

**2017 No. (W.)**

**EDUCATION, WALES**

**The Government and Staffing of  
Maintained Schools (Wales)  
Regulations 2017**

**EXPLANATORY NOTE**

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

These Regulations set out the new arrangements for—

- (a) the terms of reference for governing bodies of maintained schools and head teachers;
- (b) the constitution and governance of governing bodies of maintained schools;
- (c) the constitution and governance of governing bodies of federated maintained schools;
- (d) the constitution and governance of new maintained schools;
- (e) the staffing of maintained schools;
- (f) paying allowances to governors and non-governor members; and
- (g) the changing of school session times of maintained schools.

All provisions in these Regulations apply to non-federated maintained schools and federated maintained schools except where expressly provided. Accordingly, Chapter 1 of Part 5 applies only to non-federated maintained schools. However, the following provisions apply only to federated schools—

- (a) Chapter 2 of Part 5;
- (b) Regulation 48 of Chapter 4 of Part 5; and
- (c) Part 6.

**Part 1** contains an overview of these Regulations.

**Part 2** provides for these Regulations to come into force on [ ] and contains interpretative provisions. Part 2 provides that the following Regulations are revoked but are subject to saving and transitional provisions—

- (a) the School Government (Terms of Reference) (Wales) Regulations 2000;
- (b) the New Maintained Schools (Wales) Regulations 2005;
- (c) the Governor Allowances (Wales) Regulations 2005;
- (d) the Government of Maintained Schools (Wales) Regulations 2005;
- (e) the Staffing of Maintained Schools (Wales) Regulations 2006; and
- (f) the Changing of School Session Times (Wales) Regulations 2009.

The provisions of the revoked regulations are re-enacted with changes in these Regulations.

**Part 3** lays down a number of principles which are to serve as terms of reference for governing bodies. Part 3 also deals with the respective roles and responsibilities of governing bodies and head teachers.

**Part 4** describes the various categories of governor. The categories of governor are as follows—

- (a) parent governors (regulation 13 and Schedule 2);
- (b) staff governors (regulation 14 and Schedule 3). This category includes both teacher and non-teaching staff;
- (c) local authority governors (regulation 15);
- (d) community governors (regulation 16);
- (e) foundation governors, including ex officio foundation governors and substitute governors (regulation 17);
- (f) partnership governors (regulation 18 and Schedule 4);
- (g) co-opted governors (regulation 19);
- (h) associate members (regulation 20). Associate members are non-governor members of a committee of a governing body; and
- (i) pupil governors (regulation 21).

**Part 5** contains provisions dealing with the governance of maintained schools. Chapter 1 contains provisions which set out the general principles by which the size and composition of non-federated school governing bodies are to be determined.

Chapter 2 contains provisions which set out the general principles by which the size and composition of federated school governing bodies are to be determined.

Chapter 3 deals with qualifications and terms of office.

Chapter 4 deals with the procedure for making, reviewing and varying instruments of government and the content of instruments of government.

Chapter 5 deals with the appointment and removal of officers of the governing body, and the delegation of their functions.

Chapter 6 provides for meetings and proceedings of the governing body. This Chapter includes provisions for access to meetings, convening meets, quorum, minutes and their publication. Decisions on all matters are to be by majority of governors voting.

Chapter 7 deals with the establishment and proceedings of committees of governing bodies, including clerking arrangements, convening meetings, quorum, voting and publication of minutes.

Chapter 8 and Schedule 6 deal with conflicts of interest and the circumstances in which governors and others who are otherwise entitled to attend meetings of the governing body or its committees must withdraw and not vote. The general principle is that where there is a conflict between the interests of such a person and the interests of the 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, that person should withdraw from the meeting and not vote.

**Part 6** contains provisions concerned with the governance of federated maintained schools. Chapter 1 sets out the provisions relating to establishing or joining a federation.

Chapter 2 deals with information and funding matters. Regulation 89 provides for the governing bodies of each school which will form part of a federation to provide specified information to assist the governing body of the federation. Regulation 90 applies Chapter 4 of Part 2 of the School Standards and Framework Act 1998 ("the 1998 Act") to federations subject to regulation 91, which modifies section 50 of the 1998 Act as it applies to federated schools and the governing bodies of federations. The modified section 50 of the 1998 Act applies until a temporary governing body is established when a school proposes to leave a federation or when a federation is dissolved.

Chapter 3 deals with schools leaving a federation and Chapter 4 deals with the dissolution of federations.

**Part 7** deals with the governance and constitution of new maintained schools. Chapter 1 contains the interpretative provisions that apply for the purposes of Part 7.

Chapter 2 deals with the making of arrangements for temporary governing bodies. Regulation 106 enables arrangements to be made in anticipation that proposals will be made and regulation 107 requires the agreement of promoters relating to temporary foundation governors.

Chapter 3 deals with the various categories of temporary governor which are as follows—

- (a) temporary parent governor (regulation 110);
- (b) temporary staff governor (regulation 111);
- (c) temporary local authority governor (regulation 112);
- (d) temporary community governor (regulation 113);
- (e) temporary foundation governor (regulation 114); and
- (f) temporary co-opted governor (regulation 115).

Chapter 4 deals with the constitution of temporary governing bodies by applying Chapter 1 of Part 5 of these Regulations with some modifications.

Chapter 5 deals with the tenure of office, resignation from office, removal from office and qualifications of temporary governors. Chapter 5 also contains provisions relating to expenses incurred in relation to temporary governing bodies and the provision of information to temporary governors.

Chapter 6 deals with the conduct of new schools with temporary governing bodies and gives temporary governing bodies general powers and duties.

Chapter 7 deals with the appointment, functions and removal of officers, meetings and proceedings of temporary governing bodies, committees of temporary governing bodies and conflicts of interest.

Chapter 8 deals with the transition from a temporary governing body to a governing body constituted under an instrument of government. The local authority must secure that an instrument of government is made before the school opening date. The local authority determines when the governing body will be constituted under the instrument of government. This is the incorporation date, which must be seen as soon as reasonably practicable after the opening date but no later than the last day of the first term.

**Part 8** deals with the staffing of maintained schools. Chapter 1 deals with general matters and in particular—

- (a) delegation of authority;
- (b) the performance of the head teacher;
- (c) conduct and discipline of staff;

- (d) capability of teachers; and
- (e) the appointment of an independent investigator where it is alleged a teacher has caused harm to a pupil at the school.

Chapter 2 relates to community, voluntary controlled, community special and maintained nursery schools and deals with the appointment of staff, suspension of staff, dismissal of staff and the local authority's entitlement to offer advice. Part 2 also provides for the appointment of school meals staff.

Chapter 3 relates to foundation, voluntary aided and foundation special schools and deals with the appointment of staff, suspension of staff, dismissal of staff and the entitlement of the local authority and appropriate diocesan authorities to offer advice. Chapter 3 also provides for the appointment of head teachers for schools of Roman Catholic religious orders.

Chapter 4 relates to the staffing of new schools either with or without delegated budgets.

**Part 9** makes provision for allowances to be paid to governors and non-governor members of committees by the governing bodies of maintained schools which have delegated budgets.

Part 9 also make provision for allowances to be paid by the local authority to the following—

- (a) governors of a maintained school which does not have a delegated budget;
- (b) non-governor members of committees of a governing body of a maintained school which does not have a delegated budget; and
- (c) persons appointed to represent the local authority at an institution providing higher education or further education (or both), or on the governing body of an independent school or a special school which is not maintained by that authority.

Travel and subsistence rates must not exceed such rates as may be set by the Independent Remuneration Panel for Wales in accordance with Part 8 of the Local Government (Wales) Measure 2011. Other expenses must be paid on provision of a receipt at a rate determined by the governing body.

**Part 10** deals with the changing of school session times. Sections 32A to 32C of the Education Act 2002 set out who is responsible for determining the dates of school terms, school holidays and the times of school sessions. For foundation, voluntary aided and foundation special schools, the governing body determines all these. For community, voluntary controlled, community special schools and maintained

nursery schools, the governing body determines the times of school sessions (with the local authority determining the dates of the school terms and holidays).

Part 10 sets out the procedures to be taken by the governing body of community, voluntary controlled, community special schools and maintained nursery schools before changing schools session times.

Part 10 also sets out the procedures to be taken by the local education authority when it proposes to change the session times of a community school, voluntary controlled school, community special school, maintained nursery school, foundation school, voluntary aided school or foundation special school.

**Part 11** deals with the modification of the School Councils (Wales) Regulation 2005.

**Part 12** makes a number of consequential and other changes to other Regulations.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the School Governance and Organisation Branch, School Effectiveness Division in the Department for Education and Public Services in the Welsh Government, Crown Building, Cathays Park, Cardiff, CF10 3NQ.

**2017 No. (W.)**

**EDUCATION, WALES**

**The Government and Staffing of  
Maintained Schools (Wales)  
Regulations 2017**

*Made* \*\*\*

*Laid before the National Assembly for Wales*  
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*Coming into force* \*\*\*

The Welsh Ministers in exercise of the powers in sections 519 and 569 of, and paragraphs 3, 6(2) and 15 of Schedule 1 to, the Education Act 1996<sup>(1)</sup>, sections 72 and 138 of the School Standards and Framework Act 1998<sup>(2)</sup>, sections 19(2), (3) and (9), 20(2), (3) and (4A), 21(3), 23, 30(1) and (2), 32C, 34(5), 35(4) and (5), 36(4) and (5), 210(7) and 214 of the Education Act 2002<sup>(3)</sup>, sections, 6, 10, 11, 12, 13, 14, 18, 22(3) and (4), 23, 24 and 32 of the Education (Wales) Measure

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- (1) 1996 c.56. Section 519 was amended by section 140(1) and paragraph 139(2) and (4) of Schedule 30 to the School Standards and Framework Act 1998 (c.31) and S.I. 2010/1158. Section 569 was amended by section 8(1), (2), (4) and (5) of the Education (Wales) Measure 2009 (nawm 5). There are other amendments to section 569 but none are relevant.
- (2) 1998 c.31. Section 72 was amended by section 215(1) and paragraph 106 of Schedule 21 to the Education Act 2002 (c.32). Section 138 was amended by section 175 and paragraph 3(1), (2) and (4) of Schedule 17 to the Education and Inspections Act 2006 (c.40). There are other amendments to section 138 but none are relevant.
- (3) 2002 c.32. Section 19 was amended by section S.I. 2010/1158, Section 19(1) and (2)(b) of the Education (Wales) Measure 2011 (nawm 7) and by section 38(1) and (3) of the Education Act 2011 (c.21). Section 20(4A) was inserted by section 19(1) and (3)(b) of the Education (Wales) Measure 2011. Section 21(3) was amended by S.I. 2010/1158. Section 32C was inserted by section 42 of the Education (Wales) Act 2014 (anaw 5). Section 30(1) was amended by section 103(1)(a) of the Education Act 2005 (c.18). Section 30(2) was amended by section 103(1)(a) of the Education Act 2005. Sections 35(5) and 36 (5) were amended by S.I. 2010/1158. Section 210(7) was amended by section 21(1) and (3)(c) of the Learner Travel (Wales) Measure 2008. There are other amendments to sections 19, 20, 21, 34, 35, 36 and 210 but none are relevant.

2011(1) and section 97, paragraph 17(2) and (3) of Schedule 1 and paragraph 38 of Schedule 4 to the School Standards and Organisation (Wales) Act 2013(2) make(3) the following Regulations:

## PART 1 OVERVIEW

### Overview

1.—(1) These Regulations have 12 Parts.

(2) Part 2 contains provisions which—

- (a) set out the date of commencement of these Regulations;
- (b) set out those Regulations which are revoked (together with Schedule 1); and
- (c) set out the definitions that apply for the purposes of these Regulations.

(3) Part 3 contains provisions concerned with the terms of reference of governing bodies and head teachers of maintained schools.

(4) Part 4 (including Schedules 2 to 4) contains provisions setting out the different categories of governors for maintained schools and maintained federated schools.

(5) Part 5 (including Schedules 5 and 6) is divided into 8 Chapters containing provisions concerned with the governance of non-federated maintained schools and federated maintained schools—

- (a) Chapter 1 sets out provisions relating to the composition of governing bodies in respect of non-federated schools;
- (b) Chapter 2 sets out provisions relating to the composition of governing bodies in respect of federated schools;

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(1) 2011 nawm 7. Section 13 was amended by section 99 and paragraph 29(1) and (3) of Part 2 of Schedule 5 to the School Standards and Organisation (Wales) Act 2013 (anaw 1). Section 18 was amended by section 99 and paragraph 13(1) and (3)(a) and (b) of Part 1 of Schedule 5 to the School Standards and Organisation (Wales) Act 2013.

(2) 2013 anaw 1.

(3) The functions in the Education Act 1996 and the School Standards and Framework Act 1998 were conferred on the Secretary of State and transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) and now vested in the Welsh Ministers by virtue of paragraphs 30 and 31 of Schedule 11 to the Government of Wales Act 2006 (c.32). The functions in the Education Act 2002 were conferred on the National Assembly for Wales and are now vested in the Welsh Ministers by virtue of paragraphs 30 and 31 of Schedule 11 to the Government of Wales Act 2006.

- (c) Chapter 3 sets out provisions relating to the qualifications and tenure of office of governors;
- (d) Chapter 4 sets out provisions relating to the instrument of government of a school, schools councils and charitable status of federated schools;
- (e) Chapter 5 sets out provisions relating to the appointment, functions and removal of officers of the governing body such as the chair, vice-chair and the clerk;
- (f) Chapter 6 sets out provisions relating to the meetings and proceedings of the governing body;
- (g) Chapter 7 sets out provisions relating to the committees of governing bodies; and
- (h) Chapter 8 sets out provisions relating to the restrictions on persons taking part in proceedings of the governing body or its committees.

(6) Part 6 (including Schedule 7) is divided into 4 Chapters containing provisions concerned with the governance of federated maintained schools—

- (a) Chapter 1 sets out provisions relating to the establishing or joining a federation;
- (b) Chapter 2 provisions relating to sets out the information and funding federations;
- (c) Chapter 3 sets out provisions relating to the federated schools leaving federation; and
- (d) Chapter 4 sets out provisions relating to the dissolution of federations.

(7) Part 7 is divided up into 8 Chapters containing provisions which concern the establishment of new non-federated maintained schools—

- (a) Chapter 1 sets out the definitions that apply for the purposes of Part 7;
- (b) Chapter 2 sets out the provisions relating to the incorporation of temporary governing bodies;
- (c) Chapter 3 sets out the provisions relating to categories of temporary governors;
- (d) Chapter 4 sets out the provisions relating to the constitution of temporary governing bodies;
- (e) Chapter 5 sets out the provisions relating to the tenure and qualifications of temporary governors;
- (f) Chapter 6 sets out the provisions relating to the general conduct of new schools;

- (g) Chapter 7 sets out the provisions relating to the officers, meetings, proceedings, committees and conflicts of interest; and
  - (h) Chapter 8 contains provisions relating to the transition from a temporary governing body to a governing body.
- (8) Part 8 is divided into 4 Chapters containing provisions concerned with the staffing of maintained schools—
- (a) Chapter 1 sets out a number of provisions which apply generally to all maintained schools and which relate to the general responsibility for staffing at schools and in particular in relation to the appointment and role of an independent investigator;
  - (b) Chapter 2 sets out the provisions on staffing matters that are specific to community; voluntary controlled, community special schools and maintained nursery schools;
  - (c) Chapter 3 sets out the provisions on staffing matters that are specific to foundation and voluntary aided schools; and
  - (d) Chapter 4 sets out the provisions on staffing matters that apply to new schools.
- (9) Part 9 contains provisions concerning governor and non governor allowances.
- (10) Part 10 contains provisions concerning the changing of school session times.
- (11) Part 11 (including Schedule 8) contains provisions concerned with the modification of the School Councils (Wales) Regulations 2005.
- (12) Part 12 contains provisions making a number of consequential amendments to other Regulations which are affected by these Regulations.

## PART 2

### INTRODUCTION

#### **Title, commencement and application**

**2.—**(1) The title of these Regulations is the Government and Staffing of Maintained Schools (Wales) Regulations 2017.

(2) These Regulations come into force on [        ] 2017.

(3) These Regulations apply in relation to Wales.

## Revocation

3. Subject to regulation 4 the regulations in Schedule 1 are revoked to the extent specified in the third column to the table in that Schedule.

## Transitional and saving provisions

4.—(1) For the purposes of this regulation “trigger event” means—

- (a) a local authority decides pursuant to regulation 43 of the New Maintained Schools (Wales) Regulations 2005<sup>(1)</sup> (“the New Schools Regulations”) to make an instrument of government for a new school;
- (b) where the governing body are constituted under an instrument of government that takes effect before [DATE TO BE INSERTED]—
  - (i) the governing body or local authority decide under regulation 35(2) of the Government of Maintained Schools (Wales) Regulations 2005<sup>(2)</sup> (“the 2005 Regulations”) or regulation 45(2) of the Federation of Maintained Schools (Wales) Regulations 2014<sup>(3)</sup> (“the 2014 Regulations”) that the instrument of government should be varied; or
  - (ii) the governing body or local authority decide under Part 2 of the 2014 Regulations to join a federation or under Part 12 of the 2014 Regulations to leave a federation;
- (c) [DATE TO BE INSERTED].

(2) A school constituted and governed in accordance with the 2005 Regulations must reconstitute its governing body and govern in accordance with these Regulations when a trigger event first occurs.

(3) Until a trigger event first occurs the composition and governance of the governing body of a school must continue to be in accordance with the 2005 Regulations.

(4) A school federated in accordance with the 2014 Regulations must reconstitute its governing body and

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(1) S.I. 2005/2912 (W.209) as amended by S.I. 2010/1142 (W.101).

(2) S.I. 2005/2914 (W.211) as amended by S.I. 2005/3200 (W.236), S.I. 2006/873 (W.81), S.I. 2007/944 (W.80), S.I. 2009/2544 (W.206), S.I. 2010/638 (W.64), S.I. 2010/1142 (W.101), S.I. 2010/2582 (W.216), S.I. 2013/2124 (W.207) and S.I. 2014/1609 (W.165).

(3) S.I. 2005/2914 (W.211) as amended by S.I. 2005/3200 (W.236), S.I. 2006/873 (W.81), S.I. 2007/944 (W.80), S.I. 2009/2544 (W.206), S.I. 2010/638 (W.64), S.I. 2010/1142 (W.101), S.I. 2010/2582 (W.216), S.I. 2013/2124 (W.207) and S.I. 2014/1609 (W.165).

govern in accordance with these Regulations when a trigger event first occurs.

(5) Until a trigger event first occurs the composition and governance of the governing body of a school federated must continue to be in accordance with Part 4 of the 2014 Regulations.

(6) A decision by a governing body under regulation 35(2) of the 2005 Regulations or regulation 45(2) of the 2014 Regulations is to be treated for the purposes of these Regulations as a decision of the governing body under regulation 49(2) of these Regulations.

(7) A new school constituted in accordance with the New Maintained Schools (Wales) Regulations 2005 must reconstitute its governing body and govern in accordance with Schedule 7 when a trigger event first occurs.

(8) Until a trigger event first occurs the composition and governance of the governing body of a new school must continue to be in accordance with the New Schools Regulations.

(9) Until a trigger event first occurs the Staffing of Maintained Schools (Wales) Regulations 2006(1) will continue to apply to maintained schools except as provided for in paragraph (9).

(10) The following provisions will continue to apply in the circumstances set out in paragraph (10)—

- (a) the Staffing of Maintained Schools (Wales) Regulations 2006(2) (“the 2006 Regulations”), except for regulations 12, 15, 18A, 26, 26A and 27 and Part 4, and
- (b) regulation 55 of the 2006 Regulations.

