

**2003 No.1558**

**EDUCATION, ENGLAND**

**New Schools (General) (England) Regulations 2003**

*Made* - - - - - *12th June 2003*

*Laid before Parliament* *19th June 2003*

*Coming into force* - - - *10th July 2003*

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In exercise of the powers conferred upon the Secretary of State by sections 72(1) and 138(7) of the School Standards and Framework Act 1998(a) and sections 34(5) and (6), 210(7) and 214 of the Education Act 2002(b), the Secretary of State for Education and Skills hereby make the following Regulations(c):

## PART 1

### Introduction

#### **Citation and commencement**

1. These Regulations may be cited as the New Schools (General) (England) Regulations 2003 and shall come into force on 10th July 2003.

#### **Revocation, savings and transitional provisions**

2.—(1) The Education (Government of New Schools on Transition to New Framework) Regulations 1998(d) are hereby revoked(e).

(2) Parts I to V, VII and VIII of the Education (New Schools) (England) Regulations 1999(f) (“the 1999 Regulations”) are revoked save as provided in paragraphs (3) and (4).

(3) Part I of the 1999 Regulations shall continue to have effect in so far as it relates to Part VI.

(4) Parts I to IV of the 1999 Regulations shall continue to have effect in relation to any temporary governing body established prior to the coming into force of these Regulations.

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(a) 1998 c.31. By virtue of the National Assembly for Wales (Transfer of Functions) Order 1999 (SI 1999/672) the powers conferred by these provisions are exercisable by the Secretary of State only in relation to England. Section 72 is amended by paragraph 106 of Schedule 21 to the 2002 Act.

(b) 2002 c.32.

(c) By virtue of section 212(2) of the 2002 Act the powers conferred by these provisions are exercisable by the Secretary of State only in relation to England.

(d) SI 1998 No. 3097.

(e) The revocation applies only in relation to England.

(f) SI 1999 No. 2262.

3. Regulations 21(1), 26, 27, 31, 32(2), 34(2) of the Education (School Government) (England) Regulations 1999(a) (“the School Government Regulations”) are hereby revoked.

4. The revocation of the following provisions of the School Government Regulations 1999 made by regulation 2 of the School Governance (Constitution) (England) Regulations 2003(b) has effect on 10th July 2003 instead of 1st September 2003:

- (a) the words “and new schools” in regulation 1(3);
- (b) the definitions of “temporary governing body” and “temporary governors” in regulation 2(2); and
- (c) the words “or temporary governing body (however constituted)” and “or (as the case may be) new school” in regulation 3.

5. The revocation of the following provisions of the School Government Regulations made by regulation 2 of the School Governance (Procedure) (England) Regulations 2003(c) has effect on 10th July 2003 instead of 1st September 2003:

- (a) the words “Subject to paragraph (1),” in regulation 21(2);
- (b) the words “or new school” in regulation 28;
- (c) the words “(other than the temporary governing body of a new school)” in regulations 29(1) and 30(1);
- (d) the words “,other than a new school,” in regulation 34(1);
- (e) the words “or (2)” and “, or a meeting of the temporary governing body as often as occasion may require” in regulation 42(1)(u);
- (f) the words “or a new school” in regulations 45(1) and 57(1)(a); and
- (g) paragraph (3) of regulation 56.

## Interpretation

6.—(1) In these Regulations—

“the 1996 Act” means the Education Act 1996(d);

“the 1998 Act” means the School Standards and Framework Act 1998;

“the 2000 Act” means the Learning and Skills Act 2000(e);

“the 2002 Act” means the Education Act 2002;

“the Constitution Regulations” means the School Governance (Constitution) (England) Regulations 2003;

“head teacher designate” means a person who has been appointed as the head teacher of a new school but who has not yet taken up the post;

“local education authority” means the local education authority by which a maintained school is, or a proposed such school is to be, maintained;

“new school” has the meaning given by section 72(3) of the 1998 Act; and

“pupil” has the meaning given by section 3 of the Education Act 1996(f).

(2) In these Regulations, references to a school having a delegated budget are to be interpreted in accordance with section 39(2) of the 2002 Act.

(3) Prior to the coming into force of section 122 of the 2002 Act, when it shall be interpreted in accordance with that provision, “school teacher” means a teacher who is employed by—

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(a) SI 1999 No. 2163.

(b) SI 2003 No. 348.

(c) SI 2003 No. 1377.

(d) 1996 c.56.

(e) 2000 c.21.

(f) Section 3 was amended by paragraph 34 of Schedule 21 to the Education Act 2002.

- (a) a local education authority, or
- (b) a governing body,

in the provision of primary or secondary education.

(4) Any reference in these Regulations to—

- (a) a committee is a reference to a committee established by the temporary governing body to which the temporary governing body has delegated any of its statutory functions;
- (b) a temporary governing body is a reference to the temporary governing body of any school or proposed school in respect of which the provision applies;
- (c) a temporary governor of a particular category shall be interpreted in accordance with Part 3.

### **Service of notices**

7. Any notice required to be served by or under these Regulations shall be served in accordance with section 572 of the 1996 Act.

## **PART 2**

### **Arrangements for the Incorporation of Temporary Governing Bodies**

#### **Arrangements made in anticipation of approval of proposals**

8.—(1) Where any proposals to establish a maintained school have been published under any enactment<sup>(a)</sup>, the local education authority may make arrangements in anticipation of approval of the proposals<sup>(b)</sup> or in anticipation of a determination by the authority that the proposals should be implemented<sup>(c)</sup>.

(2) If proposals are to establish a voluntary controlled school, the local education authority shall consult the promoters—

- (a) as to whether the power given to the local education authority in paragraph (1) above should be exercised; and
- (b) if the local education authority proposes to exercise it, as to the date on which the arrangements should be made.

(3) If proposals are to establish a voluntary aided or foundation school, the local education authority and the promoters shall consider—

- (a) whether the power given to the local education authority in paragraph (1) above should be exercised, and
- (b) where they agree that it should, on what date the arrangements should be made.

(4) Where in a case falling within paragraph (3) the local education authority and the promoters fail to agree on the question referred to in sub-paragraph (a) or on that referred to in sub-paragraph (b), either of them may refer the matter to the Secretary of State and on a reference under this paragraph the Secretary of State shall give such direction as he thinks fit.

#### **Agreements necessary for arrangements**

9.—(1) Where proposals to establish a foundation school or a voluntary school have been published by promoters, a local education authority shall not make arrangements in respect of the

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<sup>(a)</sup> Proposals may be published under section 28 or 31 of, or paragraph 5 of Schedule 7 to, the 1998 Act, section 113A<sup>(a)</sup> of the 2000 Act or section 70 of the 2002 Act.

<sup>(b)</sup> Under paragraph 3 of Schedule 6 or paragraph 8 or 9 of Schedule 7 to the 1998 Act, section 113A(5)(a) of the 2000 Act or paragraph 3 of Schedule 8 to the 2002 Act.

<sup>(c)</sup> Under paragraph 4 of Schedule 6 to the 1998 Act.

school without the agreement of the promoters as to any provision which will be made in relation to the temporary foundation governors.

(2) In the event of any disagreement between the local education authority and the promoters in respect of the provision referred to in paragraph (1), either of them may refer the issue to the Secretary of State and, on a reference under this paragraph the Secretary of State, shall give such direction as he thinks fit.

## PART 3

### Categories of Temporary Governor

#### Temporary parent governors

**10.**—(1) In these Regulations, “temporary parent governor” means a person appointed to be a member of the temporary governing body of a new school by

- (a) the local education authority, where a new school is or will be a community, voluntary controlled, community special or foundation special school, a maintained nursery school or a foundation school proposals for the establishment of which were published by a local education authority; or
- (b) the promoters, where a new school is or will be a voluntary aided school, or a foundation school proposals for the establishment of which were published by promoters.

