
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations govern the operation of companies formed or joined by governing bodies of maintained schools using their powers under section 11 of the Education Act 2002. The Regulations refer to the companies which they apply to as “school companies”. Companies which are formed with the purpose of facilitating or entering into agreements under the private finance initiative are excluded from the ambit of these Regulations and separate regulations which have not yet been made will apply to those companies instead.

Regulation 5 and Schedule 1 set out the persons who are permitted to become and those prohibited from becoming, members of school companies.

Regulation 6 requires a school company’s constitution to limit the circumstances in which the company may enter into contracts in which its directors have an interest, if the constitution permits such contracts at all. A school company may only enter into a contract in which a director has an interest if the company needs the goods or services to be provided under the contract and the company is not paying an inflated price for them.

Regulation 7 requires a school company’s constitution to provide that where a director of the company has an interest in any matter under discussion by the board of directors he must declare his interest and withdraw from the meeting without taking any part in the discussion or vote on the matter.

Regulation 8 requires a school company to have at least 40% of its board of directors be non-executive directors and deals with the process for deciding remuneration of executive directors. The company must establish a remuneration committee made up of non-executive directors only. The company’s constitution must provide that either the remuneration committee will decide director’s salaries or that the whole board of directors will do so following a recommendation from the remuneration committee.

Regulation 9 allows a director to be present for discussion of benefits which accrue to all executive directors equally, such as pension provision and insurance, but it prohibits him from being present whilst his own terms of service and remuneration are under discussion.

Regulation 10 requires the school company’s constitution to set out how any surplus funds generated by the company may be either re-applied for the company’s objects or divided among the members.

Regulation 11 requires the company’s constitution to prevent the company from borrowing at all unless it has the permission of its supervising authority to do so. Part 4 of the regulations deal with a school company’s supervising authority.

A governing body which is a member of a school company is limited in the circumstance in which it can make payments into company funds by regulation 12. It can only make payments for goods and services that it has received from the company or where such payments are necessary or expedient to enable the company to pursue its objects.

Regulation 13 requires a maintained school governing body to either resign from a school company or reduce their involvement in the management of the company in accordance with regulation 32 if the school’s delegated budget is suspended.

The constitution of a school company must require members to give 12 weeks notice of their resignation from the company (regulation 14).

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

Under section 12(1) of the Education Act 2002 a governing body of a maintained school is required to obtain the permission of its local education authority before forming or joining a school company. Regulation 15 sets out the grounds on which a local education authority may refuse permission to a governing body to become a member of a school company. Where the local education authority does refuse its permission, regulation 16 requires it to provide written reasons for the refusal to the governing body.

Regulation 17 sets out the requirement for a school company to have a local education authority as its supervising authority and specify how the supervising authority for a company is to be selected. If all the maintained school governing bodies who are members of the school company are from the same local education authority then that local education authority is designated as the supervising authority for the company.

If there is one local education authority which maintains schools whose governing bodies are members of the school company and which is not a member of the company itself then that local education authority is the supervising authority for the company.

In the remaining circumstances regulation 18 will apply and the relevant local education authorities must either decide amongst themselves which of them will be designated as the supervising authority or, if they cannot agree, request the Secretary of State to designate a supervising authority for the company.

Regulation 17 also allows a school company to request the Secretary of State to designate a different local education authority to be the company's supervising authority if the company is to provide services or facilities to schools and the operation of the Regulations would result in a local education authority which the company would be in competition with becoming the company's supervising authority.

Regulation 19 provides that the Secretary of State shall serve written notice on the school company, its relevant local education authorities and the supervising authority when he designates a supervising authority for the company. It also allows the Secretary of State to revoke a designation of a local education authority as supervising authority for a school company and replace that with a newly designated supervising authority.

Regulation 20 provides that revocation and designation of supervising authority status must be notified in writing to the company, the supervising authority and the relevant local education authorities stating the dates on which the status change takes effect.

Where the relevant local education authorities for a school company agree amongst themselves which authority will be designated as the supervising authority then that authority may resign after two years as the supervising authority (regulation 21).

If the supervising authority for a company maintains schools whose governing bodies are members of the company and all those governing bodies leave the company then regulation 22 requires the supervising authority to resign by giving 56 days notice.

If a supervising authority resigns from its role, regulation 23 provides that the relevant local education authorities should agree a new supervising authority or request the Secretary of State to appoint a new one if they cannot agree.

Regulation 24 requires a school company to notify its supervising authority if its membership changes so that it ceases to be governed by these Regulations, and the supervising authority must notify the Secretary of State that this is the case.

The supervising authority of a company has initial duties to notify the Secretary of State of the particulars of its company when it becomes the supervising authority under regulation 25, and ongoing duties to monitor the finances and management of the company under regulation 26. It must notify members of the company and relevant local education authorities if it considers that the company is poorly managed or there is a risk that the company may become insolvent.

The supervising authority of a company is required by regulation 27 to notify the Secretary of State of changes to the company's name, registered number and any change in membership of the company. It must also notify the Secretary of State if the membership of the company no longer contains any governing bodies of schools which it maintains.

Regulation 28 requires a school company to provide a copy of its audited accounts to its supervising authority at regular intervals. When the company is either first incorporated as a school company or first includes members which bring it within the ambit of these regulations then the company must provide audited accounts of its first 6 months of operation as a school company to the supervising authority within 10 months of becoming a school company. After that the requirement reduces to providing annual audited accounts to the supervising authority, unless the supervising authority directs more frequent reports on the company's finances under regulation 29.

Regulation 28 also requires a school company to provide its supervising authority with a copy of its memorandum and articles of association and to notify the authority of changes to its constitution and provide them with a copy of its amended constitution.

Regulation 29 sets out the powers which a supervising authority has over a school company. There are four ways in which the authority can direct in relation to the company. Firstly it can direct the company to provide it with information. Secondly it can direct a company to take steps to comply with the regulations. Thirdly it can direct a company member which is a governing body of a maintained school to reduce its involvement in the management of the company. Fourthly it can direct a maintained school governing body to resign its membership of the company.

There are circumstances set out in regulation 30 where the supervising authority must direct the governing body of a maintained school to either reduce its involvement in the management of the company or resign its membership of the company. These are where the school becomes subject to special measures, is assessed as having serious weaknesses, the school has a deficit budget or the supervising authority considers that the school is likely to go into special measures or be assessed as having serious weaknesses. Further, the supervising authority must direct the governing bodies of maintained schools which are members of a school company to resign from the company if the company disobeys a direction to comply with these Regulations.

Regulation 31 provides that a supervising authority must serve a warning notice on a school company and a governing body if it is intending to direct a governing body to reduce its involvement or resign from the company. That notice must be served at least 28 days before the direction is issued. It also allows the governing body and the company 14 days to make written representations opposing the direction.

Regulation 32 sets out how a governing body is to reduce its involvement in the management of a school company when it is directed to do so by the supervising authority. It must ensure that the school staff are not engaged in the company's affairs within 28 days and it must cease to make payments to the school company apart from to settle outstanding liabilities or to pay for goods, facilities or services required by the school.

Regulation 33 sets out what a governing body must do when it is directed to resign from a school company by the supervising authority. It must reduce its involvement in the company in line with regulation 32 as soon as practicable, and it must, within 7 days of the direction, give the company 12 weeks notice of its resignation.

Regulation 34 permits a supervising authority to revoke any direction given to a governing body by informing the governing body in writing that the direction is revoked.