(11) The circumstances referred to in paragraph (9) are—

- (a) the process for appointing a head teacher or deputy head teacher by the governing body in accordance with regulations 10 or 24 (as appropriate) of the 2006 Regulations has started before a governing body is reconstituted and governed in accordance with these Regulations and has not been completed; or
- (b) the process for conducting a disciplinary and dismissal process carried out pursuant to Parts 2 or 3 (as appropriate) of the 2006 Regulations by a governing body disciplinary

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(1) S.I. 2006/873 (W.81) as amended by S.I. 2007/944 (W.80), S.I. 2009/2544 (W.206), S.I. 2009/2708 (W.226), S.I. 2009/3161 (W.275), S.I. 2010/1142 (W.101), S.I. 2014/1609 (W.165) and S.I. 2016/211 (W.84).

(2) S.I. 2006/873 (W.81) as amended by S.I. 2007/944 (W.80), S.I. 2009/2544 (W.206), S.I. 2009/2708 (W.226), S.I. 2009/3161 (W.275), S.I. 2010/1142 (W.101), S.I. 2014/1609 (W.165) and S.I. 2016/211 (W.84).

and dismissal committee or a governing body disciplinary and dismissal appeals committee established pursuant regulation 55 of the 2005 Regulations has started before a governing body is reconstituted and governed in accordance with these Regulations and has not been completed.

(12) The provisions set out in paragraph (9) will continue to apply until the earlier of the following—

- (a) the processes described in paragraph (10)(a) and (b) have completed (as appropriate); or
- (b) the expiry of 6 months starting from—
  - (i) the start of the process set described in paragraph (10)(a); or
  - (ii) the start of the process described in paragraph (10)(b).

(13) For the purposes of paragraph (10)(a)—

- (a) the appointment process is to be taken to have started if a selection panel has been appointed in accordance with regulations 10 or 24 of the 2006 Regulations; and
- (b) the appointment process is to be taken to have been completed if a person has been appointed on a permanent basis in accordance with regulations 10 or 24 of the 2006 Regulations to the post of head teacher or deputy head teacher (as appropriate).

(14) For the purposes of paragraph (10)(b)—

- (a) the disciplinary and dismissal process is to be taken to have started if a staff disciplinary and dismissal committee has been established to consider a disciplinary matter in relation to a member of the school staff in accordance with Parts 2 or 3 (as appropriate) of the 2006 Regulations;
- (b) the disciplinary and dismissal process is to be taken to have been completed if—
  - (i) the staff disciplinary and dismissal committee have determined whether or not a person (“P”) should cease to work at the school, and
  - (ii) the disciplinary and dismissal appeals committee have determined any appeal by P following a determination that P should cease to work at the school.

(15) The provisions in the following Regulations will continue to apply to a school until a trigger event first occurs—

- (a) the School Government (Terms of Reference) (Wales) Regulations 2000<sup>(1)</sup>;
- (b) the Governor Allowances (Wales) Regulations 2005<sup>(2)</sup>; and
- (c) the Changing of School Session Times (Wales) Regulations 2009<sup>(3)</sup>.

(16) The amendments made by Part 12 of these Regulations only apply to a maintained school which has an instrument of government made for it in accordance with these Regulations.

## Interpretation

### 5.—(1) In these Regulations—

- “the 1996 Act” means the Education Act 1996<sup>(4)</sup>;
- “the 1997 Act” means the Police Act 1997<sup>(5)</sup>;
- “the 1998 Act” means the School Standards and Framework Act 1998<sup>(6)</sup>;
- “the 2002 Act” means the Education Act 2002<sup>(7)</sup>;
- “the 2011 Measure” means the Education (Wales) Measure 2011<sup>(8)</sup>;
- “the 2013 Act” means the School Standards and Organisation (Wales) Act 2013<sup>(9)</sup>;
- “the 2014 Act” means the Education (Wales) Act 2014;
- “acting head teacher” means a person appointed, pending the appointment of a head teacher or in the absence of the head teacher, to carry out the functions of—
  - (a) the head teacher of a school; or
  - (b) the head teacher of the federation or of a federated school;
- “appropriate diocesan authority” has the same meaning as in section 142(1) of the 1998 Act;
- “appropriate religious body” has the meaning given to it in section 98(3) of the 2013 Act;
- “appropriate diocesan officer” means such person the appropriate diocesan authority may nominate;
- “Church in Wales school” has the same meaning as in section 142(1) of the 1998 Act;

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- (1) S.I. 2000/3207 (W.195) as amended by S.I. 2005/2913 (W.210) and S.I. 2011/2940 (W.316). There are other amendments which are no longer relevant.
  - (2) S.I. 2005/2915 (W.212) as amended by S.I. 2010/1142 (W.101).
  - (3) S.I. 2009/572 (W.54) as amended by S.I. 2010/1132 (W.101).
  - (4) 1996 c.56.
  - (5) 1997 c.50.
  - (6) 1998 c.31.
  - (7) 2002 c.32.
  - (8) 2011 nawm 7.
  - (9) 2013 anaw 1.

“day” means school day as defined by section 579 of the 1996 Act;

“dismissal” is to be interpreted in accordance with sections 95 and 136 of the Employment Rights Act 1996(1);

“employment business” has the meaning given by section 13(3) of the Employment Agencies Act 1973(2) and includes a local authority and a person carrying on an employment business;

“enhanced criminal records certificate” means an enhanced criminal records certificate issued under section 113B of the 1997 Act(3) which includes, in such cases as are from time to time prescribed under section 113BA(1) of that Act(4), suitability information relating to children within the meaning of section 113BA(2) of that Act;

“federation date” means the date on which governing bodies federate;

“federation transition period” means the period of time after a determination has been made to proceed with the proposals for a federation under Chapter 1 of Part 6 but before the federation date;

“governing body” means a governing body incorporated under section 19(1) of the 2002 Act or these Regulations as appropriate;

“harm” means physical, sexual or emotional abuse;

“local authority” means—

- (a) the local authority in Wales by which a maintained school is, or a proposed school is to be, maintained;
- (b) in the case of a federation where that federation includes schools maintained by different local authorities in Wales, “relevant local authority” means the local authority by which a maintained school is, or a proposed school is to be, maintained;

“local authority federation” means a federation containing at least one federated school that has been federated by virtue of section 11 of the 2011 Measure (proposal by local authorities to federate schools) and by these Regulations;

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

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(1) 1996 c.18.

(2) 1973 c.35.

(3) Section 113B was inserted by section 163(2) of the Serious Organised Crime and Police Act 2005 (c.15).

(4) Section 113BA was inserted by paragraph 14(1) and (4) of Part 2 of Schedule 9 to the Safeguarding Vulnerable Groups Act 2006 (c.47).

“proposer” means the local authority, the governing body or other person who has made the proposals;

“pupil” has the same meaning as in section 3 of the 1996 Act;

“school council” means a council established in accordance with regulation 3 of the School Councils Regulations;

“the School Councils Regulations” means the School Councils (Wales) Regulations 2005<sup>(1)</sup>;

“small school” is to be interpreted in accordance with an Order made under section 15 of the 2011 Measure;

“school organisation proposal functions” means the functions in sections 42, 43, 45, 53 and 80 of the 2013 Act;

“staff” means any person who is (or is to be) employed or engaged to work at a school or a federation;

“statutory authorities” means the police force and the local authorities within those areas the school is situated;

“support staff” means any member of a school’s staff other than a teacher”;

“teacher” means—

- (a) a person who is a school teacher for the purposes of table 1 of Schedule 2 to the 2014 Act; and
- (b) a person who would be regarded as a school teacher but for the fact that the other party to the contract is not a local authority or governing body within Chapter 3 of Part 8 of these Regulations;

“working day” means any day other than a Saturday, a Sunday or a day which is a bank holiday within the meaning of section 1 of the Banking and Financial Dealings Act 1971<sup>(2)</sup> or other public holiday.

(2) Any reference in these Regulations to—

- (a) a school includes a reference to a federated school;
- (b) a person or governor who is (or is to be) employed or engaged to work at a school includes a person or governor who is (or is to be) employed or engaged to work at a federation or a federated school;
- (c) a person who is (or is to be) supplied by an employment business to a school includes a

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(1) S.I. 2005/3200 (W.236).

(2) 1971 c.80.

person who is (or is to be) supplied by an employment business to a federation or a federated school;

- (d) a vacancy in any post includes a prospective vacancy in the post;
- (e) a person's absence is to their absence, or prospective absence, from the school;
- (f) support staff includes staff engaged to provide community facilities and services under section 27 of the 2002 Act.

(3) In these regulations unless the contrary intention requires—

- (a) any reference to a school having a “religious character” is a reference to a foundation or voluntary school designated as a school having such a religious character by an order made section 69(3) of the 1998 Act;
- (b) any reference to the head teacher or deputy head teacher of a federated school is to be construed as a reference to the head teacher or deputy head teacher—
  - (i) of the federation; and
  - (ii) of each of the federated schools in the federation;
- (c) where reference is made to the local authority and a federation includes schools maintained by more than one authority, the reference is to be taken as a reference to each.

(4) For the purposes of these Regulations a person (“P”) applies for an enhanced criminal record certificate if—

- (a) P countersigns an application for the certificate as a registered person (within the meaning of section 120 of the 1997 Act) or if an application is countersigned on P’s behalf; and
- (b) the application is submitted in accordance with Part V of that Act.

(5) For the purposes of these Regulations an enhanced criminal records certificate is subject to update arrangements in the circumstances set out on section 116A(3) of the 1997 Act<sup>(1)</sup>.

(6) A person (“P”) is to be treated as meeting any staff qualification requirements if P—

- (a) fulfils any requirements with respect to qualifications or registration which apply to P as a result of regulations made under—

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(1) Section 116A was inserted by section 83 of the Protection of Freedoms Act 2012 (c.9).

- (i) section 218(1)(a) of the Education reform Act 1988<sup>(1)</sup>;
- (ii) section 19 of the Teaching and Higher Education Act 1998<sup>(2)</sup>;
- (iii) sections 132 to 135 of the 2002 Act; and
- (iv) section 14 of the 2014 Act;
- (b) meets any of the conditions with respect to health and physical capacity which apply to P as a result of regulations made under section 141 of the 2002 Act;
- (c) is not barred from regulated activity relating to children in accordance with section 3(2) of the Safeguarding Vulnerable Groups Act 2006<sup>(3)</sup>;
- (d) is not subject to any direction made under section 142 of the 2002 Act or any prohibition, restriction or order having effect as such a direction; and
- (e) is not subject to conditional registration, suspension or prohibition order made under section 26 of the 2014 Act.

#### **Service of notices**

6. Any notice or other document required to be served by or under these Regulations is to be served in accordance with section 572 of the 1996 Act.

## **PART 3**

### **TERMS OF REFERENCE**

#### **Terms of reference**

7.—(1) In this regulation the term "governing body" includes the temporary governing body of a new school.

(2) In exercising their functions, the governing body's terms of reference are the principles set out in this regulation.

(3) The governing body must act with integrity, objectivity and honesty and in the best interests of the school, and in the case of a federation, the best interests of all schools in the federation.

(4) The governing body must be open about the decisions and actions they take and in particular must be prepared to explain their decisions and actions to interested persons.

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(1) 1988 c.40.  
 (2) 1998 c.30.  
 (3) 2006 c.47.

(5) Nothing in paragraph (4) is to be construed so as to require the governing body to disclose material relating to—

- (a) a named teacher or other person employed or engaged, or proposed to be employed or engaged, at the school or federation; or
- (b) a named pupil at, or candidate for admission to, the school; or
- (c) any matter which by reason of its nature, the governing body or a committee of the governing body are satisfied should remain confidential.

### **The role of the governing body**

**8.—**(1) The governing body is responsible for the strategic direction of the school and must establish a strategic framework for the school by—

- (a) ensuring the ethos and strategic direction of the school are clearly defined;
- (b) ensuring that the head teacher performs the responsibilities of that post so as to raise the educational performance of the school;
- (c) ensuring the sound, proper and effective use of the school's financial resources;
- (d) setting aims and objectives for the school;
- (e) setting policies for the school for achieving the aims and objectives; and
- (f) setting targets for achieving the aims and objectives.

(2) The governing body must monitor and evaluate progress in the school towards achievement of the matters set out in paragraph (1) and regularly review the strategic framework for the school in the light of that progress.

(3) In exercising the functions in paragraphs (1) and (2) the governing body must—

- (a) consider any advice given by the head teacher under regulation 9(1)(f), and
- (b) comply with any trust deed relating to the school (subject to any other statutory provision).

(4) The governing body must support the head teacher in the performance of the functions of the post.

### **The role of the head teacher**

**9.—**(1) The head teacher's responsibilities include—

- (a) the educational performance of the school;
- (b) the internal organisation of the school;
- (c) the management of the school;

- (d) the control of the school;
- (e) the implementation of the strategic framework established by the governing body; and
- (f) advising the governing body on the establishment and review of the strategic framework, and in particular may if so requested by the governing body formulate—
  - (i) policies for the school for achieving the aims and objectives set by the governing body; and
  - (ii) targets for the achievement of the aims and objectives set by the governing body, which may be adopted (with or without modifications) or rejected by the governing body.

(2) The head teacher is accountable to the governing body for the performance of all of the head teacher's responsibilities and must report at least once every school year to the governing body on the progress made towards—

- (a) achieving the aims and objectives set by the governing body;
- (b) meeting specific targets set by the governing body; and
- (c) raising the educational performance of the school.

### **Delegation of the governing body's functions**

**10.** In deciding whether or how to exercise any power to delegate their functions the governing body must have regard to—

- (a) their responsibilities as set out in regulation 8; and
- (b) the responsibilities of the head teacher set out in regulation 9.

### **Power of governing body to direct the head teacher**

**11.** The head teacher must comply with any reasonable direction of the governing body in relation to the exercise by the head teacher of any function of the head teacher.

### **The school curriculum policy**

**12.—(1)** The head teacher must formulate a policy for the secular curriculum of the school (“the curriculum policy”) for adoption by the governing body (with or without modifications).

(2) The head teacher must review the curriculum policy every school year and must formulate changes

to the curriculum policy for adoption by the governing body (with or without modifications).

(3) The head teacher must implement the curriculum policy as adopted by the governing body.

(4) The governing body must—

- (a) consider and, if they see fit, adopt the curriculum policy (with or without modifications), or remit it to the head teacher for reformulation;
- (b) monitor, evaluate and review the implementation of the curriculum policy; and
- (c) consider and, if they see fit, adopt any changes to the curriculum policy proposed by the head teacher (with or without modifications).

(5) This regulation does not apply to maintained nursery schools.

## PART 4

### CATEGORIES OF GOVERNOR AND NON GOVERNOR MEMBERS

#### **Parent governors**

**13.**—(1) In these Regulations “parent governor” means—

- (a) a person who is elected in accordance with paragraph 3 of Schedule 2 as a member of the governing body by parents of registered pupils at a school and is such a parent at the time when that person is elected; or
- (b) a person appointed as a parent governor in accordance with paragraphs 4 and 5 of Schedule 2.

(2) Schedule 2 applies to the appointment and election of parent governors.

(3) A person is disqualified from appointment or election as a parent governor of a governing body if that person is—

- (a) an elected member of the local authority;
- (b) employed by the local authority in connection with its education functions; or
- (c) any person qualified to be a staff governor.

(4) Unless that person is otherwise disqualified under these Regulations that person is not disqualified from continuing to hold office as a parent governor when that person—

- (a) ceases to be a parent of a registered pupil at a school; or

- (b) ceases to fulfil any of the requirements set out in paragraph 6 of Schedule 2 (as the case may be).

### **Staff governors**

**14.—**(1) In these Regulations “staff governor” means a person—

- (a) who is elected in accordance with Schedule 3 as a member of the governing body by persons who are employed to work at a school; and
- (b) who is a person so working at the time when that person is elected.

(2) Upon ceasing to work at the school a staff governor is disqualified from continuing to hold office as such a governor at the school.

(3) Subject to paragraph (4) a person is disqualified from election as a staff governor to a federated governing body if that person—

- (a) has previously been elected as a staff governor to the same federated governing body within the last two years; or
- (b) is employed to work at the same federated school as any person elected as a staff governor to that governing body within the last two years.

(4) Paragraph (3)(b) does not apply—

- (a) to any person employed to work at two or more schools in the federation; and
- (b) if to do so would result in no person being qualified for election as a staff governor to a governing body.

### **Local authority governors**

**15.—**(1) In these Regulations “local authority governor” means a person appointed by the local authority to be a member of the governing body and who in the opinion of the local authority has the skills required to contribute to the effective governance and success of the school.

(2) Where a federation includes schools which are maintained by two or more local authorities, those local authorities must agree amongst themselves who will appoint such governors.

(3) A person is disqualified from appointment or continuing to hold office as a local authority governor if that person is eligible to be a staff governor.

### **Community governors**

**16.—**(1) In these Regulations—

“community governor” means a person who is appointed as such by the governing body and who is—

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

(2) No person may be appointed as a community governor unless that person has, in the opinion of the governing body the skills required to contribute to the effective governance and success of the school.

(3) In the case of a federated school the reference to “the school” in paragraph (2) includes all schools within the federation.

(4) A person is disqualified from appointment or continuing to hold office as a community governor if that person is—

- (a) a registered pupil at the school;
- (b) eligible to be a staff governor; or
- (c) an elected member of the local authority.

### **Foundation governors**

**17.—(1)** In these Regulations—

(a) “foundation governor” means a person—

- (i) who is appointed by a person other than the local authority to be a member of the governing body and in the case of a federation is appointed in respect of a federated school or schools;
- (ii) is appointed for the purposes of securing that the character of a school including where a school which has a particular religious character, that character is preserved and developed at that school;
- (iii) in the opinion of the person entitled to appoint the foundation governor—
  - (aa) has the skills required to contribute to the effective governance and success of the school; and
  - (bb) is capable of achieving the purposes for which they would be appointed; and
- (iv) where the school has a trust, is appointed for the purpose of securing that the school is conducted in accordance with that trust;

(b) “ex officio foundation governor” means a foundation governor who is the holder of an

office by virtue of which that person is entitled to be a foundation governor;

- (c) “substitute governor” means a foundation governor appointed to act in place of an ex officio foundation governor—
  - (i) who is unwilling or unable to act as governor;
  - (ii) who has been removed as a governor under regulation 42; or
  - (iii) if there is a vacancy in the office by virtue of which such a governorship exists.

(2) In the case of a federated school the reference to “the school” in paragraph (1)(a)(iii) includes all schools within the federation.

(3) An ex officio foundation governor is, upon ceasing to hold the office from which that person’s governorship derives, disqualified from continuing to hold office as such a governor.

### **Partnership governors**

**18.**—(1) In these Regulations “partnership governor” means a person who is nominated as a partnership governor and appointed as such in accordance with Schedule 4.

(2) A person is disqualified from nomination or appointment as a partnership governor if that person is—

- (a) a parent of a registered pupil at a school or in the case of a federated school a school within the federation;
- (b) a registered pupil at a school or in the case of a federated school a school within the federation;
- (c) eligible to be a staff governor of the school or in the case of a federated school a school within the federation;
- (d) an elected member of a relevant local authority; or
- (e) employed by a relevant local authority in connection with its functions as a local authority.

### **Co-opted governors**

**19.**—(1) In these Regulations “co-opted governor” means a person appointed as a co-opted governor by the governing body and who, in the opinion of the governing body—

- (a) has the skills required to contribute to the effective governance and success of the school; and

- (b) has the primary aim of wanting the school to secure the best possible outcomes for registered pupils at the school.

(2) In the case of a federated school the reference to “the school” in paragraph (1) includes all schools within the federation.

### **Associate members**

**20.** In these Regulations “associate member” means a person—

- (a) who is appointed as a member of any committee established by the governing body but who is not a governor;
- (b) who in the opinion of the governing body has the appropriate skills and experience to be appointed a member of a committee of the governing body;
- (c) who would not be disqualified from being governor under Schedule 5; and
- (d) who is not a registered pupil of the school or in the case of federations a school within that federation.