(2) Where one or more maintained schools have been, or are to be, discontinued (“the discontinued schools”), and the registered pupils at such school or schools, or a substantial number of those pupils, are expected to transfer to a new school, the arrangements made under regulation 8 shall provide for the governing body of the discontinued school (or, as the case may be, any of the governing bodies of the discontinued schools) to appoint some or all of the temporary parent governors of the new school.

(3) Subject to paragraph (5), no person shall be appointed as a temporary parent governor of a new school unless—

- (a) he is the parent of a child who is or is likely to become a registered pupil at the school; or
- (b) where it is not reasonably practicable to appoint such a person, he is the parent of a child of or under compulsory school age.

(4) No person shall be appointed as a temporary parent governor of a school which is or will be a maintained special school unless he is—

- (a) the parent of a child who is or is likely to become a registered pupil at the school;
- (b) where one or more maintained special schools have been, or are to be, discontinued (“the discontinued special schools”) and the registered pupils at such school or schools, or a substantial number of those pupils, are expected to transfer to the new school, a parent of a former pupil of the discontinued special schools;
- (c) the parent of a child of or under compulsory school age with special educational needs; or
- (d) a parent with experience of educating a child with special educational needs.

(5) The temporary governing body may only appoint a person referred to in sub-paragraphs (4) (b), (c) or (d) if it is not reasonably practicable to appoint a person referred to in the sub-paragraph which immediately precedes it.

(6) A person shall be disqualified from appointment as a temporary parent governor if he is—

- (a) an elected member of the local education authority; or
- (b) paid, or likely to be paid, to work at the school for more than 500 hours in any twelve month period commencing on 1st August and finishing on 31st July.

(7) A person shall not be disqualified from continuing to hold office as a temporary parent governor when he ceases to fulfil any of the requirements set out in paragraphs (4) and (5), unless he is otherwise disqualified under these Regulations.

### **Temporary staff governors**

11.—(1) In these Regulations “temporary staff governor” means—

- (a) the head teacher or head teacher designate, who is a temporary staff governor by virtue of his office unless he resigns the position in accordance with regulation 23(1);
- (b) a person who is appointed to be a member of the temporary governing body of a new school in accordance with this regulation and who is paid to work at a maintained school.

(2) Subject to paragraph (3) any temporary staff governor shall be appointed by the temporary governing body.

(3) In the case of a new school which is or will be a voluntary aided school or a foundation school proposals for the establishment of which were published by promoters, a person shall not be appointed under paragraph (2) unless he has been nominated for appointment as a temporary staff governor by the promoters.

(4) Where a person has been nominated in accordance with paragraph (3) by the promoters, that person shall be co-opted as a temporary staff governor.

(5) At least one temporary staff governor (in addition to the head teacher or head teacher designate) shall be a school teacher unless no school teacher is willing to be appointed.

(6) Where there will be three or more temporary staff governors, at least one temporary staff governor shall be a person who is not a school teacher unless no such person is willing to be appointed.

(7) Where one or more maintained schools have been, or are to be, discontinued (“the discontinued schools”) and the registered pupils at such school or schools or a substantial number of those pupils, are expected to transfer to a new school, the arrangements made under regulation 8 shall provide for the governing body of the discontinued school (or, as the case may be, any of the governing bodies of the discontinued schools) to appoint some or all of the temporary staff governors of the new school.

(8) A temporary staff governor shall, upon ceasing to work at a maintained school, be disqualified from continuing to hold office as such a temporary governor.

### **Temporary LEA governors**

12.—(1) In these Regulations “temporary LEA governor” means a person appointed to be a member of the temporary governing body of a new school by the local education authority.

(2) A person is disqualified from appointment as a temporary LEA governor of a school if he is eligible to be a temporary staff governor of a school.

### **Temporary community governors**

13.—(1) In these Regulations, “temporary community governor” means a person who is appointed to be a member of the temporary governing body of a new school by the local education authority and who is:

- (a) a person who lives or works in the community served, or to be served, by the new school;  
or
- (b) a person who, in the opinion of the temporary governing body, is committed to the good government and success of the new school.

(2) Where a new school is, or will be, a community special school or a foundation special school(a), Schedule 1 shall apply.

(3) A person shall be disqualified from appointment as a temporary community governor if he:

- (a) is or is likely to become a registered pupil at the new school;
- (b) is eligible to be a temporary staff governor of the new school; or

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(a) Within the meaning of section 20 of, and Schedule 2 to, the 1998 Act.

- (c) is an elected member of the local education authority.

### **Temporary foundation governors**

14.—(1) In these Regulations, “temporary foundation governor” means a person who is appointed as a member of the temporary governing body of a new school, otherwise than by the local education authority, and who:

- (a) where the new school has, or the proposals for its establishment indicate that it will have, a particular religious character designated or intended to be designated by order under section 69(3) of the 1998 Act, is appointed for the purpose of securing that the character is established and developed;
- (b) where the new school has or will have a trust deed, is appointed for the purpose of securing that new school is established and conducted in accordance with that deed; or
- (c) where the new school does not have, nor will have, either a particular religious character or a trust deed, is appointed as a temporary foundation governor of the new school.

(2) “Ex officio temporary foundation governor” means a temporary foundation governor who is the holder of an office by virtue of which he is entitled to be a temporary foundation governor.

(3) A temporary ex officio foundation governor shall, upon ceasing to hold the office from which his temporary governorship derives, be disqualified from continuing to hold office as such a temporary governor.

### **Temporary partnership governors**

15.—(1) In these Regulations “temporary partnership governor” means

- (a) in the case of a new foundation school proposals for the establishment of which were published by a local education authority, a person appointed as such by the local education authority;
- (b) in any other case, a person nominated as such by the promoters and appointed as such by the temporary governing body.

(2) A person who nominates a person for appointment as, or appoints a person as, a temporary partnership governor must be satisfied that the nominee or appointee appears to be—

- (a) from the community which the new school serves or will serve; or
- (b) committed to the good government and success of the school.

(3) A person shall be disqualified from nomination or appointment as a temporary partnership governor of a new school if he:

- (a) is a parent of a child who is or is likely to become a registered pupil at the new school;
- (b) is or is likely to become a registered pupil at the new school;
- (c) is eligible to be a temporary staff governor of the new school;
- (d) is an elected member of the local education authority; or
- (e) is employed by the local education authority in connection with their functions as a local education authority.

### **Temporary sponsor governors**

16.—(1) In these Regulations—

- (a) “temporary sponsor governor” means a person appointed to be a member of a temporary governing body of a new school in accordance with paragraph (2);
- (b) “sponsor” in relation to a school means:
  - (i) a person who gives or has given substantial financial assistance (which for these purposes includes benefits in kind) to the school other than pursuant to a statutory obligation; or



(ii) any other person (not being otherwise represented on the governing body) who provides or has provided substantial services to the school.

(2) Where a new school has one or more sponsors, the temporary governing body may appoint one or two temporary sponsor governors, nominated in accordance with paragraph (3).

(3) Where the temporary governing body intends to appoint temporary sponsor governors, it shall seek nominations for such appointments from the school's sponsor or, as the case may be, from one or more of the school's sponsors.

### **Temporary associate members**

**17.**—(1) In these Regulations “temporary associate member” means a person appointed by the temporary governing body to one or more committees of the temporary governing body but who is not a member of the temporary governing body.

(2) A temporary associate member shall hold office for such period as may be determined by the temporary governing body at the date of his appointment.

(3) Nothing in this regulation shall prevent a temporary associate member from being reappointed at the expiration of his term of office or from being appointed as an associate member of the governing body.

(4) Temporary associate members shall not be counted in any quorum and shall not form the majority of members on any committee to which they are appointed.

