

## SCHEDULE 4

Regulation 6

### PROVISIONS RELATING TO FOUNDATION PROPOSALS AND OTHER CHANGES OF CATEGORY

#### **Unimplemented statutory proposals**

1. Where a school changes category and there are other proposals for prescribed alterations falling to be implemented in respect of that school which have not been implemented—
- (a) in the case of a school which has changed category to a voluntary controlled, foundation or foundation special school, the proposals must to the extent that they have not been implemented, be implemented by the local authority;
  - (b) in the case of a school which has changed category from a foundation or voluntary controlled school to become a voluntary aided school, the proposals must continue to be implemented by the governing body and local authority (as the case may be) as if the school had remained a foundation or voluntary controlled school;
  - (c) in the case of a school which has changed category from a community school to a voluntary aided school the proposals must continue to be implemented by the local authority as if the school had remained a community school.

#### **Revision or replacement of the school's instrument of government**

- 2.—(1) The governing body and the local authority must secure that by the end of the implementation period a new instrument of government is made for the school in accordance with the Constitution Regulations.
- (2) The implementation period is the period commencing on the date a proposal is approved under paragraph 5 or 6 of Schedule 3 and ending on the implementation date.
- (3) The new instrument of government is to take effect from the date of making for the purpose of reconstituting the governing body but does not affect the constitution of the governing body conducting the school pending the implementation date.
- (4) For all other purposes the new instrument of government is to take effect from the implementation date.

#### **Reconstitution or replacement of the governing body**

- 3.—(1) The governing body and the local authority must secure that as soon as reasonably practicable after the commencement of the implementation period (and in any event within a period of three months beginning on the implementation date) the governing body are reconstituted in accordance with the new instrument of government, and the Constitution Regulations.
- (2) The current governing body must exercise their functions under the Act and these Regulations in a manner calculated to enable the local authority to fulfil their duties under sub-paragraph (1).

#### **Current governors continuing in office**

- 4.—(1) Sub-paragraph (2) applies to any member of a current governing body in respect of which a new instrument of government has been made under these Regulations.
- (2) Subject to paragraph 5 a governor to whom this paragraph applies is to continue from the implementation date (or the making of the new instrument of government if later) as a governor of the corresponding category required by the new instrument of government (if any such category exists).

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(3) A member of a current governing body who continues as a governor under sub-paragraph (2) holds office for the remainder of the term for which the governor was originally appointed or elected.

(4) The proceedings of the governing body are not invalidated by the school having more governors of a particular category than are provided for by the new instrument of government pending removal of the surplus governors pursuant to paragraph 5.

### **Surplus governors**

5.—(1) Where—

- (a) on or after the implementation date a school has more governors of any of the categories of governors than are required as governors of the corresponding category by the new instrument of government; and
- (b) the excess is not eliminated by the required number of governors resigning,

such number of that category as is required to eliminate the excess must cease to hold office in accordance with sub-paragraphs (2) and (3).

(2) The governors who are to cease to hold office are determined on the basis of juniority, the governor whose current period of continuous service (whether as a governor of one or more than one category) is the shortest being the first who must cease to hold office.

(3) Where governors have held office for an equal length of time, the selection of those who must cease to hold office must be done by drawing lots.

(4) For the purposes of this paragraph, sponsor governors nominated by a particular category of person are treated as if they constituted a separate category of governor.

(5) Any procedure set out in the new instrument of government for the removal of excess foundation governors does not apply to the reconstitution of the governing body under these Regulations.

### **Transfer of staff**

6. Where a voluntary aided or foundation school changes category to a voluntary controlled school—

- (a) the contract of employment between a person to whom this paragraph applies and the governing body has effect from the implementation date as if originally made between that person and the local authority;
- (b) all the governing body's rights, powers, duties and liabilities under or in connection with the contract of employment transfer by virtue of this paragraph to the local authority on the implementation date; and
- (c) anything done before that date by, or in relation to, the governing body in respect of that contract or the employee, is deemed from that date to have been done by or in relation to the local authority.

7.—(1) Subject to sub-paragraph (2), paragraph 6 applies to any person who immediately before the implementation date is employed by the governing body to work solely at the school which is the subject of the proposals.

(2) Paragraph 6 does not apply to any person whose contract of employment terminates on the day immediately preceding the implementation date, or to any person employed by the local authority to work at the school solely in connection with the provision of meals.

8. Any person who before the implementation date has been appointed by the governing body to work at the school as from the implementation date or a date thereafter is to be treated for the purposes of paragraph 6 as if the person had been employed by the governing body immediately

before the implementation date to do such work at the school as that person would have been required to do on or after the date under that person's contract of employment with the governing body.

**9.** Where a voluntary controlled school changes category to a voluntary aided school, a voluntary controlled or community school changes category to a foundation school, or a community special school changes category to a foundation special school—

- (a) the contract of employment between a person to whom this paragraph applies and the local authority has effect from the implementation date as if originally made between that person and the governing body;
- (b) all the local authority's rights, powers, duties and liabilities under or in connection with the contract of employment transfer by virtue of this paragraph to the governing body on the implementation date; and
- (c) anything done before that date by, or in relation to, the local authority in respect of that contract or the employee, is deemed from that date to have been done by or in relation to the governing body.

**10.**—(1) Subject to sub-paragraph (2), paragraph 9 applies to any person who immediately before the implementation date is employed by the local authority to work solely at the school which is the subject of the proposals.

(2) Paragraph 9 does not apply to any person whose contract of employment terminates on the day immediately preceding the implementation date, or to any person employed by the local authority to work at the school solely in connection with the provision of meals.

**11.** Any person who before the implementation date has been appointed by the local authority to work at the school as from the implementation date or a date thereafter is to be treated for the purposes of paragraph 9 as if the person had been employed by the local authority immediately before the implementation date to do such work at the school as that person would have been required to do on or after the date under that person's contract of employment with the local authority.

**12.** Paragraphs 9 to 11 are without prejudice to any right of an employee to terminate their contract if a substantial change is made to that employee's detriment in their working conditions, but no such right arises by reason only of the change in employer effected by these Regulations.

**13.**—(1) This paragraph applies where a voluntary controlled school with a religious character changes category to become a voluntary aided school with a religious character.

(2) Where immediately before the implementation date a teacher in a voluntary controlled school enjoyed by virtue of section 60(2) of SSFA 1998, rights not conferred on the teacher on or after the implementation date by section 60 as a teacher at a voluntary aided school, that teacher must continue to enjoy those rights until they cease to be employed as a teacher at the voluntary aided school.

### **Transitional admission arrangements**

**14.**—(1) Where a community or voluntary controlled school changes category to become a foundation or voluntary aided school, anything done before the implementation date by the local authority as admission authority under any provision in Chapter 1 of Part 3 of the SSFA 1998 (admission arrangements) will, from the implementation date, have effect as if done by the governing body.

(2) Where a foundation or voluntary aided school changes category to become a voluntary controlled school, anything done before the implementation date by the governing body as admission authority under any provision in Chapter 1 of Part 3 of SSFA 1998 (admission arrangements) will, from the implementation date have effect as if done by the local authority.