### **Pupil governors**

**21.** In these Regulations “pupil governor” means a registered pupil nominated by the school council to be a member of the governing body and appointed as such by the governing body in accordance with regulation 7 of the School Councils Regulations.

## **PART 5**

### **COMPOSITION, GOVERNANCE AND PROCEDURES OF GOVERNING BODIES**

#### **CHAPTER 1**

#### **COMPOSITION OF GOVERNING BODY: NON FEDERATED SCHOOLS**

### **General principles**

**22.—**(1) The governing body of every maintained school must be constituted in accordance with this Chapter.

(2) The size of the membership of the governing body must be no fewer than—

- (a) seven governors in a community, community special or a maintained nursery school;
- (b) nine governors in a voluntary controlled or foundation school; and

- (c) fourteen governors in a voluntary aided school.

(3) In determining the size of the membership of the governing body the following governors must not be included—

- (a) any parent governor appointed or elected in addition to the minimum required by Part 4;
- (b) any staff governor elected in addition the minimum required by Part 4;
- (c) pupil governors appointed in accordance with Part 4; and
- (d) additional governors appointed in accordance with section 6 (power of local authorities to appoint additional governors) or section 13 of the 2013 Act (power of Welsh Ministers to appoint additional governors) of the 2013 Act.

(4) The total number of co-opted governors who are also eligible to be—

- (a) elected as staff governors when counted with the head teacher and the staff governors; or
- (b) elected as parent governors when counted with the elected parent governors,

must not exceed one third of the total membership of the governing body.

#### **Maintained nursery schools, community schools and community special schools**

**23.**—(1) This regulation applies to the governing body of a—

- (a) maintained nursery school;
- (b) community school; and
- (c) community special school.

(2) A governing body must consist of the following—

- (a) at least one elected parent governor but no more than the number of appointed parent governors;
- (b) at least one appointed parent governor;
- (c) at least one staff governor;
- (d) the head teacher, unless that person resigns the position in accordance with regulation 41;
- (e) one local authority governor;
- (f) one community governor; and
- (g) at least one co-opted governor.

(3) A governing body may in addition appoint up to two pupil governors if the school is a secondary school.

### **Voluntary controlled schools**

**24.**—(1) A governing body of a voluntary controlled school must consist of the following—

- (a) at least one elected parent governor but no more than the number of appointed parent governors;
- (b) at least one appointed parent governor;
- (c) at least one staff governor;
- (d) the head teacher, unless that person resigns the position in accordance with regulation 41;
- (e) one local authority governor;
- (f) one community governor;
- (g) at least one co-opted governor; and
- (h) at least two foundation governors (but no more than one third of the total number of governors on the governing body when rounded up to the nearest whole number).

(2) A governing body may in addition appoint up to two pupil governors if the school is a secondary school.

### **Voluntary aided schools**

**25.**—(1) A governing body of a voluntary aided school must consist of the following—

- (a) at least one elected parent governor but no more than the number of appointed parent governors;
- (b) at least one appointed parent governor;
- (c) at least one staff governor;
- (d) the head teacher, unless that person resigns the position in accordance with regulation 41;
- (e) one local authority governor;
- (f) at least one co-opted governor; and
- (g) such number of foundation governors as will lead to their outnumbering all the other governors by two.

(2) A governing body may in addition appoint up to two pupil governors if the school is a secondary school.

### **Foundation schools**

**26.**—(1) A governing body of a foundation school must consist of the following—

- (a) at least one elected parent governor but no more than the number of appointed parent governors;
- (b) at least one appointed parent governor;
- (c) at least one staff governor;

- (d) the head teacher, unless that person resigns the position in accordance with regulation 41;
- (e) one local authority governor;
- (f) one community governor;
- (g) at least one co-opted governor; and
- (h) at least two foundation or partnership governors (but no more than one third of the total number of governors on the governing body when rounded up to the nearest whole number).

(2) A governing body may in addition appoint up to two pupil governors if the school is a secondary school.

### **Notification of nominations and appointments**

27. Where any person makes an appointment or nominates a person to be appointed to the governing body, that person must give written notice of the appointment or the nomination to the clerk to the governing body specifying the name and usual place of residence of the person appointed.

### **Joint appointments**

28. The appointment is to be made by, or in accordance with a direction given by, the Welsh Ministers if—

- (a) the instrument of government of a school provides for one or more of the governors to be appointed by persons acting jointly, and
- (b) those persons fail to make an agreed appointment.

### **Surplus governors**

29.—(1) Where—

- (a) a maintained school has more governors of a particular category than are provided for by the instrument of government for the school; and
- (b) the surplus is not eliminated by the required number of governors resigning,

the number of governors of that category required to eliminate the surplus must cease to hold office in accordance with this regulation.

(2) Foundation governors must cease to hold office such that, in the opinion of those who appointed them under the instrument of government, the foundation governors remaining in office are those best placed to—

- (a) contribute to the effective governance and success of the school; and

(b) serves the purposes for which foundation governors are appointed.

(3) Governors who are not foundation governors must cease to hold office such that, in the opinion of the governing body, the governors remaining in office are those with the most relevant skills to contribute to the effective governance and success of the school.

(4) In determining which governors must cease to hold office in accordance with paragraph (3)—

- (a) the governing body must hold a vote in respect of each category in which there are surplus governors;
- (b) governors must not vote in respect of their own category;
- (c) no governor ceases to hold office until the votes in all categories are cast; and
- (d) the matter of the governor's removal from office must be specified as an item of business on the agenda for the meeting.

(5) Any procedure set out in the instrument of government for the removal of surplus governors does not apply in the circumstances set out in paragraph (1).

(6) After a resolution to remove a governor from office has been passed the governing body must inform the person removed from office of the reasons for the removal in writing.

## CHAPTER 2

### COMPOSITION OF GOVERNING BODY: FEDERATED

#### **General principles**

**30.—**(1) The governing body of every maintained federated school must be constituted in accordance with this Chapter.

(2) The size of the membership of the governing body must be no fewer than—

- (a) seven governors in a federation comprising of only community, community special and maintained nursery schools;
- (b) nine governors in a federation comprising of only foundation schools;
- (c) nine governors in a federation comprising of only voluntary controlled schools;
- (d) fourteen governors in a federation comprising of only voluntary aided schools; and
- (e) sixteen governors in a federation comprising of only voluntary controlled and voluntary aided schools.

(3) In determining the size of the membership of the governing body of a federation the following governors must not be included—

- (a) any parent governor appointed or elected in addition to the minimum required by Part 4;
- (b) any staff governor elected in addition the minimum required by Part 4;
- (c) any pupil governors appointed in accordance with Part 4; or
- (d) any additional governors appointed in accordance with section 6 (power of local authorities to appoint additional governors) or section 13 of the 2013 Act (power of Welsh Ministers to appoint additional governors) of the 2013 Act.

(4) The total number of co-opted governors who are also eligible to be—

- (a) elected as staff governors when counted with the head teacher and the staff governors; or
- (b) elected as parent governors when counted with the elected parent governors,

must not exceed one third of the total membership of the governing body.

**Federation comprising only community, community special and maintained nursery schools**

**31.**—(1) The governing body of a federation containing any combination of community schools, community special schools and maintained nursery schools (and no other category of school) is to comprise the following—

- (a) at least one elected parent governor but no more than the number of appointed parent governors;
- (b) at least one appointed parent governor;
- (c) at least one staff governor;
- (d) one local authority governor;
- (e) one community governor; and
- (f) one co-opted governor.

(2) The governing body must in addition include—

- (a) the head teacher of the federation, unless that person resigns the office of governor in accordance with regulation 41; or
- (b) (if there is no head teacher of the federation) the head teacher of each federated school, unless that person resigns the office of governor in accordance with regulation 41.

(3) The governing body may in addition appoint up to two pupil governors where the federation contains secondary schools.

**Federation comprising voluntary controlled schools only**

**32.**—(1) The governing body of a federation containing voluntary controlled schools only is to comprise the following—

- (a) at least one elected parent governor but no more than the number of appointed parent governors;
- (b) at least one appointed parent governor;
- (c) at least one staff governor;
- (d) one local authority governor;
- (e) one community governor;
- (f) at least one co-opted governor; and
- (g) at least two foundation governors (but no more than one third of the total number of governors on the governing body when rounded up to the nearest whole number).

(2) The governing body must in addition include—

- (a) the head teacher of the federation, unless that person resigns the office of governor in accordance with regulation 41; or
- (b) (if there is no head teacher of the federation) the head teacher of each federated school, unless that person resigns the office of governor in accordance with regulation 41.

(3) The governing body may in addition appoint up to two pupil governors where the federation contains secondary schools.

**Federation comprising voluntary aided schools only**

**33.**—(1) The governing body of a federation containing voluntary aided schools only is to comprise the following—

- (a) at least one elected parent governor but no more than the number of appointed parent governors;
- (b) at least one appointed parent governor;
- (c) at least one staff governor;
- (d) one local authority governor;
- (e) one co-opted governor; and
- (f) such number of foundation governors as will lead to their out numbering all the other governors by two.

(2) The governing body must in addition include—

- (a) the head teacher, unless that person resigns the office of governor in accordance with regulation 41; or
- (b) (if there is no head teacher of the federation) the head teacher of each federated school,

unless that person resigns the office of governor in accordance with regulation 41.

(3) The governing body may in addition appoint up to two pupil governors where the federation contains secondary schools.

#### **Federation comprising voluntary controlled and voluntary aided schools**

**34.**—(1) The governing body of a federation containing any combination of voluntary controlled schools and voluntary aided schools (and no other category of school) is to comprise the following—

- (a) at least one elected parent governor but no more than the number of appointed governors;
- (b) at least one appointed parent governor;
- (c) at least one staff governor;
- (d) one local authority governor;
- (e) one community governor;
- (f) at least one co-opted governor; and
- (g) such number of foundation governors as will lead to their outnumbering all the other governors by no more than two.

(2) The governing body must in addition include—

- (a) the head teacher of the federation, unless that person resigns the office of governor in accordance with regulation 41; or
- (b) (if there is no head teacher of the federation) the head teacher of each federated school, unless that person resigns the office of governor in accordance with regulation 41.

(3) The governing body may in addition appoint up to two pupil governors where the federation contains secondary schools.

#### **Federation comprising only foundation schools**

**35.**—(1) The governing body of a federation containing foundation schools only is to comprise the following—

- (a) at least one elected parent governor but no more than the number of appointed parent governors;
- (b) at least one appointed parent governor;
- (c) at least one staff governor;
- (d) one local authority governor;
- (e) one community governor;
- (f) at least one co-opted governor; and
- (g) at least two foundation or partnership governors (but no more than one third of the total number of governors on the governing

body when rounded up to the nearest whole number).

(2) The governing body of the federation must in addition include—

- (a) the head teacher of the federation, unless that person resigns the office of governor in accordance with regulation 41; or
- (b) (if there is no head teacher of the federation) the head teacher of each federated school, unless that person resigns the office of governor in accordance with regulation 41.

(3) The governing body of the federation may in addition appoint up to two pupil governors where the federation contains secondary schools.

### **Notification of nominations and appointments**

**36.** Where any person makes an appointment or nominates a person to be appointed to the governing body, that person must give written notice of the appointment or the nomination to the clerk to the governing body specifying the name and usual place of residence of the person appointed.

### **Joint appointments**

**37.** The appointment is to be made by, or in accordance with a direction given by, the Welsh Ministers if—

- (a) the instrument of government of a school or a federation provides for one or more of the governors to be appointed by persons acting jointly; and
- (b) those persons fail to make an agreed appointment.

### **Surplus Governors**

**38.—(1)** Where—

- (a) a governing body has more governors of a particular category than are provided for by the instrument of government for the school; and
- (b) the surplus is not eliminated by the required number of governors resigning,

the number of governors of that category required to eliminate the surplus must cease to hold office in accordance with this regulation.

(2) Foundation governors must cease to hold office such that, in the opinion of those who appointed them under the instrument of government, the foundation governors remaining in office are those best placed to—

- (a) contribute to the effective governance and success of the schools; and
  - (b) serves the purposes for which foundation governors are appointed.
- (3) Governors who are not foundation governors must cease to hold office such that, in the opinion of the governing body, the governors remaining in office are those with the most relevant skills to contribute to the effective governance and success of the schools.
- (4) In determining which governors must cease to hold office in accordance with paragraph (3)—
- (a) the governing body must hold a vote in respect of each category in which there are surplus governors;
  - (b) governors must not vote in respect of their own category;
  - (c) no governor ceases to hold office until the votes in all categories are cast; and
  - (d) the matter of the governor's removal from office is specified as an item of business on the agenda for the meeting.
- (5) Any procedure set out in the instrument of government for the removal of surplus governors does not apply in the circumstances set out in paragraph (1).
- (6) After a resolution to remove a governor from office has been passed the governing body must inform the person removed from office of the reasons for the removal in writing.

### CHAPTER 3

#### QUALIFICATIONS AND TENURE OF OFFICE

##### **Qualifications and disqualifications**

**39.** Schedule 5 sets out the circumstances in which a person is qualified for or disqualified from holding or continuing in office as a governor or as an associate member.

##### **Term of office**

**40.—(1)** All governors hold office for the same fixed period of not less than 1 year and no more than 4 years as determined by the governing body running from the date of their election or appointment.

(2) Where the instrument of government allows a governing body may determine that—

- (a) a particular category of governor is to hold office for a shorter period than other categories of governor provided that shorter period is not less than 1 year,
- (b) an individual governor is to hold office for a shorter period than other governors of the

same category provided that shorter period is not less than 1 year.

(3) Paragraphs (1) and (2) do not apply to—

- (a) any governor who is the head teacher , or to any ex officio foundation governor, who may hold office for as long as that person holds the position from which that person's governorship derives;
- (b) any foundation governor whose term of office is to be determined by the person who appointed that governor, but not be less than 1 year or more than 4 years;
- (c) any additional governor, additional foundation governor or interim executive member appointed under sections 6, 7, 13 or 14 of the 2013 Act whose term of office is to be for a fixed period of between 1 and 4 years as determined by the person who appointed that governor; and
- (d) any pupil governor who is to hold office for a period of 1 year from the date of that person's appointment.

(4) Nothing in paragraph (3)(d) prevents a pupil governor from being re-appointed at the expiration of that person's term of office.

(5) A substitute ex officio governor may hold office until the earlier of the following—

- (a) the expiry of 4 years from the date when that person's appointment takes effect;
- (b) the date when the original governor (not having been removed from office under regulation 42) gives written notice to the clerk to the governing body to the effect that that person is able and willing to act as a foundation governor; or
- (c) the date when a person other than the original governor takes office in the post by virtue of which the ex officio foundation governorship exists.

(6) This regulation does not prevent a governor from—

- (a) being elected or appointed for a further term, save as otherwise provided in these Regulations;
- (b) resigning that person's office in accordance with regulation 41;
- (c) being removed from office under regulations 42 or 43; or
- (d) being disqualified, by virtue of any provision of these Regulations, from holding or continuing to hold office.

(7) An associate member may hold office for a period of not less than 1 year and not more than 4 years as determined by the governing body at the date of the associate member's appointment.

(8) Nothing in this regulation prevents an associate member from being reappointed at the expiry of the associate member's term of office.

(9) In this regulation "the original governor" means the ex officio foundation governor in whose place the substitute governor is appointed to act.

### **Resignation**

**41.—**(1) A governor or associate member may at any time resign from office by giving written notice to the clerk to the governing body.

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

(3) An ex officio foundation governor may resign as governor either permanently or temporarily, but that person's resignation does not prejudice the ex officio governorship of that person's successor in the office from which the ex officio governorship derives.

### **Removal of local authority and foundation governors**

**42.—**(1) Any local authority governor or foundation governor may be removed from office by the person who appointed that governor, who must give written notice of the removal to the clerk to the governing body and to the governor removed.

(2) An ex officio foundation governor may be removed from office by the person named in the instrument of government as the person entitled to remove that governor and that person must give written notice of the removal to the clerk to the governing body and to the governor removed.

### **Removal of community governors, appointed parent governors, partnership governors, co-opted governors, associate members and pupil governors**

**43.—**(1) The governing body may remove any of the following persons from office in accordance with the procedure set out in regulation 44—

- (a) community governor;
- (b) appointed parent governors, appointed by the governing body under paragraphs 4 to 6 of Schedule 2;
- (c) partnership governors;
- (d) co-opted governors; and
- (e) pupil governors.

(2) A partnership governor may also be removed from office by the governing body at the request of the nominating body in accordance with regulation 44.

(3) A nominating body requesting the removal of a partnership governor must give written reasons for the request to the clerk to the governing body and the governor in question.

(4) An associate member may be removed from office at any time by the governing body that appointed that associate member.

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

**44.**—(1) This regulation applies in relation to the removal of a governor from office in accordance with regulation 43.

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

- (a) the person proposing the governor's removal has given their reasons for doing so;
- (b) the governor whom it is proposed to remove has been given the opportunity to make a statement in response before withdrawing from the meeting;
- (c) the governing body has considered the information provided under sub-paragraphs (a) and (b); and
- (d) the matter of the governor's removal from office is specified as an item of business on the agenda for the meeting, of which notices have been given in accordance with regulation 59.

(3) After a resolution to remove a governor from office has been passed the governing body must inform the person removed from office of the reasons for the removal in writing.

### **CHAPTER 4**

#### **INSTRUMENT OF GOVERNMENT, SCHOOLS COUNCILS AND CHARITABLE STATUS**

#### **Duty to have regard to guidance**

**45.** In respect of the making of instruments of government, the matters to be dealt with in such instruments, the form of such instruments, and the review and variation of such instruments, governing bodies and local authorities must have regard to any guidance given from time to time by the Welsh Ministers.

## **Contents and form of instrument of government**

**46.**—(1) The instrument of government must set out—

- (a) the name and category of the school;
- (b) the name of the federation (where applicable);
- (c) the names and categories of each federated school within the federation (where applicable);
- (d) the name of the governing body;
- (e) subject to paragraph (4), the manner in which the governing body is to be constituted in accordance with Chapters 1 or 2 of this Part (as the case may be), specifying—
  - (i) minimum and maximum number of governors (if applicable);
  - (ii) the minimum and maximum number of governors for each category of governor (if applicable); and
  - (iii) the total membership of the governing body;
- (f) whether the term of office for a category of governor or an individual governor—
  - (i) may be more than 1 but less than 4 years and if so the length of that term of office; and
  - (ii) who is to determine the length of that term of office;
- (g) where a governing body has foundation governors—
  - (i) the name of any person who is entitled to appoint such governors and, if there is more than one such person entitled to appoint, the basis upon which such appointments are made;
  - (ii) details of any foundation governorship to be held *ex officio* by the holder of a named office; and
  - (iii) the name of any person who is entitled to remove any *ex officio* foundation governor and to appoint any substitute governor;
- (h) where there is a trust relating to a school, that fact;
- (i) where a school has a religious character, a single description of the religious ethos of each such school; and
- (j) the date when the instrument of government takes effect.

(2) The manner in which the governing body is to be constituted, as set out in accordance with paragraph

(1)(d), must accord with the provisions of these Regulations as they apply to a school of the category to which the school belongs.

(3) The instrument of government must (subject to any statutory provision) comply with any trust relating to a school.

(4) Sub-paragraphs (e) and (f) of paragraph (1) do not apply to pupil governors.

#### **Procedure for making an instrument of government: non federated school**

47.—(1) Subject to paragraph (6), the governing body must prepare a draft of the instrument of government and submit it to the local authority.

(2) Where the school has foundation governors, the governing body must not submit the draft to the local authority unless it has been approved by—

- (a) the foundation governors;
- (b) any trustees of any trust relating to the school;
- (c) in the case of a Church in Wales school or Roman Catholic Church school, the appropriate diocesan authority; and
- (d) in the case of any other school as having a religious character, the appropriate religious body.

(3) The instrument of government is to be made by the local authority in the form of the draft or (as the case may be) the revised draft if—

- (a) the local authority is content that the draft complies with all the applicable provisions; or
- (b) there is agreement between the local authority and the governing body and (where the school will have foundation governors) the persons mentioned in paragraph (3) that the draft should be revised to any extent, and the revised draft complies with all the applicable statutory provisions.