(5) Subject to paragraph (6), temporary associate members shall have such voting rights in the committees to which they are appointed as shall be determined by the temporary governing body at the date of their appointment.

(6) Temporary associate members may not vote on any resolution concerning—

- (a) staff appointments, pay, discipline, performance management, grievance or dismissal;
- (b) admissions;
- (c) pupil discipline;
- (d) appointment of temporary governors; or
- (e) the budget and financial commitments of the temporary governing body.

(7) A temporary associate member may be removed from office by the temporary governing body at any time.

(8) Any person who is disqualified from holding office as a temporary governor of a new school under regulation 26 is likewise disqualified from appointment as, or from continuing as, a temporary associate member.

## **PART 4**

### **Composition of Temporary Governing Bodies**

#### **General principles**

**18.**—(1) The size of the membership of the temporary governing body, being no fewer than 9 or more than 20 temporary governors, shall be determined by the local education authority.

(2) In determining the size of the membership of the temporary governing body, the local education authority must not include:

- (a) any temporary sponsor governors; or
- (b) any additional temporary foundation governors appointed in accordance with regulation 21(2)(b).

(3) In calculating the number of temporary governors required in each category in accordance with regulations 19 to 22, the numbers shall be rounded up or down to the nearest whole number.

(4) In calculating the number of temporary staff governors required, the head teacher shall be included whether or not he has resigned his governorship.

**New community schools, new community special schools and new maintained nursery schools**

**19.**—(1) The temporary governing body of a proposed community school, proposed community special school(a) or proposed maintained nursery school(b) shall be composed as follows:

- (a) one third or more shall be temporary parent governors;
- (b) at least two but no more than one third shall be temporary staff governors;
- (c) one fifth shall be temporary LEA governors; and
- (d) one fifth or more shall be temporary community governors.

(2) The temporary governing body may in addition appoint up to two temporary sponsor governors.

**New foundation schools and new foundation special schools**

**20.**—(1) The temporary governing body of a proposed foundation school or a proposed foundation special school(c) shall be composed as follows:

- (a) one third or more shall be temporary parent governors;
- (b) at least two but no more than one third shall be temporary staff governors;
- (c) at least one but no more than one fifth shall be temporary LEA governors;
- (d) one tenth or more shall be temporary community governors; and
- (e) at least two but no more than one quarter shall be temporary foundation governors or, where the proposed school does not have or does not propose to have a foundation, temporary partnership governors.

(2) The temporary governing body may in addition appoint up to two temporary sponsor governors.

**New voluntary aided schools**

**21.**—(1) The temporary governing body of a proposed voluntary aided school(c) shall be composed as follows:

- (a) at least two but no more than one third shall be temporary staff governors;
- (b) at least one but no more than one tenth shall be temporary LEA governors;
- (c) at least one shall be a temporary parent governor; and
- (d) such number of temporary foundation governors as outnumber all the other temporary governors listed in sub-paragraphs (a) to (c) by two.

(2) In addition-

- (a) the temporary governing body may appoint up to two temporary sponsor governors; and
- (b) the person who is entitled to appoint temporary foundation governors may appoint such number of additional temporary foundation governors (up to two) as are required to preserve their majority.

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(a) Within the meaning of section 20 of, and Schedule 2 to, the 1998 Act.

(b) Within the meaning of section 39(1) of the 2002 Act.

(c) Within the meaning of section 20 of, and Schedule 2 to, the 1998 Act.

### **New voluntary controlled schools**

**22.**—(1) The temporary governing body of a proposed voluntary controlled school<sup>(a)</sup> shall consist of the following:

- (a) one third or more shall be temporary parent governors;
- (b) at least two but no more than one third shall be temporary staff governors;
- (c) at least one but no more than one fifth shall be temporary LEA governors;
- (d) one tenth or more shall be temporary community governors; and
- (e) at least two but no more than one quarter shall be temporary foundation governors.

(2) The temporary governing body may in addition appoint up to two temporary sponsor governors.

## **PART 5**

### **Tenure of Office and Qualifications**

#### **Resignation**

**23.**—(1) Any member of a temporary governing body may resign his governorship by giving written notice to the clerk to the temporary governing body of the school.

(2) An ex officio temporary foundation governor may resign as a temporary governor either permanently or temporarily but his resignation shall not prejudice the temporary governorship of his successor in the office from which the ex officio temporary governorship derives.

(3) The head teacher may withdraw his resignation at any time by giving written notice to the clerk to the temporary governing body.

#### **Removal**

**24.** Any temporary governor of a new school may be removed from office by the person or persons who appointed him, who must give written notice thereof to the clerk to the temporary governing body and to the governor so removed.

#### **Procedure for removal of temporary governors by the temporary governing body**

**25.**—(1) This regulation applies in relation to the removal from office of:

- (a) a temporary parent governor appointed by the temporary governing body,
- (b) a temporary staff governor, other than the head teacher or head teacher designate,
- (c) a temporary partnership governor appointed by the temporary governing body, or
- (d) a temporary sponsor governor.

(2) A resolution to remove a temporary governor from office which is passed at a meeting of the temporary governing body will not have effect unless—

- (a) before the temporary governing body resolve to remove the temporary governor from office, the temporary governor or governors proposing his removal, at that meeting, state their reasons for doing so and the governor whom it is proposed be removed is given an opportunity to make a statement in response;
- (b) it is confirmed by a resolution passed at a second meeting of the temporary governing body held not less than fourteen days after the first meeting; and
- (c) the matter of the temporary governor's removal from office is specified as an item of business on the agenda for each of those meetings.

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(a) Within the meaning of section 20 of and Schedule 2 to the 1998 Act.

### **Qualifications and disqualifications**

26. Schedule 2 sets out the circumstances in which a person is qualified for or disqualified from holding or continuing in office, or from being appointed or nominated as a temporary governor of a new school.

### **Expenses**

27. Where a temporary governing body is constituted for a new school the local education authority shall be under the same duty to defray the expenses incurred in relation to the temporary governing body as they would be if the relevant proposals had been implemented and the temporary governing body were the governing body of the school.

### **Explanatory information**

28. The local education authority shall secure that the members of the temporary governing body of a new school are, on being appointed, provided (free of charge) with such information as the authority consider they require to enable the temporary governing body to discharge its functions effectively.

## **PART 6**

### **General Conduct of New Schools**

#### **Interpretation and application of Part 6**

29. In this Part “proposed school” means a school which has not yet opened for which there is a temporary governing body constituted in accordance with arrangements under section 34 of the 2002 Act.

30. This Part does not apply to any committee established by the temporary governing body to exercise functions relating to the appointment, grievance, conduct and discipline, capacity, suspension or dismissal of individual members of the school staff.

#### **Conduct of the school before the school opening date**

31. Section 61 of the 1998 Act and sections 27 and 28 of, and Schedule 1 to, the 2002 Act shall apply in relation to a proposed school<sup>(a)</sup> with the following modifications—

- (a) references to governing body shall be treated as references to temporary governing body;
- (b) references to a maintained school shall be treated as including a reference to a proposed maintained school;
- (c) references to the instrument of government shall be treated as a reference to the instrument of government whether or not it has taken effect; and
- (d) section 61(3)(b) and (7) of the 1998 Act and paragraphs 2(2) and 2(3) of Schedule 1 to the 2002 Act shall not apply.

#### **Conduct of the school on or after the school opening date**

32.—(1) During the period—

- (a) beginning with the school opening date; and

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<sup>(a)</sup> Section 34(7) of the 2002 Act provides that for the purposes of section 30(3) of that Act and sections 495 to 498 of the 1996 Act, the temporary governing body shall be treated as if they were the governing body at any time before the school opening date.

- (b) ending with the time when the governing body are constituted for the school under an instrument of government,

Schedule 1 to the 2002 Act shall apply(a) with the modifications set out in paragraph (2).

