated under section 36(1) of the 1998 Act.

Transitional provisions relating to sections 54 to 59 of the 2002 Act

4. Where an inspector’s report has been made before 2nd September 2002:
 - (a) section 15(4) and (6) of the 1998 Act shall have effect as if the amendments made by section 55 of the 2002 Act had not come into force;

(a) 1998 c. 31.
(b) 2002 c. 32. See section 212 for the definition of “regulation”. By virtue of that definition these regulations made by the Secretary of State apply only in relation to England.
(c) 1996 c. 57.

- (b) the Secretary of State may exercise the powers conferred on her by sections 18(1), 18A, 19(1) or 19A of the 1998 Act as if the report had been prepared after that date and a notice had been given under section 16A(2) of the 1996 Act;
- (c) a local education authority may exercise the powers conferred on it by sections 14(2), 16, 16A or 17 of the 1998 Act as if the report had been prepared after that date and a notice had been given under section 16A(2) of the 1996 Act.

Temporary modification of Schedule 1A to the 1998 Act

5. Prior to the coming into force of section 19 of the 2002 Act, Schedule 1A to the 1998 Act (inserted by Schedule 6 to the 2002 Act) shall have effect as if:

- (a) in the definition of “normally constituted governing body” in paragraph 1(1), for “in accordance with regulations made by virtue of section 19 of the Education Act 2002” there were substituted “under section 36(1) and Schedule 9”;
- (b) in paragraph 2(1) for “in accordance with regulations made by virtue of section 19 of the Education Act 2002” there were substituted “under section 36(1) and Schedule 9”; and
- (c) for paragraph 13(1) there were substituted:

“(1) The following provisions shall not apply in relation to the interim executive board:

 - (a) section 36(1);
 - (b) Schedule 9;
 - (c) paragraphs 1 and 4 of Schedule 10 and paragraph 3(7)(a) of that Schedule in so far as the instrument of government of the school relates to the constitution of the governing body;
 - (d) paragraphs 2 to 4 and 6 to 8 of Schedule 11; and
 - (e) any regulations made under the provisions contained in Schedules 9 to 11 save for regulations 39 and 40 of the Education (School Government) (England) Regulations 1999(a).”.

Modification of regulations 39 and 40 of the Education (School Government) (England) Regulations 1999

6. Where an appropriate authority^(b) has appointed a governing body consisting of interim executive members constituted in accordance with Schedule 1A to the 1998 Act, the Education (School Government) (England) Regulations 1999 (as they apply by virtue of paragraph 13(1)(e) of Schedule 1A to the 1998 Act as modified by regulation 5) have effect as if:

- (a) in regulation 39(1) the words “subject to paragraph 2” and “by a person acting as clerk to the governing body for the purposes of the meeting” are omitted; and
- (b) regulations 39(2), 39(3) and 40(3) are omitted.

Modification of section 44 of the 1998 Act

7. Section 44 of the 1998 Act (arrangements for government of new schools) shall prior to the coming into force of its repeal (effected by Schedule 22 to the 2002 Act) have effect as if:

- (a) for subsection (3) there were substituted—

“(3) The local education authority shall secure that the governing body are so constituted on or before 31st August 2003.”; and
- (b) in subsection (4) for “the school opening date” there were substituted “1st September 2003”.

Modification of the Education (New Schools) (England) Regulations 1999(c)

8. Regulation 31 of the Education (New Schools) (England) Regulations 1999 is amended as follows:

- (a) in paragraph (1) for “the school opening date” there is substituted “1st September 2003”;

(a) SI 1999/2163 to which there are amendments not relevant to these Regulations.

(b) An “appropriate authority” is defined under paragraph 1(1) of Schedule 1A to the 1998 Act.

(c) S.I. 1999/2262.

- (b) in paragraph (2) the words “for the purpose of constituting the governing body” are omitted; and
- (c) paragraph (3) is omitted.

8th August 2002

David Miliband
Minister of State
Department for Education and Skills

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make transitional provisions in connection with the bringing into force, on 2nd September 2002, of provisions in the Education Act 2002 relating to the power of a governing body to provide community services and intervention powers in schools causing concern. Modification is also made to provisions in the School Standards and Framework Act 1998 to arrangements for the government of new schools.

Regulation 3 ensures that until sections 21 and 39 of, and paragraph 1 of Schedule 1 to, the 2002 Act come into force, references in sections 27 and 28 of, and paragraph 3 of Schedule 1 to, the 2002 Act shall have effect as if they were references to relevant provisions in the School Standards and Framework Act 1998.

Regulation 4 ensures that inspectors' reports which were made prior to 2nd September 2002 have the same effect as if they had been made on 2nd September and a notice had been served under section 16A(2) of the School Inspections Act 1996 (as inserted by the 2002 Act) and can be relied on by either the Secretary of State or the local education authority in exercising their powers of intervention in schools causing concern.

Regulations 5 and 6 modify certain provisions where an interim executive board takes the place of a normally constituted governing body. Under regulation 5, references in Schedule 1A to the 1998 Act (as inserted by Schedule 6 to the 2002 Act) to school governance provisions to be made under section 19 to the 2002 Act, are modified until section 19 of the 2002 Act comes into force. Regulations 39 and 40 of the Education (School Government) (England) Regulations 1999 apply to interim executive boards with certain modifications.

Regulations 7 and 8 make modifications to section 44 of the 1998 Act and to regulation 31 of the Education (New Schools) (England) Regulations 1999 so that new schools which open on or after 2nd September 2002 need not constitute a governing body or have an instrument of government until 1st September 2003 so as to avoid the need to constitute under the 1998 Act and then re-constitute under the new arrangements once the relevant provisions of the 2002 Act have come into force.

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