(4) If, in the case of a school which has foundation governors, at any time the persons listed in paragraph (2) disagree with the draft, any of those persons may refer it to the Welsh Ministers who must give such direction as it thinks fit having regard, in particular, to the category of school to which the school belongs.

(5) If neither of sub-paragraphs (a) and (b) of paragraph (3) applies in the case of a school which does not have foundation governors, the local authority must—

- (a) inform the governing body of the reasons why it is not content with the draft instrument of government, and

- (b) give the governing body a reasonable opportunity to reach agreement with it on revising the draft;

and the instrument of government must be made by it either in the form of a revised draft agreed between it and the governing body or (in the absence of such agreement) in such form as it thinks fit having regard, in particular, to the category of school to which the school belongs.

(6) In the case of a maintained nursery school, the local authority must prepare and make the first instrument of government.

#### **Procedure for making an instrument: federated school**

**48.**—(1) In this regulation, where reference is made to the local authority and the federation is to include schools maintained by different local authorities, the reference is to be taken as a reference to whichever of those local authorities the governing bodies of the schools agree between them should make the instrument of government for the federation.

(2) The governing bodies of the schools which are to form the federation must jointly prepare a draft instrument of government and submit it to the local authority.

(3) Where the federation will have foundation governors, the governing bodies of the proposed federation must not submit the draft to the local authority unless it has been approved in respect of each foundation or voluntary school by—

- (a) the foundation governors;
- (b) the trustees of any trust relating to such a school;
- (c) in the case of a Church in Wales or Roman Catholic Church school, the appropriate diocesan authority; and
- (d) in the case of any other school with a religious character, the appropriate religious body.

(4) The instrument of government is to be made by the local authority in the form of the draft or (as the case may be) the revised draft if—

- (a) the local authority is content that the draft complies with all the applicable provisions; or
- (b) there is agreement between the local authority, the governing bodies and (where the federation will have foundation governors) the persons mentioned in paragraph (3) that the draft should be revised to any extent, and the revised draft complies with all the applicable statutory provisions.

(5) If, in the case of a federation which will have foundation governors, there is at any time disagreement as to the content of the draft among the persons mentioned in paragraph (3), any of those persons may refer the draft to the Welsh Ministers who must give such direction as they think fit having regard, in particular, to the categories of schools which are proposed to be included within the federation.

(6) If neither of sub-paragraphs (a) and (b) of paragraph (4) applies in the case of a federation which will not have foundation governors, the local authority must—

- (a) inform the governing body of the federation of the reasons why it is not content with the draft instrument of government;
- (b) give the governing body of the federation a reasonable opportunity to reach agreement with it on revising the draft; and
- (c) make the instrument of government either in the form of a revised draft agreed between it and the governing body of the federation or (in the absence of such agreement) in such form as it thinks fit having regard, in particular, to the categories of school included in the federation.

### **Review of instruments of government**

**49.**—(1) The governing body or the local authority may review the instrument of government at any time after it is made.

(2) Where on any review the governing body or the local authority decides that the instrument of government should be varied, the governing body or (as the case may be) the local authority must notify the other of its proposed variation together with its reasons for proposing such a variation.

(3) Where the governing body has received notification under paragraph (2), it must inform the local authority as to whether or not it is content with the proposed variation and, if not content, its reasons.

(4) Where the governing body has foundation governors, the governing body must not—

- (a) give the local authority any notification under paragraph (2); or
- (b) inform the local authority under paragraph (3) that it is content with the local authority's proposed variation;

unless the persons listed in regulation 48(3) have approved the proposed variation.

(5) If the local authority is satisfied that the draft complies with all the applicable statutory provisions it must vary the instrument of government accordingly if—

- (a) whichever of the governing body and the local authority is the recipient of a notification under paragraph (2) agrees with the proposed variation; or
- (b) there is agreement between the local authority, the governing body and (if the federation has foundation governors) the other persons listed in regulation 48(3) that some other variation should be made instead.

(6) If, in the case of a governing body which has foundation governors, at any time the persons listed in regulation 48(3) disagree with the proposed variation any of those persons may refer it to the Welsh Ministers; and on such a reference the Welsh Ministers must give such direction as they think fit having regard to—

- (a) the category of school; or
- (b) the category of schools that make up a federation.

(7) If neither sub-paragraphs (a) and (b) of paragraph (5) applies in the case of a governing body which does not have foundation governors, the local authority must—

- (a) inform the governing body of the reasons—
  - (i) why it is not content with the governing body's proposed variation, or as the case may be;
  - (ii) why it wishes to proceed with its own variation;
- (b) give the governing body a reasonable opportunity to reach agreement with it with regard to the variation; and
- (c) vary the instrument of government either in the manner agreed between it and the governing body or (in the absence of such agreement) in such manner as it thinks fit having regard, in particular to—
  - (i) the category of school; or
  - (ii) category of schools that make up the federation.

(8) Nothing in this regulation is to be taken as requiring the local authority to vary the instrument of government if it does not consider it appropriate to do so.

(9) Where an instrument of government is varied under this regulation the instrument must set out the date on which the variation takes effect.

### **Other requirements relating to instruments of government**

**50.**—(1) The local authority must ensure that the persons set out in paragraph (2) are provided (free of charge) with—

- (a) a copy of the governing body's instrument of government; and
- (b) where any variation is made to the governing body's instrument of government, a consolidated version of the instrument of government incorporating all variations made by the local authority (other than any variations which have ceased to have effect).

(2) The persons who are to be provided with the information referred to in paragraph (1) are—

- (a) every member of the governing body;
- (b) every associate member;
- (c) the head teacher, whether or not the head teacher is a member of the governing body;
- (d) the trustees of any trust relating to the school;
- (e) in the case of a Church in Wales school or Roman Catholic Church school, the appropriate diocesan authority;
- (f) in the case of any other school designated as having a religious character, the appropriate religious body; and
- (g) in the case of a federated school, the Welsh Ministers.

### **Charitable status of federations**

**51.**—(1) The governing body of a federation which includes a foundation or voluntary school is a charity which is an exempt charity for the purposes of the Charities Act 2011<sup>(1)</sup>, but no governing body of a federation which includes only community, community special or maintained nursery schools is a charity.

(2) So far as it is a charity, any institution which—

- (a) is administered by or on behalf of any governing body of a federation which includes a foundation or voluntary school; and
- (b) is established for the general purposes of, or for any special purpose of, or in connection with, that body or that federation or any foundation or voluntary school within that federation;

must also be an exempt charity for the purposes of the Charities Act 2011.

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<sup>(1)</sup> 2011 c.25.

(3) In this regulation, “charity” (“*elusen*”) and “institution” (“*sefydliad*”) have the same meaning as in the Charities Act 2011.

## CHAPTER 5

### APPOINTMENT, FUNCTIONS AND REMOVAL OF OFFICERS

#### **Election of the chair and vice-chair**

**52.**—(1) Subject to paragraph (2) and to sections 6 (power for local authorities to appoint additional governors) and 13 (power of Welsh Ministers to appoint additional governors) of the 2013 Act, the governing body must elect a chair and a vice-chair from among their number.

(2) Prior to the election of the chair and vice-chair the governing body must determine the date on which the term of office of the chair and vice-chair will end which must—

- (a) not be less than 1 year and no more than 4 years; and
- (b) in any event, not exceed the remaining term of office of the governor to be appointed chair or vice-chair.

(3) A governor who is paid to work at the school or who is a pupil at the school is not eligible to be chair or vice-chair of the governing body.

(4) Subject to paragraphs (5) and (6), the chair or vice-chair is to hold office until that person's successor has been elected in accordance with paragraph (1).

(5) The chair or vice-chair may at any time resign from office by giving notice in writing to the clerk to the governing body.

(6) The chair or vice-chair ceases to hold office—

- (a) when that person ceases to be a member of the governing body;
- (b) if that person is paid to work at the school in question;
- (c) if that person is removed from office in accordance with regulation 54 or replaced by a chair nominated by the local authority pursuant to section 6 of the 2013 Act or the Welsh Ministers pursuant to section 13 of the 2013 Act; or
- (d) in the case of the vice-chair, that person is elected in accordance with paragraph (7) to fill a vacancy in the office of chair.

(7) Where a vacancy arises in the office of chair or vice-chair, the governing body must at its next meeting elect one of its number to fill that vacancy, subject to paragraph (3) and to sections 6 or 13 of the 2013 Act.

(8) Any election of the chair or vice-chair which is contested must be held by secret ballot.

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

(10) Where in the circumstances referred to in paragraph (9) the vice-chair is absent from the meeting or there is at the time a vacancy in the office of vice-chair, the governing body must elect one of its number to act as chair for the purposes of that meeting, subject to paragraph (3).

(11) The clerk to the governing body is to act as chair during that part of any meeting at which the chair is to be elected.

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

**53.**—(1) The chair may, where in that person's opinion the circumstances mentioned in paragraph (2) apply, exercise any function of the governing body which can be delegated under regulation 64.

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

- (a) the school;
- (b) any pupil at the school, or that pupil's parent; or
- (c) a person who works at the school.

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

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

- (a) the circumstances mentioned in paragraph (2) apply; and
- (b) the chair (whether by reason of a vacancy in the 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 is to read as if it were a reference to the vice-chair.

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

**54.**—(1) The governing body may by resolution remove the chair from office, unless that person has been nominated by the local authority pursuant to section 6 of the 2013 Act or the Welsh Ministers pursuant to section 13 of the 2013 Act.

(2) The governing body may by resolution remove the vice-chair from office.

(3) A resolution to remove the chair or vice-chair from office does 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 59.

(4) Before the governing body resolves to remove the chair or the vice-chair from office, the governor proposing the chair or the vice-chair's removal must at that meeting state their reasons for doing so and the chair or the vice-chair (as the case may be) must be given an opportunity to make a statement in response, before withdrawing from the meeting.

### **Appointment and removal of the clerk to the governing body**

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

(2) The governing body must appoint a clerk to the governing body.

(3) The clerk to the governing body must not be—

- (a) a governor;
- (b) a non-governor member of any committee of the governing body; or
- (c) the head teacher of the school.

(4) Notwithstanding paragraph (2), the governing body may, if the clerk fails to attend a meeting, appoint any one of its number (who is not the head teacher of the school) to act as clerk for the purposes of that meeting.

(5) The governing body may remove the clerk to the governing body from office.

(6) If at any time the school does not have, or in the case of a federation no federated school, has a delegated budget, the local authority may remove the clerk to the governing body and appoint a substitute, provided the local authority consults the governing body before taking such action.

### **Functions of the clerk to the governing body**

**56.**—(1) The clerk to the governing body must—

- (a) convene meetings of the governing body in accordance with regulation 59;
- (b) attend meetings of the governing body and ensure minutes of the proceedings are produced in accordance with regulation 61;
- (c) maintain a register of members of the governing body (excluding associate

- members) and report any vacancies to the governing body;
  - (d) maintain a register of governors' attendance at meetings and report on non-attendance to the governing body;
  - (e) give and receive notices in accordance with regulations 27 or 36 (as the case may be) (notification of nominations and appointments), 41 (resignation), 43 (removal of governors), 52(5) (resignation of chair or vice chair), and 59 (convening meetings) of, and paragraph 12 of Schedule 5 (notification of disqualification) to, these Regulations;
  - (f) report to the governing body as required on the discharge of that person's functions; and
  - (g) perform such other functions as may be determined by the governing body from time to time.
- (2) The clerk to the governing body may provide it with advice on its functions and procedures.

## CHAPTER 6

### MEETINGS AND PROCEEDINGS OF GOVERNING BODY

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

**57.**—(1) Subject to regulation 58 and Chapter 8 of this Part, and Schedule 6 to the following persons are entitled to attend any meeting of the governing body—

- (a) subject to regulation 63, a governor;
- (b) the clerk to the governing body;
- (c) the head teacher; and
- (d) such other persons as the governing body may determine.

(2) Persons attending a meeting of the governing body pursuant to paragraph (1)(d) do so on the terms to be determined by the governing body and those persons may be excluded from any part of its meeting as the governing body thinks fit.

(3) In the case of federated schools the reference to head teacher in paragraph (1)(c) means—

- (a) the head teacher of the federation (whether or not that person is a governor); or
- (b) (if there is no head teacher of the federation) the head teacher of each federated school (whether or not that person is a governor).

### **Exclusion of pupil governors from meetings**

**58.** The governing body must exclude pupil governors from any governing body discussion relating to—

- (a) staff appointments, staff pay, staff discipline, performance management of staff, grievances submitted by staff or dismissal of staff;
- (b) admissions;
- (c) individual pupil discipline;
- (d) election, appointment and removal of governors and associate members;
- (e) the budget and financial commitments of the governing body;
- (f) in the case of a voluntary aided school, the trust deed relating to that school; or
- (g) any other matter that, by reason of its nature, the governing body is satisfied is and should remain confidential.

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

**59.—(1)** The governing body must hold at least one meeting during every school term.

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

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

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

(4) Subject to paragraphs (5), (6) and (7), the clerk must give written notice of the meeting, a copy of the agenda, and any reports or other papers to be considered at the meeting at least 5 clear working days in advance to—

- (a) each governor;
- (b) the head teacher (whether or not that person is a governor); and
- (c) the local authority.

(5) Where the chair so determines, on the ground that there are matters demanding urgent consideration, it is sufficient—

- (a) if the written notice of the meeting states that fact and provides a brief explanation of the need for urgent consideration; and

- (b) the notice, copy of the agenda, reports and other papers to be considered are given within such shorter period as that person directs.

(6) This paragraph applies in relation to any meeting at which the following is to be considered—

- (a) the removal of the chair or vice-chair from office;
- (b) the suspension of any governor;
- (c) the removal of any appointed governor;
- (d) surplus governors; or
- (e) a decision to serve notice of discontinuance of a school under section 80 of the 2013 Act.

(7) Where paragraph (6) applies—

- (a) written notice of the meeting, a copy of the agenda and any reports or other papers to be considered at the meeting must be given at least 7 clear working days in advance; and
- (b) the power of the chair to direct that a meeting be held within a shorter period does not apply.

(8) The functions of the chair in this regulation may be exercised by the vice-chair in the absence of the chair or where there is a vacancy in the office of chair.

(9) A meeting of the governing body and its proceedings are not invalidated by reason of any person not having received written notice of the meeting or a copy of the agenda.

### **Quorum and proceedings of the governing body**

**60.**—(1) The quorum for a meeting of the governing body and for any vote on any matter at such a meeting is one half (rounded up to a whole number) of the membership of the governing body excluding any vacancies and any governors suspended from that meeting in accordance with regulation 63.

(2) Subject to paragraph (3) every question to be decided at a meeting of the governing body must be determined by a majority of the votes of the governors present and voting on the question.

(3) Pupil governors may not vote on any question to be determined at a meeting of the governing body.

(4) 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), has a second or casting vote.

(5) No decision to serve notice of discontinuance of a school under section 80 of the 2013 Act whether taken by the governing body or by a committee, has effect unless it is confirmed by the governing body at a meeting held not less than 28 clear working days after the meeting at which the decision was made and—

- (a) the matter is specified as an item of business on the agenda for both meetings; and
  - (b) notice of the second meeting is given in accordance with regulation 59(7).
- (6) No decision to remove surplus governors under regulation 29 or 38 (as the case may be) has effect unless the matter is specified as an item of business on the agenda for the meeting.
- (7) The proceedings of the governing body are not invalidated by—
- (a) any vacancy among their number;
  - (b) any defect in the election, appointment or nomination of any governor;
  - (c) any defect in the appointment of the chair or vice-chair; or
  - (d) the governing body having more governors of a particular category than are provided for by the instrument of government.
- (8) Notwithstanding the requirements of paragraph (2), a governing body may approve alternative arrangements for some (but not all) of the members of the governing body to participate or vote at meetings of the governing body, including but not limited to, by telephone or video conference.

### **Minutes and papers**

- 61.**—(1) The clerk (or the person appointed to act as clerk) must ensure that minutes of the proceedings of a meeting of the governing body are drawn up and signed (subject to the approval of the governing body) by the chair (or the person acting as chair) at the next meeting.
- (2) The person acting as clerk to the governing body for the purposes of any meeting must record in the minutes of that meeting the names of those members of the governing body and of any other person present at the meeting concerned.
- (3) The governing body must supply a copy of the draft or signed minutes of a particular meeting to the local authority that maintains the school in question on request by the local authority concerned.
- (4) The minutes and agenda kept for the purposes of this regulation may be kept in electronic form and where that is the case the minutes may be signed electronically.

### **Publication of minutes and papers**

- 62.**—(1) The governing body must, as soon as reasonably practicable, make available for inspection (which may be of electronic copies) at school by any interested person, a copy (which may be in electronic form) of—

- (a) the agenda for every meeting;
- (b) the signed minutes of every such meeting;
- (c) any report or other paper considered at any such meeting; and
- (d) the draft minutes of any meeting, if they have been approved by the person acting as chairman of that meeting.

(2) The governing body may exclude from any item required to be made available in pursuance of paragraph (1) 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; or
- (c) any other matter that, by reason of its nature, the governing body is satisfied should remain confidential.

(3) Published copies of any draft minutes of proceedings of meetings approved by the chair must indicate that they are draft minutes.

### **Suspension of governors**

**63.—**(1) The governing body may by resolution suspend a governor for all or any meetings of the governing body, or of a committee, for a fixed period of up to 6 months on one or more of the following grounds—

- (a) that the governor, being a person paid to work at the school, is the subject of disciplinary proceedings in relation to that person's employment;
- (b) that the governor is the subject of proceedings in any court or tribunal, the outcome of which may be that that person is disqualified from continuing to hold office as a governor under Schedule 5;
- (c) that the 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, the governing body or that person's office into disrepute; or
- (d) that the governor is in breach of that person's duty of confidentiality to the school or to any member of staff or to any pupil at the school.

(2) A resolution to suspend a governor from office does 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 59.

(3) Before a vote is taken on a resolution to suspend a governor, the governor proposing the resolution must

at the meeting state their reasons for doing so, and the governor who is the subject of the resolution must be given the opportunity to make a statement in response before withdrawing from the meeting in accordance with Chapter 8 of this Part.

(4) During the period of suspension nothing in this regulation is to be read as affecting the right of a governor who has been suspended—

- (a) to receive notices of, and agendas and reports or other papers for, meetings of the governing body; or
- (b) to attend a meeting of the governing body convened in accordance with regulation 59 to consider that person's removal from office.

(5) Nothing in this regulation is to be read as preventing a governing body from suspending a governor who has been suspended under paragraph (1) for a further fixed period or periods, whether or not on the same ground as that of the original suspension, and paragraphs (1) to (4) apply in relation to each suspension.

(6) A governor is not disqualified from continuing to hold office under paragraph 4 of Schedule 5 for failure to attend any meeting of the governing body while suspended under this regulation.

### **Delegation of functions**

**64.**—(1) Subject to regulation 65 of these Regulations and regulation 3(2) of the Religious Character of Schools (Designation Procedure) Regulations 1998(1) the governing body may delegate any of its functions to—

- (a) a committee;
- (b) any governor; or
- (c) the head teacher (whether or not that person is a governor).

(2) Where the governing body has delegated functions this does not prevent the governing body from exercising those functions.

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

### **Restrictions on delegation and specified committees**

**65.**—(1) The governing body may not delegate—

- (a) under regulation 64 its functions under the following regulations—
  - (i) those in Part 4 (categories of governors and non governor members);

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(1) S.I. 1998/2535, as amended by the S.I.1999/2243 (W.3) and S.I.2005/2912 (W.209).