(2) The modifications are as follows–

- (a) for references to “governing body” there shall be substituted references to “temporary governing body”;
- (b) in paragraph 2(1) of Schedule 1 to the 2002 Act, the words “as for the time being set out in the school’s instrument of government” shall be omitted; and
- (c) paragraphs 2(2) and 2(3) of Schedule 1 to the 2002 Act shall not apply.

### **Execution of documents by the temporary governing body**

**33.**—(1) Only the chair of the temporary governing body, or where that is not reasonably practicable the vice-chair, may make and issue instruments on behalf of the temporary governing body.

(2) Every document purporting to be an instrument made or issued by or on behalf of the temporary governing body and to be signed or executed by the chair or vice chair of the temporary governing body shall be received in evidence and be treated, without further proof, as being so made or issued unless the contrary is shown.

### **Preparation of the curriculum**

**34.** The head teacher of a proposed school shall, in preparing to discharge his functions under Part 6 of the 2002 Act in relation to the curriculum for the school, consult the temporary governing body and the local education authority.

### **School terms, holidays and sessions**

**35.**—(1) In the case of a proposed school which will be a community, voluntary controlled, community special school or maintained nursery school–

- (a) the local education authority shall determine the dates when the school terms and holidays are to begin and end; and
- (b) the temporary governing body shall determine the times of the school sessions after consultation with the authority.

(2) In the case of a proposed school which will be a foundation, voluntary aided or foundation special school, the temporary governing body shall determine–

- (a) the dates and times when the school terms and holidays are to begin and end; and
- (b) the times of the school sessions.

(3) In this regulation “the times of the school sessions” means the times at which each of the school sessions (or, if there is only one, the school session) is to begin and end on any day.

### **Chair and vice chair of temporary governing body**

**36.**—(1) The members of the temporary governing body shall, at their first meeting, elect a chair and vice-chair from among their number, subject to paragraph (6).

(2) The chair or vice-chair of a temporary governing body may at any time resign his office by giving notice in writing to the clerk to the temporary governing body.

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(a) Under section 34(7) of the 2002 Act, the temporary governing body of a school shall be treated for the purposes of the Education Acts as if they were the governing body during the period beginning with the school opening date and ending with the time the governing body are constituted under an instrument of government; subject to section 34(8) under which Schedule 1 does not apply to temporary governing bodies unless provided for in regulations made under section 34(5).

- (3) The chair or vice-chair of the temporary governing body shall cease to hold office as such if—
- (a) he ceases to be a member of the temporary governing body;
  - (b) he is paid to work at the new school;
  - (c) he is removed from office in accordance with regulation 38; or
  - (d) in the case of a vice-chair, he is elected in pursuance of paragraph (4) to fill a vacancy in the office of chair.

(4) Where a vacancy arises in the office of chair or vice-chair, the temporary governing body shall at their next meeting elect one of their members to fill that vacancy subject to paragraph (6).

(5) Where the chairman is absent from any meeting or there is at any time a vacancy in the office of the chair, the vice-chair shall act as the chair for all purposes.

(6) Every member of the temporary governing body of a new school shall be eligible for election as chair or vice-chair of the temporary governing body or as a chair of a meeting except a member who is

- (a) the head teacher or head teacher designate of the new school;
- (b) a person employed to work at the new school or, in the opinion of the other temporary governors, likely to be so employed; or
- (c) a pupil at the new school, or a person who, in the opinion of the other temporary governors, is likely to be such a pupil.

#### **Delegation of functions to the chair and vice-chair in cases of urgency**

**37.**—(1) The chair shall have the power, where in his opinion the circumstances mentioned in paragraph (2) apply, to exercise—

- (a) any function of the temporary governing body which can be delegated to an individual; and
- (b) any function that under regulation 49(2) cannot otherwise be delegated to an individual.

(2) The circumstances are that a delay in exercising the function would be likely to be seriously detrimental to the interests of—

- (a) the new school,
- (b) any pupil of, or person likely to become a pupil of, the new school,
- (c) a parent of any such pupil, or of any person likely to become such a pupil, or
- (d) a person who works, or is likely to work, at the new school.

(3) In paragraph (2) “delay” means delay for a period extending beyond the earliest date on which it would be reasonably practicable for a meeting of the temporary governing body, or a committee of the temporary governing body to which the function in question has been delegated, to be held.

(4) Where it appears to the vice-chair that—

- (a) the circumstances stated in paragraph (2) apply, and
- (b) the chair (whether by reason of a vacancy in his office or otherwise) would be unable to exercise the function in question before the detriment referred to in that paragraph is suffered,

the reference in paragraph (1) to the chair shall be read as if it were a reference to the vice-chair.

#### **Removal of the chair or the vice-chair from office**

**38.**—(1) Subject to paragraph (2), the temporary governing body may remove the chair or vice chair from office.

(2) A resolution to remove the chair or vice-chair from office shall not have effect unless the matter is specified as an item of business on the agenda for the meeting of the temporary governing body, of which notice has been given in accordance with regulation 43(4).

(3) Before the temporary governing body resolve to remove the chair or vice-chair from office, the temporary governor proposing his removal shall at that meeting state his reasons for doing so and the chair or vice chair (as the case may be) shall be given the opportunity to make a statement in response, before withdrawing from the meeting.

#### **Clerk to the temporary governing body**

**39.**—(1) The local education authority shall appoint the first clerk to the temporary governing body of a new school which will be a community, voluntary controlled, or community special school, maintained nursery school or a foundation or foundation special school proposals for the establishment of which were published by the local education authority.

(2) The promoters of the school shall appoint the first clerk to the temporary governing body of a new school which will be a voluntary aided or foundation school or a foundation special school proposals for the establishment of which were published by promoters.

(3) Subject to paragraphs (1) and (2)–

- (a) the local education authority shall appoint a person selected by the temporary governing body to be the clerk to the temporary governing body and to each committee, in the case of a school which is or will be a community, voluntary controlled, community special or maintained nursery school;
- (b) the temporary governing body shall appoint a clerk to the temporary governing body and each committee, in the case of a school which is or will be a foundation, voluntary aided or foundation special school.

(4) The clerk to the temporary governing body must not be–

- (a) a temporary governor;
- (b) a temporary associate member; or
- (c) the head teacher or head teacher designate of the new school.

(5) Notwithstanding paragraph (4), the temporary governing body or a committee may, if the clerk fails to attend a meeting, appoint any one of their number (who is not the head teacher or head teacher designate) to act as clerk for the purposes of that meeting.

#### **Functions of the clerk**

**40.** The clerk shall–

- (a) convene meetings in accordance with regulations 43 and 52(1);
- (b) attend meetings and ensure that minutes of the proceedings are produced in accordance with regulations 45(1) and 52(7);
- (c) maintain a register of members of the temporary governing body and of temporary associate members and report any vacancies to the temporary governing body;
- (d) maintain a register of temporary governors' attendance at meetings and report on non-attendance to the temporary governing body;
- (e) give and receive notices in accordance with regulations 23(1) and (3), 24, 36(2), 43(3) and (4), 52(2), 54(2) and paragraph 11 of Schedule 2;
- (f) report to the temporary governing body as required on the discharge of his functions; and
- (g) perform such other functions as shall be determined by the temporary governing body from time to time.

#### **Removal of the clerk**

**41.**—(1) This regulation is without prejudice to any rights and liabilities which the clerk may have under any contract with the temporary governing body or with the local education authority.

(2) The temporary governing body may by resolution remove from office the clerk to the temporary governing body or any clerk appointed to any of their committees.

(3) If at any time the new school does not have a delegated budget, the local education authority, having consulted the temporary governing body, may remove the clerk to the temporary governing body or the clerk of any committee of the temporary governing body and appoint a substitute.

### **Rights of persons to attend meetings of the governing body**

**42.**—(1) Subject to regulation 46 and to Schedule 3—

- (a) the following persons shall be entitled to attend any meeting of the temporary governing body or their committees—
  - (i) subject to regulation 47, a temporary governor;
  - (ii) the head teacher or head teacher designate of the new school, whether or not he is a temporary governor of that school;
  - (iii) the clerk to that meeting; and
  - (iv) such other persons as the temporary governing body may determine;
- (b) a temporary associate member shall be entitled to attend—
  - (i) any meeting of the temporary governing body; and
  - (ii) any meeting of a committee to which he has been appointed.

(2) The temporary governing body may exclude a temporary associate member from any part of their meeting or from a meeting of a committee of the temporary governing body when the business under consideration concerns a person who is, or is likely to become, a member of staff or pupil at the new school.

### **Convening meetings of the temporary governing body**

**43.**—(1) A temporary governing body shall hold a meeting as often as occasion may require.

(2) Meetings of the temporary governing body shall be convened by the clerk; and, without prejudice to paragraph (3), in exercising this function the clerk shall comply with any direction given by—

- (a) the temporary governing body;
- (b) the chair, so far as such direction is not inconsistent with any direction given under subparagraph (a).

(3) Any three members of the temporary governing body may requisition a meeting by giving written notice to the clerk that includes a summary of the business to be transacted; and it shall be the duty of the clerk to convene a meeting as soon as is reasonably practicable.

(4) The clerk shall give written notice of the meeting, a copy of the agenda for the meeting and any reports or other papers to be considered at the meeting at least seven clear days in advance to—

- (a) each temporary governor;
- (b) the head teacher or head teacher designate (if he is not a temporary governor); and
- (c) each temporary associate member (if any),

provided that where the chair so determines on the ground that there are matters demanding urgent consideration, it shall be sufficient if the written notice of the meeting states that fact and the notice, copy of the agenda, reports and other papers to be considered are given within such shorter notice period as he directs.

(5) The power of the chair to direct that a meeting be held within a shorter period shall not apply in relation to any meeting at which the chair's removal from office (under regulation 38) or the suspension of any temporary governor (under regulation 47) is to be considered.



### **Proceedings of the temporary governing body**

**44.**—(1) The quorum for a meeting of the temporary governing body and for any vote on any matter at such a meeting, shall be one half (rounded up to a whole number) of the membership of the temporary governing body when complete.

(2) Every question to be decided at a meeting of the temporary governing body shall be determined by a majority of the votes of the temporary governors present and voting on the questions.

(3) Where there is an equal division of votes the chair or, as the case may be, the person who is acting as chair for the purposes of the meeting (provided that such person is a governor), shall have a second or casting vote.

(4) The proceedings of the temporary governing body of a school shall not be invalidated by—

- (a) any vacancy among their number;
- (b) any defect in the election, appointment or nominations of any temporary governor; or
- (c) any defect in the appointment of any chair or vice-chair.

### **Minutes and papers**

**45.**—(1) The clerk (or the person appointed to act as clerk for the purpose of the meeting in accordance with regulation 39(5)) shall ensure that minutes of the proceedings of a meeting of the governing body are drawn up and signed (subject to the approval of the temporary governing body) by the chair of the next meeting.

(2) Subject to paragraph (3), the temporary governing body shall, as soon as reasonably practicable, make available for inspection by any interested person, a copy of—

- (a) the agenda for every meeting;
- (b) the signed minutes of every such meeting; and

(3) The temporary governing body may exclude from any item required to be made available in pursuance of paragraph (2) any material relating to—

- (a) a named person who works, or who it is proposed should work, at the new school;
- (b) a named pupil at, or candidate for admission to, the new school;
- (c) any other matter that, by reason of its nature, the temporary governing body is satisfied should remain confidential.

### **Restrictions on persons taking part in proceedings of the temporary governing body or their committees**

**46.**—(1) In this regulation and in Schedule 3—

- (a) “relevant person” means a temporary governor, a temporary associate member, the head teacher or head teacher designate (if he is not a governor) or any person appointed as clerk to the temporary governing body or to a committee;
- (b) any reference to “meeting of the new school” is a reference to a meeting of the temporary governing body, or of a committee.

(2) Subject to paragraph (4), where—

- (a) in relation to any matter there may be a conflict between the interests of a relevant person and the interests of the temporary governing body; or
- (b) a fair hearing is required and there is any reasonable doubt about a relevant person’s ability to act impartially in relation to any matter,

that person, if present at a meeting of the new school at which the matter is the subject of consideration, shall withdraw from the meeting and not vote on the matter in question.

(3) Nothing in this regulation or in Schedule 3 shall be construed as precluding the temporary governing body, or a committee of the temporary governing body, from—

- (a) allowing a person who appears to them to be able to give evidence to attend any hearing conducted by them into any matter and to present his evidence; or
- (b) hearing representations from a relevant person acting in a capacity other than that of a relevant person.

(4) A person who is acting as the clerk to a meeting of the new school shall not be required to withdraw from a meeting by this regulation or by Schedule 3 unless his appointment to office, his remuneration or disciplinary action against him is the subject of consideration, but if this regulation or Schedule 3 would have otherwise required him to withdraw, he shall not act in any capacity other than that of a clerk.

(5) Where there is any dispute as to whether a relevant person is required by this regulation or by Schedule 3 to withdraw from a meeting of the new school and not vote, that question shall be determined by the other temporary governors present at the meeting.

(6) Schedule 3 makes provision in connection with specified conflicts of interest and cases where a relevant person is required to withdraw from a meeting of the new school and not vote.

### **Suspension of temporary governors**

**47.**—(1) Subject to paragraphs (2), (3) and (4) the temporary governing body may by resolution suspend a temporary governor for all or any meetings of the temporary governing body or of any of their committees for a fixed period of up to 6 months on one or more of the following grounds—

- (a) that the temporary governor, being a person paid to work at the new school, is the subject of disciplinary proceedings in relation to his employment;
- (b) that the temporary governor is the subject of proceedings in any court or tribunal, the outcome of which may be that he is disqualified from continuing to hold office as a governor under Schedule 2;
- (c) that the temporary governor has acted in a way that is inconsistent with the ethos or with the religious character of the school and has brought or is likely to bring the school or the temporary governing body or his office into disrepute; or
- (d) that the temporary governor is in breach of his duty of confidence to the new school or to the staff or pupils.

(2) A resolution to suspend a temporary governor from office shall not have effect unless the matter is specified as an item of business on the agenda for the meeting of which notice has been given in accordance with regulation 43(4).

(3) Before a vote is taken on a resolution to suspend a temporary governor, the temporary governor proposing the suspension shall at that meeting state his reasons for doing so, and the temporary governor who is the subject of the resolution shall be given the opportunity to make a statement in response before withdrawing from the meeting in accordance with paragraph 2(2) of Schedule 3.

(4) Nothing in this regulation shall be read as affecting the right of a temporary governor who has been suspended to receive notices of, and agendas and reports or other papers for, meetings of the temporary governing body during the period of his suspension.

### **Delegation of functions**

**48.**—(1) Subject to regulation 49, the temporary governing body of a new school may establish committees and delegate any of their functions to—

- (a) a committee,
- (b) any temporary governor, or
- (c) the head teacher or head teacher designate.

(2) Where the temporary governing body has delegated functions to an individual or to a committee this shall not prevent the temporary governing body from exercising those functions.

(3) The temporary governing body shall review the exercise of functions it has delegated annually.