- (ii) those in chapter 1 of Part 5 (composition of governing body: non federated schools);
  - (iii) those in Chapter 2 of Part 5 (composition of governing body: federated schools);
  - (iv) those in Chapter 3 of Part 5 (removal of governors);
  - (v) those in Chapter 4 of Part 5 (instruments of government);
  - (vi) regulations 52 and 54 (election and removal of chair and vice chair);
  - (vii) regulation 55 (appointment and removal of the clerk to the governing body);
  - (viii) regulation 63 (suspension of governors);
  - (ix) regulation 64 (delegation of functions); or
  - (x) regulation 68 (establishment of committees); or
  - (b) its functions in respect of head teacher and deputy head teacher selection panels in Chapters 2 and 3 of Part 8.
- (2) The governing body may not delegate to an individual under regulation 64—
- (a) its school organisation proposal functions;
  - (b) the functions in—
    - (i) a scheme made by the local authority under section 48(1) of the 1998 Act<sup>(1)</sup>, to the extent that it requires the governing body to give their approval to the first formal budget plan of the financial year;
    - (ii) section 88(1) to (3) of the Education and Inspections Act 2006<sup>(2)</sup> (responsibility of governing body for discipline);
    - (iii) sections 88<sup>(3)</sup>, 89<sup>(4)</sup>, 89A<sup>(5)</sup> and 90(8)<sup>(6)</sup> of the 1998 Act (which relate to

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(1) Amended by section 40 of, and Schedule 5 to, the 2002 Act, and by section 57 of, and Schedule 5 to, the Education and Inspections Act 2006 (c.40) and by S.I. 2010/1158.

(2) 2006 c.40.

(3) Amended by section 43(1) of the Education and Inspections Act 2006 (c.40), section 54(1) and 64(2) of, and by Schedule 13 to the Education Act 2011 and S.I. 2010/1158.

(4) Amended by paragraph 5 of Schedule 4 to the 2002 Act; and by sections 41, 45, 46(1), and 184 of, and by Part 6 of Schedule 18 to the Education and Inspections Act 2006. Subsection (1A) was inserted by section 106 of the Education Act 2005 (c.18). Section 89 was further amended by paragraphs 53 and 57 of Part 2 of Schedule 1 to the Education and Skills Act 2008 (c.25).

(5) Inserted by section 47(2) of the 2002 Act and amended by paragraphs 53 and 58 of Part 2 of Schedule 1 to the Education and Skills Act 2008.

(6) Substituted by section 47 of the Education and Inspections Act 2006 (c.40) and further amended by paragraphs 53 and

- the determination of admission arrangements), section 90(1)(1) of the 1998 Act (which relates to the reference to the Welsh Ministers for Wales of objections about admission arrangements), or section 94(2) of the 1998 Act in so far as it relates to the determination of appeal arrangements by the governing body;
- (iv) section 63(3) of the 1998 Act (school attendance targets);
  - (v) section 439(7) of the 1996 Act (school attendance orders);
  - (vi) sections 95(2) and 97(3)(4) of the 1998 Act (appeal against a decision of the local authority to admit a child and referral to the Welsh Ministers in respect of a direction made by the local authority to admit a child); or
- (c) the functions that must be delegated to the committees specified in regulations 70 to 72.

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

**66.**—(1) This regulation applies where any function of the governing body has been delegated to or is otherwise exercisable by—

- (a) a governor (including the chair or vice-chair);
- (b) the head teacher (whether or not that person is a governor); or
- (c) a committee.

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

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62 of Part 2 of Schedule 1 to the Education and Skills Act 2008.

- (1) Sub-paragraph (1)(b) was substituted by section 41(1) and (8)(a) of the Education and Inspections Act 2006 and further amended by paragraphs 53 and 62 of Part 2 of Schedule 1 to the Education and Skills Act 2008.
- (2) Amended by sections 50 and 51 of, and paragraph 8 of Schedule 4 to, the 2002 Act; and by section 51(1) of the Education and Inspections Act 2006 and further amended by section 152 of the Education and Skills Act 2008.
- (3) Amended by section 53 of, and Part 3 of Schedule 21 to, the 2002 Act.
- (4) Amended by section 49 of the Education and Inspections Act 2006.

## CHAPTER 7

### COMMITTEES OF GOVERNING BODIES

#### **Application of this Chapter**

**67.** This Chapter does not apply in relation to head teacher and deputy head teacher selection panels established under Chapter 2 or 3 of Part 8.

#### **Establishment of committees of the governing body**

**68.**—(1) This regulation applies to committees of the governing body subject to regulations 70, 71 and 72.

(2) The governing body must determine the constitution, membership and terms of reference of any committee it decides to establish and review them annually.

(3) A chair must be appointed annually to each committee by the governing body or elected by the committee, as determined by the governing body.

(4) A committee must elect a member of that committee to act as chair in the absence of the chair appointed under paragraph (3).

(5) The following persons may not act as chair of a committee—

- (a) any person who is employed to work at the school or, in the case of a federated school, the federation;
- (b) a registered pupil of the school; or
- (c) an associate member.

(6) The governing body may remove the chair to any committee from office at any time.

(7) The membership of a committee may include pupil governors and persons who are not governors and the extent to which such members are entitled to vote is to be determined by the governing body.

(8) The majority of members on any committee must be governors excluding pupil governors.

#### **Associate members**

**69.**—(1) The membership of any committee may include associate members.

(2) An associate member has such voting rights in a committee to which that person is appointed as are determined by the governing body.

(3) An associate member may be removed from office by the governing body at any time.

### **Staff disciplinary and dismissal committee and disciplinary and dismissal appeals committee**

**70.—**(1) The following functions of the governing body must be delegated to a committee, to be known as the staff disciplinary and dismissal committee—

- (a) where a school is a community, voluntary controlled or community special school, the initial determination under regulation 169 that any person employed by the local authority to work at the school, or in the case of a federated school the federation, should cease to work there;
- (b) where a school is a foundation or voluntary aided school, the initial decision under regulation 191 that a person employed to work at the school, or in the case of a federated school the federation, should have that person's contract of employment with the governing body terminated or should not have that person's contract renewed (except where the dismissal is pursuant to a direction of the local authority under paragraph 7 of Part 2 of Schedule 2 to the 2002 Act); and
- (c) the hearing of representations in relation to a decision which must be delegated under this paragraph.

(2) The hearing of any appeal in respect of a decision that must be delegated under paragraph (1) must be delegated to a committee, known as the disciplinary and dismissal appeals committee.

(3) The staff disciplinary and dismissal committee must include—

- (a) an independent person; and
- (b) not less than two governors.

(4) The disciplinary and dismissal appeals committee must include—

- (a) not less than three members;
- (b) no fewer governors than the staff disciplinary and dismissal committee and in any event not less than two governors; and
- (c) no fewer independent persons than the staff disciplinary and dismissal committee and in any event at least one independent person who was not involved in the staff disciplinary and dismissal committee's decision.

(5) For the purposes of paragraphs (3) and (4) a person is to not to be regarded as independent if the person—

- (a) is a member of the governing body;
- (b) is a parent of a current or former pupil at the school or federation;

- (c) is a current or former member of staff at the school; or in the case of a federated school the federation;
- (d) is a member or employee of the local authority that maintains the school in question;
- (e) is a trustee of the school or federation;
- (f) is a member of the appropriate diocesan authority for the school or federation;
- (g) appoints foundation governors to the governing body; or
- (h) will not in the opinion of the governing body—
  - (i) act fairly and impartially; or
  - (ii) be reasonably be perceived to be able to act fairly and impartially.

(6) Paragraph (5)(a) does not prevent an associate member from being an independent person provided the associate member meets the criteria in paragraph (5)(b) to (h).

(7) The quorum for a meeting of the staff disciplinary and dismissal committee and the disciplinary and dismissal appeals committee and any vote on any matter at the committees is the same as the minimum requirements for the composition of those committees specified in this regulation.

(8) Where a disciplinary and dismissal appeals committee is considering an appeal against a decision of the staff disciplinary and dismissal committee, no member of the staff disciplinary and dismissal committee whose decision is subject to appeal may take part in the proceedings of the disciplinary and dismissal appeals committee.

(9) Neither the head teacher nor a pupil governor may be a member of the staff disciplinary and dismissal committee or the disciplinary and dismissal appeal committee.

(10) No member of the staff disciplinary and dismissal committee or the disciplinary and dismissal appeals committee who is not a governor is entitled to vote in any proceedings of the committee in question.

(11) Paragraph (10) does not apply to the independent person member of the committees.

### **Pupil discipline and exclusions committee**

**71.—**(1) The governing body must establish a committee, to be known as the pupil discipline and exclusions committee, to discharge the functions conferred on it by or under regulations made under section 52(3) and (4) of the 2002 Act (exclusion of pupils).

(2) The pupil discipline and exclusions committee must consist of either three or five governors, but must not include the head teacher or any pupil governor.

(3) The quorum for a meeting of the pupil discipline and exclusions committee and any vote on any matter before the committee is three members of the committee.

(4) The chair of the pupil discipline and exclusions committee may exercise any function conferred on the governing body by or under regulations made under section 52(3) and (4) of the 2002 Act (exclusion of pupils) in a case where—

- (a) a pupil has been excluded for a fixed period in circumstances in which that pupil would, as a result of the exclusion, lose an opportunity to take any public examination; and
- (b) it appears to the chair that it would not be practical for a quorate meeting of the committee to take place for any purpose referred to in such regulations before the time when the pupil would be due to take that examination.

### **Admissions committee**

**72.**—(1) Where the governing body is the admissions authority for a school it must establish a committee, to be known as the admissions committee, to exercise its powers to determine whether any child should be admitted to the school.

(2) A committee established under paragraph (1) must consist of—

- (a) in the case of a non-federated school the head teacher or the acting head teacher; or
- (b) in the case of a federated school—
  - (i) the head teacher of the federation; or
  - (ii) where there is no head teacher or acting head teacher of the federation, the head teacher or the acting head teacher of the federated school; and
- (c) at least two other governors (excluding pupil governors).

(3) The quorum for the admissions committee and any vote on any matter at the committee is the same as the minimum requirement for the composition of the committee specified in this regulation.

### **Clerks to committees**

**73.**—(1) The governing body must appoint a clerk to each committee established in accordance with regulations 70 to 72 and may appoint a clerk to any other committee established by it.

(2) Neither the head teacher nor a pupil governor may be appointed as a clerk under paragraph (1).

(3) Notwithstanding paragraph (1), the committee may, if the clerk fails to attend a meeting of theirs, appoint any one of their number (who is not the head teacher) to act as clerk for the purposes of that meeting.

(4) The governing body may remove any clerk appointed to any of their committees from office at any time.

(5) A clerk appointed to a committee of the governing body must—

- (a) convene meetings of the committee;
- (b) attend meetings of the committee and ensure that minutes of the proceedings are drawn up; and
- (c) perform such other functions with respect to that committee as may be determined by the governing body from time to time.

#### **Right of persons to attend meetings of committees**

**74.**—(1) Subject to paragraphs (2) and (3) and Schedule 6 the following persons are entitled to attend any meeting of a committee—

- (a) any member of the committee, provided that person is not a governor who has been suspended in accordance with regulation 63;
- (b) in the case of a non-federated school the head teacher;
- (c) in the case of federated school—
  - (i) the head teacher of a federation; or
  - (ii) where there is no head teacher or acting head teacher of the federation, the head teacher or the acting head teacher of a federated school;
- (d) the clerk to the committee; and
- (e) such other persons as the governing body or the committee may determine.

(2) A committee may exclude a member who is not a governor from any part of its meeting which that person is otherwise entitled to attend when the business under consideration concerns an individual member of staff or pupil.

(3) Paragraph (1)(b) and (c) does not apply in relation to the committees referred to in regulations 70 and 71 or in relation to any committee or selection panel exercising any function under Part 8.

## **Meetings of committees**

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

- (a) the 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) Where a clerk has not been appointed, committee meetings must be convened by the chair who, when exercising this function, must comply with any direction given by the governing body.

(3) Subject to any direction given in accordance with paragraphs (1) or (2), at least 5 clear working days in advance the clerk must give to each member of the committee and to the head teacher (whether or not that person is a member of the committee)—

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

(4) Paragraph (3) does not apply where the chair of the committee determines that there are matters demanding urgent consideration and in those cases—

- (a) the written notice of the meeting must state the matter to be considered and a brief explanation as to the need for urgent consideration; and
- (b) the notice, agenda and reports or other papers to be considered at the meeting may be given within such shorter period as that person directs or decides (as the case may be).

(5) The proceedings of a committee are not invalidated by—

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

(6) Subject to regulations 70(7), 71(3) and 72(3), the quorum for a meeting of a committee and for any vote on any matter at such a meeting is one half (rounded up to a whole number) of the membership of the committee excluding any vacancies and any pupil governors.

(7) No vote on any matter may be taken at a meeting of a committee unless the majority of members of the committee present are governors excluding pupil governors.

(8) Every question to be decided at a meeting of a committee is to be determined by a majority of the

votes of the members of the committee present and voting on the question.

(9) Where there is an equal division of votes the person who is acting as chair for the purposes of the meeting has a second or casting vote, provided that such person is a governor excluding pupil governors.

### **Minutes of meetings of committees**

**76.**—(1) Minutes of the proceedings of a meeting of a committee must—

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

(2) Any committee of the governing body must supply their local authority with a copy of the draft or signed minutes of any meeting of theirs on request by that local authority.

(3) The minutes kept for the purposes of this regulation may be kept in electronic form and where that is the case the minutes may be signed electronically.

### **Publication of minutes and papers**

**77.**—(1) Subject to paragraph (2) the committee must, as soon as reasonably practicable, make available for inspection (which may be of electronic copies) at the school by any interested person a copy (which may be in electronic form) of—

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

(2) The committee may exclude from any item required to be made available in pursuance of paragraph (1) any material relating to—

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

CHAPTER 8  
RESTRICTIONS ON PERSONS TAKING PART IN  
PROCEEDINGS OF THE GOVERNING BODY OR  
ITS COMMITTEES

**Restrictions on persons taking part in proceedings**

**78.**—(1) In this regulation and in Schedule 6—

- (a) “relevant person” means a governor, an associate member, a member of a committee who is not a governor, the head teacher (whether or not that person is a governor) or any person appointed as clerk to the governing body or to a committee; and
- (b) any reference to “meeting of the school” is a reference to a meeting of the governing body or of a committee, including a selection panel established under Part 8.

(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 governing body;
- (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; or
- (c) a relevant person has a pecuniary interest in any matter;

that person, if present at a meeting of the school or in the case of a federated school the federation at which the matter is the subject of consideration, must disclose that person's interest, withdraw from the meeting and not vote on the matter in question.

(3) Nothing in this regulation or in Schedule 6 is to be construed as precluding—

- (a) the governing body, or a committee, from—
  - (i) allowing a person who appears to it to be able to give evidence to attend any hearing conducted by it into any matter and to present that person's evidence; or
  - (ii) hearing representations from a relevant person acting in a capacity other than that of a relevant person; or
- (b) a relevant person from entering into a contract with the governing body from which that person is entitled to profit.

(4) A person (“P”) who is acting as the clerk to a meeting of the school, or in the case of a federated school the federation, is not required to withdraw from a meeting by this regulation or Schedule 6 unless P's appointment to office, P's remuneration, or

disciplinary action against P is the subject of consideration, but if this regulation or Schedule 6 would have otherwise required P to withdraw, P may 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 6 to withdraw from a meeting of the school, or in the case of a federated school the federation, and not vote, that question is to be determined by the other governors present at the meeting.

(6) Schedule 6 makes provision about pecuniary interests and other specified conflicts of interest.

## PART 6

### FEDERATION

#### CHAPTER 1

#### ESTABLISHING OR JOINING A FEDERATION

##### **General**

**79.**—(1) A federation may comprise of at least two but no more than six of the following—

- (a) community schools, community special schools and maintained nursery schools (and no other category of school);
- (b) foundation schools (and no other category of school); or
- (c) voluntary controlled and voluntary aided schools (and no other category of school).

(2) Regulations 81 and 82 apply where governing bodies propose to federate in accordance with section 10 of the 2011 Measure.

(3) Regulation 83 applies where it is proposed to establish a new school and either—

- (a) the temporary governing body wish to federate with one or more governing bodies; or
- (b) the local authority or, where the school is to be a foundation or voluntary school proposals for the establishment of which were published by promoters, the promoters propose that the school should be a federated school.

(4) Regulations 84 and 85 apply where a local authority exercises its power to federate schools in accordance with section 11 of the 2011 Measure.

(5) Regulations 86 and 87 apply where a local authority exercises its power to federate small schools in accordance with section 11 of the 2011 Measure.

### **Procedure for federation: governing body proposed**

**80.**—(1) Where a governing body is considering federation, it must first consider a report on the proposal.

(2) The report must be specified as an item on the agenda for the meeting of which notice has been given in accordance with regulation 59(4).

(3) Where a governing body proposes that it should federate with the governing body of a federation, it must give notice of the proposal to the governing body of the federation.

(4) Upon receipt of the notice, the governing body of the federation must consider whether it should—

- (a) give preliminary consent to the governing body joining the federation; or
- (b) determine that the governing body should not join the federation.

### **Publication of proposals: governing body proposed**

**81.**—(1) Where a governing body decides that it should federate with one or more other governing bodies and, where necessary, preliminary consent in accordance with regulation 80(4)(a) has been given, they must jointly with the other governing body or bodies publish proposals for federation.

(2) The proposals must contain the following—

- (a) the name or names of the governing body or bodies with which the governing body proposes to federate and confirmation that the governing body, or those governing bodies, have resolved likewise to federate;
- (b) the proposed size of the governing body of the federation (of applicable);
- (c) the proposed minimum and maximum number of governors (if applicable);
- (d) the proposed minimum and maximum number of governors for each category of governor (if applicable);
- (e) the proposed arrangements for staffing the schools within the federation;
- (f) the proposed federation date;
- (g) the identity of the admission authority or authorities for the schools within the federation;
- (h) the date, not less than 6 weeks after the publication of the proposals, by which written representations may be made to the governing body regarding the proposals and the address to which they should be sent; and
- (i) such other matters as the governing bodies consider appropriate.

(3) The governing bodies proposing to federate must publish the proposals by sending them to—

- (a) the relevant local authorities;
- (b) the head teacher of each school;
- (c) the school council of each school;
- (d) in the case of any school with a foundation—
  - (i) the foundation governors; and
  - (ii) any trustees of a trust relating to the school;
- (e) where any of the schools have a religious character, the appropriate diocesan authority in the case of a Church in Wales or Roman Catholic Church school, or the appropriate religious body in the case of any other such school;
- (f) all staff;
- (g) every person known by them to be a parent of a registered pupil at any of the schools;
- (h) every trade union known to them to have members paid to work at any of the schools; and
- (i) such other persons as the governing bodies consider appropriate.

(4) A copy of the proposals must be made available for inspection at all reasonable times at each school.

(5) The proposed federation date in paragraph (2)(e) must be not less than 125 days following the publication of the proposals for federation by the governing body pursuant to paragraph (1).

### **Consideration of responses to proposals and determination as to whether to proceed: governing body proposed**

**82.**—(1) The governing bodies proposing to federate must jointly consider any responses to the proposals and each governing body must determine whether—

- (a) to proceed with the proposals for federation as published;
- (b) to proceed with the proposals for federation with such modifications as the governing body considers appropriate; or
- (c) not to proceed with the proposals for federation.

(2) The modifications referred to in paragraph (1)(b) must not include a change in the identity of the governing bodies proposing to federate.

(3) All the governing bodies that have determined to proceed must jointly give notice of that fact to the relevant local authority or local authorities.

### **New schools wishing to federate**

**83.**—(1) Where it is proposed that a new school should federate with one or more schools or a federation, paragraph (2) or (3) applies as appropriate.

(2) Where a temporary governing body has been established, regulations 80 to 82 have effect as if references to a governing body proposing to federate were references to a temporary governing body proposing to federate.