### **Restrictions on delegation**

**49.**—(1) The temporary governing body may not delegate to an individual functions relating to powers conferred and the duties imposed on temporary governing bodies by or under:

- (a) the local education authority's scheme under section 48(1) of the 1998 Act, to the extent that it requires the temporary governing body to give their approval to the first formal budget plan of the financial year;
- (b) section 61(1) to (3) of the 1998 Act (*School discipline policies*); or
- (c) section 88, 89, 89A(a), 90 (8) or 91(b) of the 1998 Act, section 3(1)(cc) of the Diocesan Boards of Education Measure 1991(c) (*Determination of admission arrangements*), section 90(1) of the 1998 Act (*Decision to object to admission arrangements of another admissions authority*), or section 94(d) of the 1998 Act (in so far as it relates to the determination of appeal arrangements by the temporary governing body).

(2) Except as provided by regulation 37, the temporary governing body may not delegate to an individual functions relating to powers conferred and duties imposed on it by or under Regulations made under section 52(3) and (4) of the 2002 Act (*Exclusion of pupils*)(e).

(3) The temporary governing body may not delegate to an individual any power of the temporary governing body to determine whether any child should be admitted to the school.

(4) The temporary governing body may not delegate functions relating to powers conferred and the duties imposed on temporary governing bodies by or under:

- (a) regulations 19(2), 20(2), 21(2) and 22(2) (*appointment of temporary sponsor governors or additional temporary foundation governors*); or
- (b) regulation 39 (*appointment of clerk*).

### **Reporting to the temporary governing body following the exercise of delegated functions**

**50.**—(1) This regulation applies where any function of the temporary governing body has been delegated to or is otherwise exercisable by a temporary governor (including the chair or vice-chair), the head teacher, head teacher designate or a committee.

(2) Any individual or committee to whom a function of the temporary governing body has been delegated or who has otherwise exercised a function of the temporary governing body shall report to the temporary governing body in respect of any action taken or decision made with respect to the exercise of that function.

### **Proceedings of committees of the temporary governing body**

**51.** Save as otherwise provided by these Regulations—

- (a) the temporary governing body shall determine the constitution, membership and proceedings of any committee of the temporary governing body;
- (b) the membership of any committee of the temporary governing body may include temporary associate members provided that a majority of members of any such committee shall be temporary governors;
- (c) the quorum for any meeting of a committee and for any vote at such a meeting shall be one half of the number of temporary governors who are members of the committee (rounded up to the nearest whole number) or three temporary governors, whichever is the greater; and

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(a) Section 89A was inserted by section 47 of the 2002 Act.

(b) Section 91 was repealed by section 49 of the 2002 Act but continues to have effect in relation to any school year earlier than 2004-05 (see paragraph 7 of the Schedule to the Education Act 2002 (Commencement No. 2 and Savings and Transitional Provisions) Order 2002, SI 2002 No. 2439).

(c) No. 2 of 1991. Section 3(1)(cc) was inserted by paragraph 13 of Schedule 4 to the 2002 Act.

(d) Section 94 was amended by section 50 of the 2002 Act.

(e) See the Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002 (SI 2002/3178).

- (d) the temporary governing body shall appoint a chair to each committee and may remove him from office at any time.

### **Meetings of committees**

**52.**—(1) Meetings of a committee shall be convened by the clerk to that committee who, when exercising this function, shall comply with any direction given by—

- (a) the temporary governing body;
- (b) the chair of that committee so far as such direction is not inconsistent with any direction given under sub-paragraph (a).

(2) Subject to any direction given in accordance with paragraph (1), at least seven clear days in advance the clerk shall give to each member of the committee and to the head teacher or head teacher designate (whether or not he is a member of the committee)—

- (a) a written notice of the meeting;
- (b) a copy of the agenda of the meeting, and
- (c) any reports or other papers to be considered at the meeting;

provided that where the chair to the committee so determines, on the ground that there are matters demanding urgent consideration, it shall be sufficient if the written notice of the meeting states that fact and the notice, agenda, reports and papers are given within such shorter notice period as he directs.

(3) The proceedings of a committee shall not be invalidated by—

- (a) any vacancy among their number; or
- (b) any defect in the appointment of any member of the committee.

(4) No vote on any matter shall be taken at a meeting of a committee unless the majority of members of the committee present are temporary governors.

(5) Every question to be decided at a meeting of a committee shall be determined by a majority of the votes of the members of the committee present and voting on the question.

(6) Where there is an equal division of votes the person who is acting as chair for the purposes of the meeting shall have a second or casting vote, provided that such person is a temporary governor.

(7) Minutes of the proceedings of a meeting of a committee shall be drawn up by the clerk to the committee or by the person acting as the clerk for the purposes of the meeting; and shall be signed (subject to the approval of the committee) by the chair of the next meeting of the committee.

(8) Subject to paragraph (9) the committee shall, as soon as reasonably practicable, make available for inspection by any interested person a copy of—

- (a) the agenda for every committee meeting;
- (b) the signed minutes of every such meeting; and
- (c) any report or other such paper considered at any such meeting.

(9) There may be excluded from any item required to be made available in pursuance of paragraph (8) any material relating to—

- (a) a named person who works, or who it is proposed should work, at the school;
- (b) a named pupil at, or candidate for admission to, the school;
- (c) any other matter that, by reason of its nature, the committee is satisfied should remain confidential.

## PART 7

### Transition from a Temporary Governing Body to a Governing Body

#### **Making of instrument of government and constitution of the governing body**

**53.**—(1) The local education authority shall secure that an instrument of government has been made for each new school in accordance with regulations 28 to 30 of the Constitution Regulations 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.

(3) 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 and take effect from that date.

(4) For all other purposes, the instrument of government shall take effect from the date stated in it (“the incorporation date”).

(5) On the incorporation date the governing body of a new school shall be constituted under the instrument of government.

(6) The temporary governing body shall exercise their functions under the 1998 Act, the 2002 Act and under these Regulations in a manner calculated to enable the local education authority to fulfil their duties under this regulation.

#### **New governors**

**54.**—(1) In the case of the appointment of any governor referred to in regulation 53(3), 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), he 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.

#### **Appointment or election of new governors**

**55.**—(1) The following paragraphs shall apply in relation to the appointment or election of governors required to constitute the governing body pursuant to regulation 53(3).

(2) Any parent governor shall be either—

- (a) elected (after the school opening date) by the parents of registered pupils at the new school and shall himself be such a parent at the time when he is elected; or
- (b) appointed (after the school opening date) by the temporary governing body in accordance with Schedule 1 to the Constitution Regulations.

(3) After the school opening date—

- (a) any staff governor shall be elected in accordance with regulation 5 of and Schedule 2 to the Constitution Regulations.
- (b) any partnership governor shall be a person nominated and appointed in accordance with regulation 9 of and Schedule 4 to the Constitution Regulations.

#### **Property, rights and liabilities**

**56.** On the incorporation date—

- (a) all land and other property which, immediately before the incorporation date, was vested in the temporary governing body, and

- (b) all rights and liabilities of the temporary governing body subsisting immediately before that date,

shall, by virtue of this regulation, be transferred to and vest in the governing body constituted under the instrument of government.

### **Rights and liabilities under a contract of employment**

**57.** Without prejudice to the generality of regulation 56, where that regulation effects a transfer of rights and liabilities under a contract of employment—

- (a) the contract shall have effect from the incorporation date as if originally made between the employee and the governing body, and
- (b) without prejudice to sub-paragraph (a), anything done before that date by or in relation to the temporary governing body in respect of that contract or the employee shall be deemed from that date to have been done by or in relation to the 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.

## **PART 8**

### **Amendments to the Religious Character of Schools (Designation Procedure) Regulations 1998**

#### **Amendments to the Religious Character of Schools (Designation Procedure) Regulations 1998**

**58.**—(1) Regulation 9 of the Religious Character of Schools (Designation Procedure) Regulations 1998 shall be amended in relation to England as set out in paragraphs (2) and (3).