(3) Where a temporary governing body is yet to be established, regulations 80 to 82 have effect as if—

- (a) references to the governing body proposing to federate were references to the local authority or, where proposals are to establish a voluntary school proposals for the establishment of which were published by promoters, the promoters;
- (b) regulation 80(2) were omitted; and
- (c) in regulation 81(2)(a) for “the governing body proposes to federate” there were substituted “the local authority or the promoters propose that the temporary governing body of the new school should federate”.

(4) Chapters 1 to 3 and 5 to 7 of Part 7 apply to a temporary governing body constituted pursuant to this regulation.

(5) Where it is proposed that two or more new schools should federate, with or without one or more other schools or other federations, the local authority may make arrangements providing for the constitution of a single temporary governing body for those new schools.

(6) Where the proposed federation includes schools which are maintained by two or more local authorities, those local authorities must agree amongst themselves which local authority may make arrangements providing for the constitution of a single temporary governing body for those new schools.

(7) Where one or more of the new schools referred to in paragraph (2) is to be a voluntary school proposals for the establishment of which were published by promoters, the local authority must consult the promoters—

- (a) as to whether the power given to the local authority in paragraph (2) should be exercised; and
- (b) if the local authority proposes to exercise it, as to the date on which the arrangements should be made.

(8) Schedule 7 applies to a temporary governing body constituted pursuant to this regulation.

### **Procedure for federation: local authority proposed**

**84.**—(1) Where a local authority makes a proposal under section 11 of the 2011 Measure that does not involve the federation of only small schools the published proposals must contain the following—

- (a) the name or names of the governing body or bodies which the local authority is proposing to federate;
- (b) the proposed size of the governing body of the federation (if applicable);
- (c) the proposed minimum and maximum number of governors (if applicable);
- (d) the proposed minimum and maximum number of governors for each category of governor (if applicable);
- (e) the proposed arrangements for staffing the schools within the federation;
- (f) the proposed federation date;
- (g) the identity of the admission authority or authorities for the schools within the federation;
- (h) the date, not less than 6 weeks after the publication of the proposals, by which written representations may be made to the local authority regarding the proposals and the address to which they should be sent;
- (i) in the case of a proposal for a federation that includes a maintained school not maintained by the proposing local authority confirmation that the local authority that maintains the school in question has given its consent;
- (j) in the case of a proposal that includes a foundation or voluntary school confirmation that the appropriate diocesan authority or the person or persons by whom the foundation governors are appointed (as the case may be) has given consent; and
- (k) such other matters as the local authority considers appropriate.

(2) The local authority must publish the proposals by sending them to—

- (a) any other relevant local authority;
- (b) the head teacher of each school;
- (c) the school council of each school;
- (d) in the case of any school with a foundation—
  - (i) the foundation governors; and
  - (ii) any trustees of a trust relating to the school;
- (e) where any of the schools have a religious character, the appropriate diocesan authority

in the case of a Church in Wales or Roman Catholic Church school, or the appropriate religious body in the case of any other such school;

- (f) all staff;
- (g) every person known by them to be a parent of a registered pupil at any of the schools;
- (h) every trade union known to them to have members paid to work at any of the schools; and
- (i) such other persons as the local authority considers appropriate.

(3) A copy of the proposals must be published on the local authority's website.

(4) A copy of the proposals must be made available for inspection at all reasonable times at each school.

(5) The proposed federation date in paragraph (1)(f) must be not less than 125 days following the publication of the proposals for federation by the governing body pursuant to section 11 of the 2011 Measure.

#### **Consideration of responses to proposals and determination as to whether to proceed: local authority proposed**

**85.**—(1) The local authority must consider any responses to the proposals and publish a summary of the responses together with the local authority's comments on the local authority's website.

(2) The local authority must determine whether—

- (a) to proceed with the proposals for federation as published;
- (b) to proceed with the proposals for federation with such modifications as the local authority consider appropriate; or
- (c) not to proceed with the proposals for federation.

(3) The modifications referred to in paragraph (2)(b) must not include a change in the identity of the governing bodies that the local authority is proposing to federate.

(4) Any determination under paragraph (2) must be published on the local authority's website and a copy of the determination sent to—

- (a) any other relevant local authority;
- (b) the head teacher of each school;
- (c) in the case of any school with a foundation—
  - (i) the foundation governors; and
  - (ii) any trustees of a trust relating to the school;

- (d) where any of the schools have a religious character, the appropriate diocesan authority in the case of a Church in Wales or Roman Catholic Church school, or the appropriate religious body in the case of any other such school; and
- (e) such other persons as the local authority considers appropriate.

#### **Procedure for federation: small schools**

**86.**—(1) Where a local authority makes a proposal under section 11 of the 2011 Measure that involves only the federation of small schools the published proposals must contain the following—

- (a) the name or names of the governing body or bodies which the local authority is proposing to federate;
- (b) the proposed size of the governing body of the federation (if applicable);
- (c) the proposed minimum and maximum number of governors (if applicable);
- (d) the proposed minimum and maximum number of governors for each category of governor (if applicable);
- (e) the proposed arrangements for staffing the schools within the federation;
- (f) the proposed federation date;
- (g) the identity of the admission authority or authorities for the schools within the federation;
- (h) in the case of a proposal for a federation that includes a maintained school not maintained by the proposing local authority confirmation that the local authority that maintains the school in question has given its consent;
- (i) in the case of a proposal that includes a foundation or voluntary school confirmation that the appropriate diocesan authority or the person or persons by whom the foundation governors are appointed (as the case may be) has given consent; and
- (j) such other matters as the local authority considers appropriate.

(2) The local authority must publish the proposals by sending them to the governing body and school council of each small school that it intends to federate inviting a response from the governing body within 20 school days.

(3) The local authority must also send copies of the proposals to—

- (a) any other relevant local authority;

- (b) the head teacher of each school;
- (c) in the case of any school with a foundation—
  - (i) the foundation governors; and
  - (ii) any trustees of a trust relating to the school; and
- (d) where any of the schools have a religious character, the appropriate diocesan authority in the case of a Church in Wales or Roman Catholic Church school, or the appropriate religious body in the case of any other such school.

(4) A copy of the proposals must be published on the local authority's website.

(5) A copy of the proposals must be made available for inspection at all reasonable times at each school.

(6) The proposed federation date in paragraph (1)(f) must be not less than 100 days following the publication of the proposals for federation by the governing body pursuant to section 11 of the 2011 Measure.

#### **Consideration of responses to proposals and determination as to whether to proceed: small schools**

**87.**—(1) The local authority must consider any responses to the proposals and publish a summary of the responses together with the local authority's comments on the local authority's website.

(2) The local authority must determine whether—

- (a) to proceed with the proposals for federation as published;
- (b) to proceed with the proposals for federation with such modifications as the local authority consider appropriate; or
- (c) not to proceed with the proposals for federation.

(3) The modifications referred to in paragraph (2)(b) must not include a change in the identity of the governing bodies proposing to federate.

(4) Any determination under paragraph (2) must be published on the local authority's website and a copy of the determination sent to—

- (a) any other relevant local authority;
- (b) the head teacher of each school;
- (c) in the case of any school with a foundation—
  - (i) the foundation governors; and
  - (ii) any trustees of a trust relating to the school;
- (d) where any of the schools have a religious character, the appropriate diocesan authority

in the case of a Church in Wales or Roman Catholic Church school, or the appropriate religious body in the case of any other such school; and

- (e) such other persons as the local authority considers appropriate.

### **Incorporation of governing bodies of federations and dissolution of former governing bodies**

**88.**—(1) On the federation date—

- (a) the governing bodies of the federating schools or federations are dissolved;
- (b) the governing body of the federation is incorporated;
- (c) all land and property which, immediately before the federation date, was held by the governing body of a federating school or federation transfers to, and by virtue of these Regulations vests in, the governing body of the federation; and
- (d) all rights and liabilities subsisting immediately before the federation date which were acquired or incurred by the governing body of a federating school or federation be transferred to the governing body of the federation.

(2) Section 198 of the Education Reform Act 1988 (which, with Schedule 10 to that Act, makes further provision in relation to transfers of property, rights and liabilities) applies in relation to transfers effected by this regulation as they apply in relation to transfers to which that section and Schedule apply.

## **CHAPTER 2**

### **INFORMATION AND FUNDING: FEDERATIONS**

#### **Information for the governing body of a federation**

**89.**—(1) Immediately before the federation date, the governing body of a school which is to become a federated school must prepare, for the purpose of assisting the governing body of the federation, a written report on the action which it has taken in the discharge of its functions relating to the school.

(2) All minutes and papers of a governing body of a school which is to become a federated school on the federation date, including the report prepared under paragraph (1), is to be made available to the governing body of the federation.

#### **Financing of federations**

**90.** Except as provided by regulation 91, Chapter 4 of Part 2 of the 1998 Act (financing of maintained

schools) applies to federated schools and their governing bodies as it applies to other maintained schools and their governing bodies.

#### **Modification of Chapter 4 of Part 2 of the 1998 Act**

**91.**—(1) In its application to a federated school in Wales, other than one for which a temporary governing body is established pursuant to regulation 94 or 101, section 50 of the 1998 Act<sup>(1)</sup> (effect of financial delegation) is to have effect subject to the following modifications.

(2) In subsection (1), for “maintained” substitute “federated”.

(3) In subsection (2) for “any amounts are made available by the authority to the governing body” substitute “any amounts in respect of a federated school are made available by the local authority to the governing body of a federation”.

(4) In subsection (3)—

(a) for “the governing body may spend any such amounts” substitute “the governing body of a federation may spend any amounts made available under subsection (2), or previously made available to the governing bodies of the federated schools before federation”; and

(b) for paragraph (a) substitute—

“(a) for any purposes of the federated school to which the amounts relate;

(ab) for any purposes of any other federated school within the federation;

(ac) for any purposes of the federation; or”.

(5) In subsection (4) for ““purposes of the school” in subsection (3) does not include” substitute “any reference to the purposes of a federated school or a federation in subsection 3(a), (ab) and (ac) does not include”.

(6) In subsection (6), for “the head teacher” substitute “the head teacher of the federation or to the head teachers of federated schools”.

(7) In subsection (7), for “school” substitute “federation”.

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(1) Subsection (1) was amended by section 40 of, and Schedule 3 to, the 2002 Act. Subsection (4)(za) was inserted by section 40 of, and Schedule 3 to, the 2002 Act. Subsection (5) was amended by paragraph 10 of Schedule 21 to the 2002 Act. Subsection (1) was further amended by section 117 of, and Schedule 18 to, the Education Act 2005 (c.18).

## CHAPTER 3

### FEDERATED SCHOOLS LEAVING FEDERATION

#### **Procedure for a school to leave a non local authority federation**

**92.**—(1) This regulation applies to a request made to a governing body of a federation for a federated school (“the relevant school”) to leave the federation where the relevant school does not form part of a local authority federation.

(2) A request may not be made if the relevant school is subject to an intervention by a local authority or the Welsh Ministers under Chapter 1 of Part 2 of the 2013 Act unless the local authority or the Welsh Ministers (as the case may be) agree to the request being made.

(3) The request must be made in writing and signed by—

- (a) two or more governors;
- (b) one fifth of the parents of registered pupils at the relevant school;
- (c) two fifths of staff of the relevant school;
- (d) the local authority;
- (e) the trustees of the relevant school; or
- (f) a body entitled to appoint foundation governors to the governing body of the federation.

(4) The governing body of the federation must give notice of the request to—

- (a) all relevant local authorities;
- (b) the head teacher of the federation or (if there is no head teacher of the federation) the head teacher of each federated school;
- (c) where the relevant school is a foundation or voluntary school with a religious foundation, any trustees of a trust relating to the relevant school and, in the case of a Church in Wales or Roman Catholic Church school, the appropriate diocesan authority, or the appropriate religious body in the case of all other such schools;
- (d) a body entitled to appoint foundation governors to the governing body of the federation;
- (e) the trustees of a trust of any federated school of the federation;
- (f) all staff of the relevant school;
- (g) every person known by it to be a parent of a registered pupil at the relevant school;

(h) every trade union known by it to have members paid to work at any of the schools; and

(i) such other persons as the governing body of the federation considers appropriate.

(5) Notice under paragraph (4) must be given within the period of 5 clear working days beginning with the date on which the request was received.

(6) A request under paragraph (1) is to be taken to have been received by a governing body of a federation if given or sent to the chair or to the clerk of the governing body of a federation.

(7) Not less than 14 clear working days after the governing body of a federation has given notice of the request in accordance with paragraph (4), the governing body must consider the request and all responses received from the persons to whom notification of the request was sent and must decide whether—

(a) subject to paragraph (10), the relevant school should leave the federation and, if so, on what date it should do so (“the de-federation date”);

(b) the federation should be dissolved, and if so, on what date; or

(c) the relevant school should not leave the federation.

(8) Such a decision does 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 59(4).

(9) The governing body of a federation must give notice in writing of its decision under paragraph (7) within 5 clear working days to those persons referred to in paragraph (4).

(10) The de-federation date specified by the governing body must be not less than 125 days after the day on which notice of the governing body decision under paragraph (9) was given.

### **Procedure for a school to leave a local authority federation**

**93.**—(1) This regulation applies to a request made to the maintaining local authority for a federated school (“the relevant school”) to leave the local authority federation.

(2) A request may not be made if the relevant school is subject to an intervention by a local authority or the Welsh Ministers in Chapter 1 of Part 2 of the 2013 Act unless the local authority or the Welsh Ministers (as the case may be) agree to the request being made.

(3) The request must be made in writing and signed by—

- (a) two or more governors;
- (b) one fifth of the parents of registered pupils at the relevant school;
- (c) two fifths of staff of the relevant school;
- (d) the local authority;
- (e) the trustees of the relevant school; or
- (f) a body entitled to appoint foundation governors to the governing body of the federation.

(4) The maintaining local authority of the relevant school must give notice of the request to—

- (a) all relevant local authorities;
- (b) the head teacher of the federation or (if there is no head teacher of the federation) the head teacher of each federated school;
- (c) where the relevant school is a foundation or voluntary school with a religious foundation, any trustees of a trust relating to the relevant school and, in the case of a Church in Wales or Roman Catholic Church school, the appropriate diocesan authority, or the appropriate religious body in the case of all other such schools;
- (d) a body entitled to appoint foundation governors to the governing body of the federation;
- (e) the trustees of a trust of any federated school of the federation;
- (f) all staff of the relevant school;
- (g) every person known by them to be a parent of a registered pupil at the relevant school;
- (h) every trade union known by them to have members paid to work at any of the schools; and
- (i) such other persons as the local authority consider appropriate.

(5) Notice under paragraph (4) must be given within the period of 5 clear working days beginning with the date on which the request was received.

(6) A request under paragraph (1) is to be taken to have been received by the local authority if given or sent to the chief education officer<sup>(1)</sup>.

(7) Not less than 14 clear working days after the local authority has given notice of the request in accordance with paragraph (4), the local authority must consider the request and all responses received from the persons to whom notification of the request was sent and must decide whether—

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(1) Within the meaning of section 532 of the Education Act 1996.

- (a) subject to paragraph (9), the relevant school should leave the federation and, if so, on what date it should do so (“the de-federation date”);
- (b) the federation should be dissolved, and if so, on what date; or
- (c) the relevant school should not leave the federation.

(8) The local authority must give notice in writing of its decision under paragraph (7) within 5 clear working days to those persons referred to in paragraph (4).

(9) The de-federation date specified by the governing body must be not less than 125 days after the day on which notice of the governing body decision under paragraph (8) was given.

### **Decision to permit federated school to leave a federation**

**94.**—(1) Upon notification that a governing body of a federation has resolved or that the local authority has decided that a federated school should leave a federation paragraphs (2) or (3) are to apply.

(2) Where one of only two federated schools is to leave a federation, the federation is to be dissolved in accordance with Chapter 4 of this Part.

(3) Where paragraph (2) does not apply—

- (a) the local authority must—
  - (i) establish a temporary governing body in respect of the school leaving the federation in accordance with Chapters 3 and 4 of Part 7; and
  - (ii) issue a new instrument of government for that school in accordance with Chapter 4 of Part 5;
- (b) the governing body of the federation must review the instrument of government of the federation in accordance with regulation 49.

(4) For the purpose of paragraph (3)(a)(ii)—

- (a) the reference in regulation 46 to “governing bodies” is treated as a reference to “temporary governing bodies”; and
- (b) references in regulation 47—
  - (i) “governing body” are treated as references to “temporary governing body”; and
  - (ii) “foundation governors” are treated as references to “temporary foundation governors”.

### **Availability of amounts representing budget share**

**95.** Subject to any provision made by or under a scheme made under section 48(1) of the 1998 Act, the temporary governing body of a school leaving a federation may spend any sum made available by the local authority under section 50(1) of that Act to the governing body of the federation in respect of the school leaving the federation, as it thinks fit for any purposes of that school.

### **Incorporation of governing body of a school leaving a federation**

**96.** On the de-federation date the temporary governing body of the de-federated school is incorporated as the governing body of that school under the name given in the school's instrument of government.

### **Transfer of property**

**97.—(1)** On the de-federation date—

- (a) all land or property, which, immediately before the de-federation date, was held by the governing body of the federation for the purposes of the de-federated school transfers to, and by virtue of these Regulations vests in, the governing body incorporated under regulation 96; and
- (b) all rights and liabilities subsisting immediately before the de-federation date which were acquired or incurred by the governing body of the federation for the purposes of the de-federated school transfer to the governing body incorporated under regulation 96.

(2) Section 198 of and Schedule 10 to the Education Reform Act 1988 (which make provision in relation to transfers of property, rights and liabilities) apply in relation to transfers effected by this regulation as they apply in relation to transfers to which that section and Schedule apply.

## **CHAPTER 4**

### **DISSOLUTION OF FEDERATIONS**

#### **Dissolution by governing body of non local authority federations**

**98.—(1)** Subject to paragraph (3) where—

- (a) a governing body of a federation decides that the federation should be dissolved; or
- (b) a governing body of a federation decides that one of only two federated schools should leave the federation,

the governing body of a federation must give notice of the decision and the proposed date of dissolution to the persons mentioned in paragraph (2) within 14 clear working days of the decision.

(2) The persons to be notified are—

- (a) all relevant local authorities;
- (b) the head teacher of the federation or (if there is no head teacher of the federation) each head teacher of a federated school;
- (c) all staff;
- (d) every person known by the governing body to be a parent of a registered pupil at a federated school;
- (e) where a federated school is a foundation or voluntary school with a religious foundation, the foundation governors, any trustees of a trust relating to the federated school and, in the case of a Church in Wales or Roman Catholic Church school, the appropriate diocesan authority, or the appropriate religious body in the case of all other such schools;
- (f) every trade union known to them to have members paid to work at any of the schools; and
- (g) such other persons as the governing body of the federation considers appropriate.

(3) Nothing in this regulation applies to the governing body of a local authority federation.

(4) The proposed date of dissolution specified by the governing body must be not less than 125 days after the day on which notice is given under paragraph (1).

#### **Dissolution by governing body of local authority federations**

**99.**—(1) Where—

- (a) a governing body of a local authority federation decides that the federation should be dissolved; or
- (b) a governing body of a local authority federation decides that one of only two federated schools should leave the federation,

the governing body must seek the consent of any maintaining local authority that the federation should be dissolved.

(2) If consent under paragraph (1) is given, the governing body must give notice of their decision and the proposed date of dissolution to the persons mentioned in paragraph (3) within 14 clear working days of the consent being given.

(3) The persons to be notified are—

- (a) all relevant local authorities;
- (b) the head teacher of the federation or (if there is no head teacher of the federation) each head teacher of a federated school;
- (c) every member of staff;
- (d) every person known by the governing body to be a parent of a registered pupil at a federated school;
- (e) where a federated school is a foundation or voluntary school with a religious foundation, the foundation governors, any trustees of a trust relating to the federated school and, in the case of a Church in Wales or Roman Catholic Church school, the appropriate diocesan authority, or the appropriate religious body in the case of all other such schools;
- (f) every trade union known to them to have members paid to work at any of the schools; and
- (g) such other persons as the governing body of the federation considers appropriate.

(4) The proposed date of dissolution specified by the governing body must be not less than 125 days after the day on which notice is given under paragraph (2).

#### **Dissolution by local authority of local authority federations**

**100.**—(1) Where—

- (a) a maintaining local authority of a local authority federation determines that the federation should be dissolved; or
- (b) a maintaining local authority of a local authority federation determines that one of only two federated schools should leave the federation,

the local authority must give notice of the fact and the proposed date of dissolution to the persons mentioned in paragraph (2) within 14 clear working days of making that determination.

(2) The persons to be notified are—

- (a) all relevant local authorities;
- (b) the head teacher of the federation or (if there is no head teacher of the federation) each head teacher of a federated school;
- (c) all staff;
- (d) every person known by the governing body to be a parent of a registered pupil at a federated school;
- (e) where a federated school is a foundation or voluntary school with a religious foundation,

the foundation governors, any trustees of a trust relating to the federated school and, in the case of a Church in Wales or Roman Catholic Church school, the appropriate diocesan authority, or the appropriate religious body in the case of all other such schools;

- (f) a body entitled to appoint foundation governors to the governing body of the federation;
- (g) the trustees of a trust of any federated school of the federation;
- (h) every trade union known to them to have members paid to work at any of the schools; and
- (i) such other persons as the local authority considers appropriate.

(3) Not less than 14 clear working days after the local authority has given notice of the determination in accordance with paragraph (2), the local authority must consider the determination and all responses received from the persons to whom notification of the determination was sent and must decide whether—

- (a) the federation should be dissolved and, if so, on what date;
- (b) that one of only two federated schools should leave the federation, and if so, on what date; or
- (c) the federation should not be dissolved.

(4) The local authority must give notice in writing of its decision under paragraph (1) within 5 clear working days to those persons referred to in paragraph (2).

### **Establishment of temporary governing body**

**101.**—(1) Upon receipt of the notice issued under regulation 98, 99 or 100 the relevant local authority or local authorities must—

- (a) establish a temporary governing body in respect of each school in accordance with Chapters 3 and 4 of Part 7; and
- (b) issue a new instrument of government for each school in accordance with Chapter 4 of Part 5.

(2) For the purposes of paragraph (1)(b)—

- (a) the reference in regulation 46 to “governing bodies” is treated as a reference to “temporary governing bodies”; and
- (b) references in regulation 47 to—
  - (i) “governing body” are treated as references to “temporary governing body”; and

- (ii) “foundation governors” are treated as references to “temporary foundation governors”.

#### **Availability of amounts representing budget share**

**102.** Subject to any provision made by or under a scheme made under section 48(1) of the 1998 Act, the temporary governing body of each school may spend any sum made available by the local authority under section 50(1) of the 1998 Act to the governing body of the federation in respect of each school, as they think fit for any purposes of that school.

#### **Incorporation of governing body of a school leaving a federation**

**103.** On the date of dissolution the temporary governing body of each federated school is incorporated as the governing body of each de-federated school under the name given in the school's instrument of government.

#### **Transfer of property**

**104.—(1)** On the date of dissolution—

- (a) all land or property which, immediately before the date of dissolution, was held by the governing body of the federation for the purposes of each de-federated school, transfers to, and by virtue of these Regulations vests in, the new governing body of each de-federated school incorporated under regulation 103; and
- (b) all rights and liabilities subsisting immediately before the date of dissolution which were acquired or incurred by the governing body of the federation for the purposes of each de-federated school transfer to the new governing body of each de-federated school incorporated under regulation 103.

(2) Section 198 of and Schedule 10 to the Education Reform Act 1988 (which make provision in relation to transfers of property, rights and liabilities) are to apply in relation to transfers effected by this regulation as they apply in relation to transfers to which that section and Schedule apply.

**PART 7**  
**NEW MAINTAINED SCHOOLS: NON-  
FEDERATED SCHOOLS**

**CHAPTER 1**  
**INTRODUCTION**

**Interpretation**

**105.**—(1) In this Part “head teacher” includes a person who has been appointed as the head teacher of a new school but who has not yet taken up the post.

(2) For the purposes of this Part the following modifications to Parts 2, 3, 4 and Chapters 1 and 3, 6, 7 and 8 of Part 5 and Schedules 2 to 6 apply (“the general modifications”)—

- (a) “new school” is substituted for “school” and “maintained school”;
  - (b) “temporary” is inserted before the words “governing body”, “governor” and “governorship”;
  - (c) references to a particular category of governor are to be read as references to the corresponding categories of temporary governor set out in Chapter 3 of this Part; and
  - (d) references to a head teacher are to include a person who has been appointed as the head teacher of a new school but who has not yet taken up the post.
- (3) Any reference in this Schedule 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; and
  - (c) a temporary governor of a particular category is to be interpreted in accordance with Chapter 3 of this Part.

**CHAPTER 2**  
**ARRANGEMENTS FOR THE INCORPORATION  
OF TEMPORARY GOVERNING BODIES**

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

**106.**—(1) Where any proposals to establish a school have been published under any enactment, the local authority may make arrangements under section 34 of the 2002 Act in anticipation of approval of the

proposals or in anticipation of a determination by the authority that the proposals should be implemented.

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

- (a) as to whether the power given to the local authority in paragraph (1) should be exercised; and
- (b) if the local 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 school, the local authority and the promoters must consider—

- (a) whether the power given to the local authority in paragraph (1) 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 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 Welsh Ministers and on a reference under this paragraph the Welsh Ministers must give such direction as they think fit.

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

**107.**—(1) Where proposals to establish a voluntary school have been published by promoters, a local authority must not make arrangements in respect of the school without the agreement of the promoters as to any provision to be made in relation to the temporary foundation governors.

(2) In the event of any disagreement between the local authority and the promoters in respect of the provision referred to in paragraph (1), either of them may refer the issue to the Welsh Ministers and, on a reference under this paragraph the Welsh Ministers, must give such direction as they think fit.

#### **Termination of arrangements**

**108.** Any arrangements made under regulation 106 must come to an end as soon as reasonably practicable if—

- (a) the proposals are withdrawn;
- (b) the proposals are rejected (or are to be treated as rejected for the purposes of section 54 of the 1998 Act) under sections 50, 51 or 62 of the 2013 Act; or
- (c) the proposer determines under sections 53 or 55 of the 2013 Act not to implement them.

## CHAPTER 3

### CATEGORIES OF TEMPORARY GOVERNOR

#### **Interpretation of this Chapter**

**109.** In this Chapter—

“the first case” means that of a new school that is or will be a community, voluntary controlled, community special or a maintained nursery school proposals for the establishment of which were published by a local authority, and

“the second case” means that of a new school that is or will be a voluntary aided school proposals for the establishment of which were published by promoters.

#### **Temporary parent governors**

**110.—**(1) A “temporary parent governor” is a person appointed to be a member of the temporary governing body of a new school by—

- (a) the local authority, in the first case; or
- (b) the promoters, in the second case.

(2) Where one or more 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—

- (a) the local authority, in the first case, or
- (b) the promoters, in the second case,

may provide for the governing body of the discontinued school or schools to appoint some or all of the temporary parent governors of the new school.

(3) No person may be appointed as a temporary parent governor of a voluntary controlled school by a local authority, and no provision referred to in paragraph (2) above may be made in respect of a voluntary controlled school, unless the local authority has first consulted the promoters.

(4) No person (“P”) may be appointed as a temporary parent governor of a new school unless P is—

- (a) a parent of a child who is or is likely to become a registered pupil at the school;
- (b) a parent of a child of compulsory school age, or in the case of a maintained nursery school, of or under compulsory school age; or
- (c) a parent of a former registered pupil at a school which has been, or is to be, discontinued (“the discontinued school”) and the pupils of the discontinued school, or a

substantial number of them, will attend the new school.

(5) No person may be appointed as a temporary parent governor of a school which is or will be a community special school not established in a hospital unless that person is—

- (a) the parent of a child who is or is likely to become a registered pupil at the school;
- (b) the parent of a child of compulsory school age with special educational needs;
- (c) the parent of a person of any age with special educational needs; or
- (d) a parent of a child of compulsory school age.

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

- (a) an elected member of the local authority;
- (b) is employed by the local authority in connection with its education functions; or
- (c) qualified to be a staff governor.

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

### **Temporary staff governors**

**111.**—(1) A “temporary staff governor” is a person who is appointed to be a member of the temporary governing body of a new school in accordance with this paragraph.

(2) In the first case, a temporary staff governor must be appointed by the local authority.

(3) In the second case, a temporary staff governor must be nominated by the promoters and appointed by the local authority.

(4) Where one or more schools have been, or are to be, discontinued and the registered pupils of the school or schools, or a substantial number of them, are expected to transfer to a new school—

- (a) the local authority, in the first case, or
- (b) the promoters, in the second case,

may provide for the governing body of the discontinued school or schools to appoint some or all of the temporary staff governors of the new school.

(5) No provision referred to in paragraph (4) above may be made in respect of a voluntary controlled school unless the local authority has first consulted the promoters.

(6) No person may be nominated or appointed as a temporary staff governor unless that person is employed at a maintained school.

(7) A temporary staff governor is, upon ceasing to work at a maintained school, disqualified from continuing to hold office as a temporary staff governor.

### **Temporary local authority governors**

**112.**—(1) A “temporary local authority governor” is a person appointed to be a member of the temporary governing body of a new school by the local authority.

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

### **Temporary community governors**

**113.**—(1) A “temporary community governor” is a person who is appointed to be a member of the temporary governing body of a new school by the temporary governing body 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) A person is disqualified from appointment as a temporary community governor if that person—

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

### **Temporary foundation governors**

**114.**—(1) A “temporary foundation governor” is a person who is appointed as a member of the temporary governing body of a new school, otherwise than by the local authority, and who—

- (a) where the new school has, or the proposals for its establishment indicate that it will have, a particular religious character, 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) An “ex officio temporary foundation governor” is a temporary foundation governor who is the holder of an office by virtue of which that office holder is entitled to be a temporary foundation governor.

(3) An ex officio temporary foundation governor is, upon ceasing to hold the office from which that person’s temporary governorship derives, disqualified from continuing to hold office as such a temporary governor.

### **Temporary co-opted governors**

**115.** A “temporary co-opted governor” is a person appointed to be a member of the temporary governing body of a new school by the temporary governing body.

### **Experience and skills required of temporary governors**

**116.—**(1) Any person responsible for the appointment of a person as a temporary governor must only appoint a person as—

- (a) a temporary governor, who has, in the opinion of the person responsible for that appointment, the skills required to contribute to the effective governance and success of the school; and
- (b) in the case of a temporary co-opted governor also has the primary aim of wanting the school to secure the best possible outcomes for registered pupils at the school.

(2) Any person responsible for the appointment of a person as a temporary governor must have regard to the desirability of that person being suitably experienced.

(3) A person (“P”) is suitably experienced for the purposes of paragraph (2)—

- (a) if P has served as a governor or a temporary governor of a maintained school; and
- (b) in a case where registered pupils at a school which has been, or is to be, discontinued are expected to transfer to a new school to which the appointment relates, if P has served as a governor or a temporary governor of the school which has been, or is to be discontinued.

### **Joint appointments**

**117.** If a temporary governor is to be appointed by persons acting jointly, and those persons fail to make an agreed appointment, the appointment must be made

by, or in accordance with a direction given by the Welsh Ministers.

## CHAPTER 4

### COMPOSITION OF TEMPORARY GOVERNING BODIES

#### **Application of this Chapter of these Regulations**

**118.**—(1) The temporary governing body of a new school must be constituted in accordance with Chapter 1 of Part 5 of these Regulations having regard to the category of school or proposed school, except that a temporary governing body—

- (a) must not include—
  - (i) temporary elected parent governors;
  - (ii) temporary associate members, or
  - (iii) temporary pupil governors; and
- (b) must include—
  - (i) at least two temporary appointed parent governors; and
  - (ii) at least one temporary staff governor.

(2) For the purposes of calculating the number of temporary foundation governors required at a voluntary aided school, it must be assumed that a head teacher has been appointed and is a member of the temporary governing body.

## CHAPTER 5

### TENURE OF OFFICE AND QUALIFICATIONS

#### **Resignation**

**119.**—(1) Any member of a temporary governing body may resign from the governing body 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 that person's resignation does not prejudice the temporary governorship of that person's successor in the office from which the ex officio temporary governorship derives.

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

#### **Removal**

**120.**—(1) Any temporary governor of a new school may be removed from office by the person who appointed that temporary governor.

(2) In the case of the removal from office of a temporary governor mentioned in regulation 121(1), the governing body must follow the procedure set out in that paragraph.

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

**121.**—(1) This paragraph 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 appointed by the temporary governing body;
- (c) a temporary community governor appointed by the temporary governing body; and
- (d) a temporary co-opted governor appointed by the temporary governing body.

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

- (a) the temporary governor or governors proposing the temporary governors removal, at that meeting, state their reasons for doing so;
- (b) the governor whom it is proposed be removed is given an opportunity to make a statement in response before withdrawing from the meeting;
- (c) the temporary governing body have considered the information provided in accordance with sub-paragraphs (a) and (b); and
- (d) the matter of the temporary governor's removal from office is specified as an item of business on the agenda for the meeting.

(3) After a resolution to remove a governor from office has been passed, the temporary governing body must inform the person removed from office of the reasons for the removal in writing.

**Qualifications and disqualifications**

**122.** Schedule 5 applies, subject to the general modifications, for the purpose of setting out the circumstances in which a person is qualified or disqualified for holding or continuing to hold office, or for being appointed or nominated as a temporary governor of a new school.

## **Expenses**

**123.** Where a temporary governing body is constituted for a new school the local authority is 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**

**124.** The local authority must 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.

## **CHAPTER 6**

### **GENERAL CONDUCT OF NEW SCHOOLS**

## **Interpretation and application of this Chapter**

**125.**—(1) In this Chapter “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.

(2) This Chapter 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**

**126.**—(1) Subject to paragraph (2), section 88 of the Education and Inspections Act 2006 and sections 27, 28 and 111 of, and Schedule 1 to, the 2002 Act apply in relation to a proposed school<sup>(1)</sup> with the following modifications—

- (a) references to a governing body are treated as references to a temporary governing body;
- (b) references to a maintained school are treated as including a reference to a proposed maintained school;
- (c) references to the instrument of government are treated as references to the instrument of government whether or not it has taken effect;

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(1) 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 is to be treated as if it was the governing body at any time before the school opening date.

- (d) references to a community school, community special school, voluntary controlled school, maintained nursery school or a voluntary aided school are treated as including a reference to a proposed community school, proposed community special school, proposed voluntary controlled school, proposed maintained nursery school or a proposed voluntary aided school; and
- (e) sections 88(3)(b) and (c), 89(6) of the Education and Inspections Act 2006 and paragraph 2(2) and (3) of Schedule 1 to the 2002 Act do not apply.

(2) The temporary governing body of a proposed school which does not have a delegated budget may not exercise any of the powers set out in paragraph 3 (3)(b) to (f) of Schedule 1 to the 2002 Act (as modified) without the prior agreement in writing of—

- (a) the local authority in the case of a proposed school which will be a community, voluntary controlled or community special school or a maintained nursery school, proposals for the establishment of which were published by a local authority; or
- (b) the promoters in the case of a proposed school which will be a voluntary aided school, proposals for the establishment of which were published by promoters.

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

**127.**—(1) Schedule 1 to the 2002(1) Act applies with the modifications set out in paragraph (2) during the period—

- (a) beginning with the school opening date; and
- (b) ending with the time when the governing body are constituted for the school under an instrument of government.

(2) The modifications are as follows—

- (a) for references to “governing body” there are 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

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(1) Under section 34(7) of the 2002 Act, the temporary governing body of a school is to be treated for the purposes of the Education Acts as if it was the governing body during the period beginning with the school opening date and ending with the time the governing body is 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).

in the school's instrument of government" are omitted; and

- (c) paragraph 2(2) and (3) of Schedule 1 to the 2002 Act does not apply.

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

**128.**—(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 must 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**

**129.**—(1) The head teacher of a proposed school must, in preparing to discharge the head teacher's functions under Part 7 of the 2002 Act in relation to the curriculum for the school, consult the temporary governing body and the local authority.

(2) Any local authority which has been consulted under paragraph (1) must inform the head teacher of the resources which are likely to be made available to the school, and the head teacher must have regard to any such information given.

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

**130.**—(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 authority must determine the dates when the school terms and holidays are to begin and end in accordance with the dates determined by the local authority under sections 32A and 32B of the 2002 Act<sup>(1)</sup>; and
- (b) the temporary governing body must determine the times of the school sessions after consultation with the local authority.

(2) In the case of a proposed school which will be a voluntary aided, the temporary governing body must determine—

- (a) the dates and times when the school terms and holidays are to begin and end in accordance

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(1) Sections 32A and 32B were inserted by section 42 of the Education (Wales) Act 2014 (anaw 5).

with the dates determined by the local authority under sections 32A and 32B of the 2002 Act; and

(b) the times of the school sessions.

(3) In this paragraph “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.

### **Reports and Information**

**131.**—(1) The temporary governing body of a new school must provide the local authority with such reports in connection with the discharge of its functions as the authority may require (either on a regular basis or from time to time) for the purposes of the exercise of any of the authority's functions.

(2) The head teacher of a new school must provide the temporary governing body or the local authority with such reports in connection with the discharge of the head teacher's functions as that body or the authority may require (either on a regular basis or from time to time) for the purposes of the exercise of any of their functions.

(3) Where a requirement under paragraph (2) is imposed on the head teacher by the local authority—

- (a) the local authority must notify the temporary governing body of that requirement; and
- (b) the head teacher must give the temporary governing body a copy of any report made by the head teacher in complying with it.

### **Consultation on expenditure by a local authority**

**132.** Where the proposed school does not have a delegated budget, the local authority must consult the temporary governing body and the head teacher on the authority's proposed expenditure on books, equipment and stationary for the school.

## **CHAPTER 7**

### **OFFICERS, MEETINGS, PROCEEDINGS, COMMITTEES AND CONFLICTS OF INTEREST**

#### **Appointment, functions and removal of officers**

**133.** Chapter 5 of Part 5 applies to new schools subject to the general modifications and regulations 134 and 135.

#### **Appointment of first clerk**

**134.**—(1) The first clerk to the temporary governing body of a new school which will be a community, voluntary controlled or community special school,

proposals for the establishment of which were published by the local authority, is to be appointed by the local authority.

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

#### **First meeting of temporary governing body**

**135.**—(1) The first meeting of a temporary governing body is to be called by the clerk.

(2) The temporary governing body must elect a chair and vice-chair at that first meeting.

(3) Where the clerk fails to call a meeting within such period as the local authority consider reasonable, the local authority must call it.

#### **Meetings and proceedings of temporary governing bodies**

**136.**—(1) Chapter 6 of Part 5 applies to new schools subject to the general modifications and paragraph (2).

(2) Where two or more schools are to be discontinued (“the discontinued schools”) and the registered pupils at those schools, or a substantial number of those pupils are expected to transfer to a new school, the head teachers of the discontinued schools are entitled to attend any meeting of the temporary governing body of the new school until a head teacher is appointed for that new school.

#### **Committees of temporary governing bodies**

**137.**—(1) Chapter 7 of Part 5 applies to new schools subject to the general modifications and paragraph (2).

(2) Where two or more schools are to be discontinued (“the discontinued schools”) and the registered pupils at those schools, or a substantial number of those pupils are expected to transfer to a new school, the head teachers of the discontinued schools are entitled to attend any meeting of a committee of the temporary governing body of the new school until a head teacher is appointed for that new school.

#### **Restrictions on persons taking part in proceedings**

**138.** Chapter 8 of Part 5 applies to new schools subject to the general modifications.

CHAPTER 8  
TRANSITION FROM A TEMPORARY  
GOVERNING BODY TO A GOVERNING BODY

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

**139.**—(1) The local authority must secure that an instrument of government has been made for each new school in accordance with regulations 46 and 47 of these Regulations before the school opening date.