(2) In paragraph (2) of regulation 9, there shall be inserted before “Church of England”, the words “new school which is intended to be a”, and for “appropriate diocesan authority” there shall be substituted “the diocesan authority which is intended to be the appropriate diocesan authority when the school opens”.

(3) In paragraph (6)(a) of regulation 9, for “foundation governor” there shall be substituted “temporary foundation governor (within the meaning of Part 3 of the New Schools (General) (England) Regulations 2003)”.

12th June 2003

*David Miliband*  
Minister of State  
Department for Education and Skills

## **SCHEDULE 1**

Regulation 13(2)

### **Appointment of Temporary Community Governors at Community Special Schools or Foundation Special Schools**

**1.** Subject to paragraphs 2 and 3, the local education authority shall appoint temporary community governors to the temporary governing body of a new school which is or will be a community special school or foundation special school, in accordance with regulation 13(1).

**2.**—(1) In relation to a new school which is or will be a community special school or a foundation special school established in a hospital, the local education authority shall:

- (i) one or more primary care trusts; or
  - (ii) the national health service trust;
- with which the new school is most closely connected, as the appropriate body; and
- (b) invite the appropriate body so designated to nominate (and if more than one, jointly) a person to be appointed as one of the temporary community governors.
- (2) For the purposes of this paragraph:
- “national health service trust” means a body established by the Secretary of State under section 5 of the National Health Service or Community Care Act 1990(a);
- “primary care trust” means a body established under section 16A of the National Health Service Act 1977(b).
3. In relation to a new school which is or will be a community special school or foundation special school not established in a hospital, the local education authority shall appoint as one of the temporary community governors:
- (a) if a voluntary organisation is designated by the local education authority as the appropriate voluntary organisation concerned with matters in respect of which the school is specially organised, a person (if any) nominated by that organisation; or
  - (b) if two or more voluntary organisations are so designated as appropriate voluntary organisations concerned with such matters, a person (if any) nominated by those organisations acting jointly.

## SCHEDULE 2

Regulation 26

### Qualifications and Disqualifications

#### **General**

1.—(1) No person shall be qualified to be a temporary governor unless he is aged 18 or over at the date of his election or appointment.

(2) This provision shall not apply to a temporary associate member appointed under regulation 17.

2. No person shall at any time hold more than one temporary governorship of the same new school.

3. Save as otherwise provided in these Regulations, the fact that a person is qualified to be elected or appointed as a temporary governor of a particular category at a new school does not disqualify him from election or appointment or from continuing as a temporary governor of any other category at that school.

#### **Mental disorder**

4. A person shall be disqualified from holding or continuing to hold office as a temporary governor of a new school at any time when he is liable to be detained under the Mental Health Act 1983(c).

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(a) 1990 c.19 as amended by the Health Act 1999 (1999 c.8).

(b) 1977 c.49 as amended by the Health Act 1999.

(c) 1983 c.20.

## **Bankruptcy**

5. A person shall be disqualified from holding or continuing to hold office as a temporary governor of a new school if—

- (a) he has been adjudged bankrupt or sequestration of his estate has been awarded and (in either case) he has not been discharged and the bankruptcy order has not been annulled or rescinded; or
- (b) he has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it.

## **Disqualification of company directors**

6. A person shall be disqualified from holding or continuing to hold office as a temporary governor of a new school at any time when he is subject to a disqualification order under the Company Directors Disqualification Act 1986(a) or to an order made under section 429(2)(b) of the Insolvency Act 1986(b) (*failure to pay under county court administration order*).

## **Disqualification of charity trustee**

7. A person shall be disqualified from holding or continuing to hold office as a temporary governor of a new school if—

- (a) he has been removed from the office of trustee for a charity by an order made by the Charity Commissioners or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity for which he was responsible or to which he was privy, or which he by his conduct contributed to or facilitated; or
- (b) he has been removed, under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990(c) (*powers of Court of Session to deal with management of charities*), from being concerned in the management or control of any body.

## **Persons whose employment is prohibited or restricted**

8. A person is disqualified from holding or continuing to hold office as a temporary governor of a new school at any time when he is

- (a) included in the list of teachers and workers with children or young persons whose employment is prohibited or restricted under section 1 of the Protection of Children Act 1999(d);
- (b) subject to a direction of the Secretary of State under section 142 of the 2002 Act;
- (c) disqualified from working with children under sections 28 and 29 of the Criminal Justice and Court Services Act 2000(e); or
- (d) by virtue of an order made under section 470 or section 471 of the 1996 Act(f) disqualified from being the proprietor of any independent school or from being a teacher or other employee in any school.

## **Criminal convictions**

9.—(1) Subject to sub-paragraph (5), a person shall be disqualified from holding, or continuing to hold, office as a temporary governor of a new school where any of sub-paragraphs (2) to (4) or (6) below apply to him.

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(a) 1986 c.46 as amended by the Insolvency Act 2000 (2000 c.39).

(b) 1986 c.45.

(c) 1990 c.40. The functions of the Lord Advocate under this section transferred to the Secretary of State by the Transfer of Functions (Lord Advocate and Secretary of State) Order 1999 (SI 1999/678).

(d) 1999 c.14 as amended by the Care Standards Act 2000 (2000 c.14).

(e) 2000 c.43.

(f) As amended by the Care Standards Act 2000.



- (2) This sub-paragraph applies to a person if–
- (a) within the period of five years ending with the date immediately preceding the date on which his appointment or election as a temporary governor would otherwise have taken effect or, as the case may be, on which he would otherwise have become a temporary governor by virtue of his office; or
  - (b) since his appointment or election as temporary governor or, as the case may be, since he became a temporary governor by virtue of his office,

he has been convicted, whether in the United Kingdom or elsewhere, of any offence and has had passed on him a sentence of imprisonment (whether suspended or not) for a period of not less than three months without the option of a fine.

(3) This sub-paragraph applies to a person if within the period of 20 years ending with the date immediately preceding the date on which his appointment or election as temporary governor would otherwise have taken effect or, as the case may be, on which he would otherwise have become a temporary governor by virtue of his office, he has been convicted of any offence, whether in the United Kingdom or elsewhere, and has had passed on him a sentence of imprisonment for a period of not less than two and a half years.

(4) This sub-paragraph applies to a person if he has at any time been convicted, whether in the United Kingdom or elsewhere, of any offence and he has had passed on him a sentence of imprisonment for a period of not less than five years.

(5) For the purposes of sub-paragraphs (2) to (4) above, there shall be disregarded any conviction by or before a court outside the United Kingdom of an offence which, if the facts giving rise to the offence had taken place in any part of the United Kingdom, would not have constituted an offence under the law in force in that part of the United Kingdom.

- (6) This sub-paragraph applies to a person if–
- (a) within the period of five years ending with the date immediately preceding the date on which his appointment or election as temporary governor would otherwise have taken effect or, as the case may be, on which he would otherwise have become a temporary governor by virtue of his office; or
  - (b) since his appointment or election as temporary governor or, as the case may be, since he became a temporary governor by virtue of his office,

he has been convicted under section 547 of the 1996 Act<sup>(a)</sup> (*nuisance and disturbance on education premises*) of an offence which took place on the premises of a maintained school, and has been sentenced to a fine.

### **Refusal to make an application for a criminal records certificate**

**10.** A person shall be disqualified from holding or continuing to hold office as a temporary governor at any time if he refuses a request by the clerk to the temporary governing body to make an application under section 113 of the Police Act 1997<sup>(b)</sup> for a criminal records certificate.

### **Notification to clerk**

- 11.** Where, by virtue of any paragraphs 5 to 10–
- (a) a person becomes disqualified from holding, or continuing to hold, office as a temporary governor; and
  - (b) he is, or is proposed, to become a temporary governor,

he shall upon becoming so disqualified give notice of that fact to the clerk to the temporary governing body.

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<sup>(a)</sup> 1996 c.56 as amended by section 206 of the 2002 Act.

<sup>(b)</sup> 1997 c.50 as amended by the Protection of Children Act 1999, the Care Standards Act 2000 and the Education Act 2002.

## Restrictions on Persons Taking Part in Proceedings of the Temporary Governing Body or their Committees

### **Pecuniary interests**

1.—(1) Subject to sub-paragraphs (5) and (6), if a relevant person has any pecuniary interest direct or indirect in a contract, proposed contract or other matter and is present at a meeting of the new school at which the contract or other matter is the subject of consideration, he shall at the meeting, and as soon as practicable after its commencement, disclose that fact and withdraw from the meeting during the consideration or discussion of the contract or matter and he shall not vote on any question with respect to the contract or matter.

(2) Subject to this paragraph a relevant person may enter into a contract with the temporary governing body of the school from which he is entitled to profit.

(3) A person shall be treated as having an indirect pecuniary interest in a contract, proposed contract or other matter if—

- (a) he was nominated or appointed to office by a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the matter under consideration; or
- (b) he is a partner of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the matter under consideration

provided that a person shall not by virtue of this sub-paragraph be treated as having such an interest by reason only of his nomination or appointment by, his membership of, or his employment by, any public body; or by reason of his membership of a corporation or other body if he has no financial interest in any securities of that corporation or other body.

(4) For the purposes of this paragraph, a person shall be treated as having an indirect pecuniary interest in a contract, proposed contract or other matter if a relative (including his spouse or someone living with that person as if he or she were that person's spouse) living with him, to his knowledge has, or would be treated as having, a direct or indirect pecuniary interest.

(5) For the purposes of this paragraph, a relevant person who is paid to work at the new school shall not be treated as having a direct or indirect pecuniary interest in a contract, proposed contract or other matter by reason only of having an interest in the contract or other matter that is no greater than the interest of the generality of those paid to work at the new school.

(6) Members of the temporary governing body shall not, by reason of their pecuniary interest in the matter, be prevented from considering and voting upon proposals for the temporary governing body to take out insurance protecting members against liabilities incurred by them arising out of their office and the temporary governing body shall not, by reason of the pecuniary interest of their members, be prevented from obtaining such insurance and paying the premiums.

### **Office of temporary governor, chair or clerk**

2.—(1) This sub-paragraph applies where a relevant person is present at a meeting of the temporary governing body at which a subject of consideration is—

- (a) his own appointment, reappointment, suspension or removal as a member of the temporary governing body;
- (b) his own appointment or removal from office as clerk to or chair or vice- chair of the temporary governing body;
- (c) if he is a temporary sponsor governor, any determination under paragraph 2 of Schedule 5 to the Constitution Regulations as to the provision in the instrument of government for sponsor governors.

(2) In any case where sub-paragraph (1) applies, the relevant person shall withdraw from the meeting during the consideration or discussion of the matter in question and shall not vote on any question with respect to that matter.

### **Pay or appraisal of persons working at the new school**

3.—(1) This sub-paragraph applies where a relevant person who is paid to work at a new school other than as head teacher is present at a meeting of the school at which a subject of consideration is the pay or performance appraisal of any particular person employed to work at the new school.

(2) This sub-paragraph applies where a head teacher or head teacher designate of a new school is present at a meeting of the school at which a subject of consideration is his own pay or performance appraisal.

(3) In any case where sub-paragraph (1) or (2) applies, the person first-mentioned in that sub-paragraph shall withdraw during the consideration or discussion of the matter in question and shall not vote on any question with respect to that matter.

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations relate to the government of new maintained schools in England.

Part 1 provides for the Regulations to come into force, sets out those Regulations that are to be revoked or amended and contains interpretation provisions. It also deals with the service of notices.

Part 2 relates to the making of arrangements for temporary governing bodies. Regulation 8 enables arrangements to be made in anticipation that proposals will be approved and regulation 9 requires the agreement of promoters to arrangements relating to temporary foundation governors.

Part 3 describes the various categories of temporary governor. Regulation 10 deals with the appointment of temporary parent governors by either the local education authority or by a new school's promoters.

Regulation 11 deals with temporary staff governors, which includes teaching and non-teaching staff and the head teacher (or head teacher designate) of the school. The head teacher, or head teacher designate, is a temporary staff governor by virtue of his position but may resign his temporary governorship (or withdraw his resignation) at any time.

Regulation 12 deals with the appointment of temporary LEA governors.

Regulation 13 sets out who is eligible to be a temporary community governor and Schedule 1 deals with the appointment of temporary community governors in special schools.

Regulation 14 makes provision as to the appointment of temporary foundation governors, including ex officio temporary governors and regulation 15 deals with the nomination and appointment of temporary partnership governors.

Regulation 16 makes provision for temporary sponsor governors, the appointment of whom is optional and regulation 17 provides for the appointment of persons who are not temporary governors (known as temporary associate members) to committees of the temporary governing body.

Part 4 sets out the general principles and specific requirements for the composition of temporary governing bodies. Their composition broadly follows that of the permanent governing body as required by Part 3 of the School Governance (Constitution) (England) Regulations 2003.

Part 5 deals with the tenure of office and qualifications of temporary governors. Regulation 23 sets out how a temporary governor can resign and regulations 24 and 25 deal with the removal of temporary governors.

Regulation 26 and Schedule 2 set out the circumstances in which a temporary governor (or associate member) shall be disqualified from being appointed or continuing in office as a temporary governor.

Part 5 also contains provisions relating to expenses incurred in relation to temporary governing bodies and the provision of information to temporary governors.

Part 6 deals with the conduct of new schools with temporary governing bodies and gives temporary governing bodies general powers and duties. In addition, regulation 33 provides for the execution of documents by the temporary governing body.

Regulation 34 requires the head teacher to consult the temporary governing body and the local education authority regarding the curriculum and regulation 35 provides for the determination of dates for the school term and holidays and the times of school sessions.

This Part also deals with the chairing and clerking of temporary governing bodies and their committees. It also includes provisions for access to meetings, convening meetings, quorum, minutes and their publication.

Regulation 46 and Schedule 3 deal with conflicts of interest and the circumstances in which temporary governors and others who are otherwise entitled to attend meetings of the temporary governing body or their committees must withdraw and not vote. The general principle is that where there is a conflict of interest between the interests of such a person and the interests of the temporary governing body, or where the principles of natural justice require a fair hearing and there is any reasonable doubt about that person's ability to act impartially, he should withdraw from the meeting and not vote.

Regulation 47 sets out the circumstances in which a temporary governor may be suspended from meetings for up to 6 months. Regulations 48 to 50 relate to delegation of temporary governing body functions.

Regulation 51 provides for temporary governing bodies to determine matters relating to any of their committees and regulation 52 deals with the meetings of those committees.

Part 7 deals with the transition from a temporary governing body to a permanent governing body constituted under an instrument of government. The local education authority must secure that an instrument of government is made before the school date.

The local education authority determines the date when the governing body will be constituted under the instrument of government. This is the incorporation date, which must be as soon as reasonably practicable after the opening date but no later than the last day of the first term.

Regulations 54 and 55 deal with the appointment and election of governors required by the instrument of government.

Regulations 56 and 57 provide for transfers of property, staff and other rights and liabilities from the temporary to the permanent governing body.

Part 8 makes some amendments relating to new schools to the Religious Character of Schools (Designation Procedure) Regulations 1998.

£4. 50

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Printed and published in the UK by The Stationery Office Limited  
under the authority and superintendence of Carol Tullo, Controller of Her Majesty's  
Stationery Office and Queen's Printer of Acts of Parliament.

E0872 6/2003 130872 19585

ISBN 0-11-046482-6



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