(2) The instrument of government takes effect from the date of making for the purpose of constituting the governing body but does not affect the constitution or name of the temporary governing body conducting the new school.

(3) For the purposes of this Chapter, in relation to any new school, the incorporation date is the date the local authority notifies in writing to the governing body which must be a date as soon as reasonably practicable after the school opening date but in any event no later than the last day of the term in which the school first admits pupils.

(4) The local authority must 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.

(5) For all other purposes, the instrument of government takes effect from the incorporation date.

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

(7) The temporary governing body must exercise its functions under the 1998 Act, the 2002 Act and under these Regulations in a manner calculated to enable the local authority to fulfil its duties under this paragraph.

**New governors**

**140.** Where any person makes an appointment or nominates a person to be appointed in accordance with regulation 139(4) to the governing body, that person must give written notice of the appointment or the nomination to the local authority and the clerk to the governing body specifying the name and usual place of residence of the person appointed.

**Appointment or election of new governors**

**141.**—(1) The following paragraphs apply in relation to the appointment or election of governors required to constitute the governing body pursuant to paragraph 139(4).

- (2) Any parent governor must be either—
  - (a) elected (after the school opening date) in accordance with Schedule 2; or
  - (b) appointed (after the school opening date) in accordance with Schedule 2.
- (3) After the school opening date—
  - (a) any staff governor must be elected in accordance with Schedule 3;
  - (b) any local authority governor must be appointed in accordance with regulation 15;
  - (c) any community governor must be appointed in accordance with regulation 16; and
  - (d) any co-opted governor must be appointed in accordance with regulation 19.
- (4) If—
  - (a) the instrument of government of a new school provides for one or more of the governors to be appointed by persons acting jointly, and
  - (b) those persons fail to make an agreed appointment,

the appointment must be made by, or in accordance with a direction given by, the Welsh Ministers.

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

**142.** 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,

are by virtue of this paragraph, transferred to and vest in the governing body constituted under the instrument of government.

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

**143.** Without prejudice to the generality of regulation 142, where that paragraph effects a transfer of rights and liabilities under a contract of employment—

- (a) the contract has effect from the incorporation date as if originally made between the employee (“P”) and the governing body constituted under the instrument of government, and

- (b) without prejudice to paragraph (a), anything done before that date by or in relation to the temporary governing body in respect of that contract or P is deemed from that date to have been done by or in relation to the governing body constituted under the instrument of government,

but no right of P to terminate P's contract of employment if a substantial change is made to P's detriment in P's working conditions arises by reason only of the change of employer effected by that paragraph.

### **Information for successors**

**144.**—(1) Immediately before the incorporation date, the temporary governing body must prepare, for the purpose of assisting the governing body who will succeed it, a brief report of the action which it has taken in the discharge of its functions relating to the new school.

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

## **PART 8**

### **STAFFING OF SCHOOLS**

#### **CHAPTER 1**

#### **GENERAL**

### **Application of Chapter 1**

**145.** The provisions in this Chapter have effect in relation to all maintained schools.

### **General responsibility for staffing of schools**

**146.** A governing body and a local authority must exercise their respective functions under these Regulations and any other enactment with a view to ensuring that there is employed, or engaged otherwise than under contracts of employment, a staff suitable and sufficient in numbers for the purpose of securing the provision of education appropriate to the ages, abilities, aptitudes and needs of the pupils having regard to any arrangements for the utilisation of the services of staff employed or engaged otherwise than at—

- (a) the school in question; or
- (b) in the case of a federated school the federation or the federated school in question.

### **Delegation of authority**

**147.**—(1) The governing body may delegate its functions under regulations 160 to 163, 166, 181 to 184 and 188.

(2) Any such delegation may be to—

- (a) the head teacher,
- (b) one or more governors,
- (c) one or more governors and the head teacher,
- (d) a committee established by the governing body.

(3) Where the governing body has made a delegation to person or committee in paragraph (2)(b), (c) or (d) (“P”) the head teacher may attend and offer advice at all relevant proceedings and such advice must be considered by P.

### **Head teacher’s duties and entitlements**

**148.**—(1) The governing body must ensure that the head teacher at the school—

- (a) complies with the duties imposed upon the head teacher; and
- (b) benefits from any entitlement conferred upon the head teacher;

by any order under section 122 of the 2002 Act<sup>(1)</sup> (teachers’ pay and conditions).

(2) In discharging its duty under paragraph (1)(a), the governing body must have regard to the desirability of the head teacher being able to achieve a satisfactory balance between the time spent discharging the professional duties of a head teacher and the time spent by the head teacher pursuing personal interests outside work.

### **Performance of the head teacher**

**149.** Where the local authority has any serious concerns about the performance of the head teacher of a school—

- (a) it must make a written report of its concerns to the chair of the governing body of the school, at the same time sending a copy to the head teacher in question; and
- (b) the chair of the governing body must notify the local authority in writing of the action the chair of the governing body proposes to take in the light of the report.

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(1) An order under section 122 may be made by the Secretary of State.

## **Conduct and discipline and capability of staff**

**150.**—(1) The regulation of conduct and discipline in relation to the staff, and any procedures for giving members of the staff opportunities for seeking redress of any grievances relating to their employment, is to be under the control of the governing body.

(2) The governing body must—

(a) establish procedures—

(i) for the regulation of the conduct and discipline of staff;

(ii) by which staff may seek redress for any grievance relating to their work at the school; and

(iii) for dealing with lack of capability on the part of staff; and

(b) take such steps as appear to the governing body to be appropriate for making them known to members of the staff.

(3) Where the implementation of any determination made by the governing body in operation of the procedures requires any action which—

(a) is not within the functions exercisable by the governing body by or under the 2002 Act, but

(b) is within the power of the local authority,

the local authority must take that action at the request of the governing body.

## **Independent investigator**

**151.**—(1) This regulation applies where a person employed under a contract of employment to work at the school is the subject of an allegation falling within paragraph (2).

(2) An allegation falls within this regulation if it is an allegation that the person referred to in paragraph (1) has caused harm to a registered pupil at the school.

(3) If the head teacher is aware of any such allegations the head teacher must—

(a) inform the governing body of all such allegations; and

(b) consult with the person appointed by the local authority in accordance with guidance issued under section 175 of the 2002 Act<sup>(1)</sup> (if any) with the responsibility for child protection.

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(1) The guidance issued under section 175 of the Education Act 2002 at the date of the coming into force of these Regulations states that the appropriate person for the head teacher to contact is currently the local authority Designated Lead Officer. That guidance is entitled “Keeping learners safe: The role of local authorities, governing bodies and proprietors of independent schools under the Education Act

(4) If the governing body is informed of any such allegation it must appoint an independent person to investigate the allegation except where paragraph (7) applies.

(5) The governing body must not make a determination on whether or not to appoint an independent person until—

- (a) the local authority in which the school is situated has notified the governing body that it has discussed the allegation with all persons it considers appropriate in accordance with guidance issued under section 175 of the 2002 Act;
- (b) the statutory authorities have notified the governing body that—
  - (i) they have each concluded their investigation (if any); and
  - (ii) any criminal proceedings (if any) arising from any such investigation by the statutory authorities and which concern the allegation have been discontinued or have otherwise concluded; and
- (c) the governing body has consulted with—
  - (i) the person appointed by the local authority in accordance with guidance issued under section 175 of the 2002 Act (if any) with the responsibility for child protection issues; and
  - (ii) the head teacher unless the allegation is made against the head teacher.

(6) The governing body must ensure that a written record is made of the outcome of any consultation carried out pursuant to paragraph (5).

(7) The governing body does not have to appoint an independent investigator in accordance with paragraph (4) where it is satisfied—

- (a) beyond reasonable doubt that the allegation is not true;
- (b) beyond reasonable doubt that there is no evidence to corroborate the allegation;
- (c) that the person about whom the allegation was made has admitted to having done what has been alleged; or
- (d) that the person about whom the allegation has been made has subsequently been convicted of a criminal offence following criminal proceedings of a type referred to in paragraph (5)(b)(ii).

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2002” and was published in 2015 under guidance document number 158/2015.

(8) Where an independent person is appointed in accordance with paragraph (4), the governing body must require that person to provide to the governing body a written report of their findings in respect of the allegation.

(9) The governing body must provide a copy of the report of the independent person to the head teacher unless—

- (a) the allegation under paragraph (2) is made against the head teacher; or
- (b) the head teacher was a witness to the conduct which forms the basis of the allegation under paragraph (2).

(10) After receiving the report of the independent person the governing body must decide, in accordance with regulation 169 or 191 as the case may be, whether the person about whom the allegation is made should cease to work at the school or the federation.

(11) A person is not to be regarded as independent for the purposes of paragraph (4) if the person—

- (a) is a member of the governing body making the appointment;
- (b) is a parent of a current or former registered pupil of the school or of any other school in the same federation;
- (c) is a current or former member of staff of the school or of any other school in the same federation;
- (d) is a member or employee of the local authority that maintains the school or of any other school in the same federation;
- (e) is a trustee of the school or of any other school in the same federation;
- (f) is a member of the appropriate diocesan authority for the school or any other school in the same federation;
- (g) appoints the foundation governors to the school governing body; or
- (h) will not in the opinion of the governing body—
  - (i) act fairly and impartially; or
  - (ii) be reasonably perceived to be able to act fairly and impartially.

CHAPTER 2  
PROVISIONS RELATING TO COMMUNITY,  
VOLUNTARY CONTROLLED, COMMUNITY  
SPECIAL AND MAINTAINED NURSERY  
SCHOOLS

**Application of Chapter 2**

**152.** The provisions in this Chapter have effect in relation community, voluntary controlled, community special and maintained nursery schools<sup>(1)</sup>.

**Criminal record check for members of staff**

**153.**—(1) The identity of any person (“P”) appointed under this Chapter must be checked by the local authority and a check must be made by the local authority of P’s right to work in the United Kingdom.

(2) An enhanced criminal record certificate issued pursuant to Part V of the 1997 Act must be obtained by the local authority in respect of P before or as soon as practicable after P’s appointment.

(3) Where a governing body obtains an enhanced criminal record certificate in respect of any such person and that certificate is subject to up-date arrangements, it must consider whether to request up-date information in relation to the certificate under section 116A(1) of the 1997 Act.

(4) In the case of any such person for whom, by reason of P having lived outside the United Kingdom, obtaining such a certificate is not sufficient to establish P’s suitability to work in a school, such further checks as the local authority considers appropriate, having regard to any guidance issued by the Welsh Ministers, must be made by the local authority.

(5) The checks referred to in paragraphs (1) and (3) must be completed before P’s appointment.

(6) Paragraphs (2) and (3) do not apply to a person (“P”) who has worked in—

- (a) a school in Wales in a post which brought P regularly into contact with children or young persons, or
- (b) an institution within the further education sector in Wales in which P’s post involved the provision of education which brought P regularly into contact with children or young persons,

during a period which ended not more than 3 months before P’s appointment.

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(1) But only to such schools with delegated budgets as defined by section 39(2) of the 2002 Act, in accordance with section 35(7) of the Education Act 2002.

### **Criminal record check for members of staff appointed by the local authority**

**154.** Regulation 153 also applies in relation to any person appointed by the local authority for the purpose of working at a school to which this Chapter or Chapter 3 applies.

### **Appointment of head teacher and deputy head teacher: notification of vacancy**

**155.**—(1) The governing body must notify the local authority in writing of a vacancy in the post of head teacher or deputy head teacher of the school before taking any of the steps mentioned in regulations 156 to 158.

(2) During the federation transition period the governing bodies of the federating schools must notify the local authority of a vacancy in the post of head teacher or deputy head teacher before taking any of the steps mentioned in regulations 156 to 158.

(3) During the federation transition period nothing in these Regulations prevents the governing bodies of schools intending to federate from forming a joint selection panel.

### **Temporary appointment of acting head teacher and acting deputy head teacher: pending permanent appointment**

**156.**—(1) Where the vacancy is in the post of head teacher and either the post has not been filled, or it appears to the governing body that the post will not be filled, by an appointment made in accordance with regulations 156 to 158 before the date on which it falls vacant, the governing body must either—

- (a) recommend a person for appointment as acting head teacher; or
- (b) exercise its power under paragraph (5).

(2) Where the vacancy is in the post of deputy head teacher and either the post has not been filled, or it appears to the governing body that the post will not be filled, by an appointment made in accordance with regulations 156 to 158 before the date on which it falls vacant, the governing body may—

- (a) recommend a person for appointment as acting deputy head teacher; or
- (b) exercise its power under paragraph (5).

(3) If the governing body recommends a person for appointment as acting head teacher or acting deputy head teacher, the local authority must appoint the person recommended unless the person recommended does not meet any staff qualification requirements which are applicable in relation to that person's appointment.

(4) If the local authority declines to appoint a person recommended by the governing body for appointment as acting head teacher because they do not meet staff qualification requirements which are applicable in relation to that person's appointment, the governing body must recommend another person for appointment.

(5) Instead of making a recommendation under paragraph (1)(a) or (2)(a) the governing body may for the purpose of filling the vacancy—

(a) engage; or

(b) make arrangements for the engagement of,

a person ("P") to provide P's services as acting head teacher, or (as the case may be) acting deputy head teacher, otherwise than under a contract of employment with the local authority.

(6) No person is to be engaged under paragraph (5) unless that person meets all the staff qualification requirements applicable in relation to the head teacher or (as the case may be) deputy head teacher at the school.

#### **Appointment of head teacher and deputy head teacher: advertising of vacancy**

**157.**—(1) The governing body must advertise a vacancy in the post of head teacher or deputy head teacher ("the vacancy") in such publications circulating throughout England and Wales as it considers appropriate as soon as reasonably practicable.

(2) The governing body must advertise the vacancy not less than twice a school year until such time as the vacancy is filled.

(3) The governing body may decide not to advertise in accordance with paragraph (1) the vacancy in the post of head teacher where the vacancy is at a school named in proposals made under sections 43, 44, 80 or 81 of the 2013 Act as one which pupils at a school to be discontinued may attend ("the receiving school") and—

(a) a person employed as a head teacher at the school to be discontinued has expressed the wish in writing to the governing body of the receiving school to apply for the vacancy in the post of head teacher; or

(b) there is no such person as described in subparagraph (a), but there is a person employed as a head teacher at a school elsewhere in the local authority's area which is either to be discontinued pursuant to proposals made under sections 43, 44, 80 or 81 of the 2013 Act, or has been named in such proposals as one which pupils at the school to be

discontinued may attend and who has expressed the wish in writing to the governing body of the receiving school to apply for the vacancy in the post of head teacher.

(4) The governing body may decide not to advertise in accordance with paragraph (1) the vacancy in the post of deputy head teacher where the vacancy is at a school named in proposals made under sections 43, 44, 80 or 81 of the 2013 Act as one which pupils at a school to be discontinued may attend (“the receiving school”) and—

- (a) a person employed as a deputy head teacher at the school to be discontinued has expressed the wish in writing to the governing body of the receiving school to apply for the vacancy in the post of deputy head teacher; or
- (b) there is no such person as described in subparagraph (a), but there is a person employed as a deputy head teacher at a school elsewhere in the local authority's area which is either to be discontinued pursuant to proposals made under sections 43, 44, 80 or 81 of the 2013 Act, or has been named in such proposals as one which pupils at the school to be discontinued may attend and who has expressed the wish in writing to the governing body of the receiving school to apply for the vacancy in the post of deputy head teacher.

(5) The governing body may decide not to advertise in accordance with paragraph (1) the vacancy in the post of head teacher of the federation or a federated school where the vacancy occurs in a federation or a federated school within the federation and—

- (a) there is a person employed as a head teacher in any federated school within the federation; and
- (b) one or more of those persons has expressed the wish in writing to the governing body to apply for the vacancy in the post of head teacher of the federation or a federated school.

(6) The governing body may decide not to advertise in accordance with paragraph (1) the vacancy in the post of deputy head teacher of the federation or a federated school where the vacancy occurs in a federation or a federated school within the federation and—

- (a) there is a person employed as a deputy head teacher in any federated school within the federation; and
- (b) one or more of those persons has expressed the wish in writing to the governing body to apply for the vacancy in the post of deputy head teacher of the federation or a federated school.

### **Appointment of head teacher and deputy head teacher: selection panels**

**158.**—(1) The governing body must appoint a selection panel consisting of—

- (a) in the case of a community, community special and maintained nursery school, no less than five and no more than seven members;
- (b) in the case of a voluntary controlled school to which sub-paragraph (g) applies no less than seven and no more than nine members;
- (c) in the case of a voluntary controlled school to which sub-paragraph (g) does not apply no less than five and no more than seven members;
- (d) a majority of governor members;
- (e) at least one but no more than two independent persons who must be entitled to vote;
- (f) the chief education officer of the local authority or that person's representative who must be entitled to vote; and
- (g) where the governing body has agreed to accord to the appropriate diocesan officer membership and voting rights in accordance with regulation 173(2) the appropriate diocesan officer.

(2) For the purposes of paragraph (1)(e) an independent person will be not be regarded as independent if any of the descriptions in regulation 151(11) apply to them.

(3) Paragraph (2) does not prevent an associate member from being an independent person for the purposes of paragraph (1)(e) provided none of the statements in regulation 151(11)(b) to (h) apply.

(4) The purpose of the selection panel is to—

- (a) select for interview such applicants for the post as it thinks fit and, where the post is that of head teacher, notify the local authority in writing of the names of the applicants so selected;
- (b) interview such of those applicants as attend for the purpose,
- (c) where the panel considers it appropriate to do so, recommend to the governing body for appointment one of the applicants interviewed by the panel; and
- (d) if the panel's recommendation is approved by the governing body, recommend the applicant in question to the local authority for appointment.

(5) The selection panel must elect a chair from among their number.

(6) The following persons are not eligible to be a chair of the selection panel—

- (a) a governor who is paid to work at the school;
- (b) a governor who is a pupil at the school;
- (c) an independent person member;
- (d) the chief education officer of the local authority that maintains the school; and
- (e) the appropriate diocesan officer.

(7) The governing body may remove the chair to any selection panel from office at any time.

(8) Subject to paragraph (1)(d) the membership of a selection panel may include persons who are not governors and the extent to which such members are entitled to vote is to be determined by the governing body.

(9) During the federation transition period membership of the selection panel may include persons from the federating schools.

(10) The persons referred to in paragraph (9) must be entitled to vote.

(11) 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), has a second or casting vote.

(12) Any decision of the selection panel must be taken by a vote representing an absolute majority of all the members of the panel (whether or not taking part in the vote).

(13) If within a period of 14 days beginning with the date when it receives notification under paragraph (4)(a), the local authority makes written representations to the selection panel that any applicant selected for interview by the panel is not a suitable person for the appointment, the panel must not recommend that person to the governing body for appointment unless the panel has—

- (a) considered those representations; and
- (b) notified the local authority in writing of its response to the representations;

and when making such a recommendation the panel must supply the governing body with a copy of those representations and of the panel's response to them.

(14) Where the person recommended by the selection panel is approved by the governing body for appointment and the person meets all relevant staff qualification requirements, the local authority must appoint the person.

(15) If—

- (a) the selection panel does not recommend a person to the governing body;

- (b) the governing body declines to approve the person recommended by the selection panel; or
- (c) the local authority declines to appoint the person that the governing body approves,

the selection panel may select another person in accordance with this regulation (but this does not prevent the selection of an existing applicant).

**Temporary appointment of acting head teacher or acting deputy head teacher: temporary absence of post holder**

**159.**—(1) The governing body may, in connection with any absence of the person for the time being holding the post of head teacher or deputy head teacher, take either of the steps mentioned in regulation 156(1) or (2) (as the case may be).

(2) For the purposes of this regulation—

- (a) regulation 156(3) applies in relation to any recommendation made by virtue of paragraph (1) as it applies in relation to any recommendation made by virtue of regulation 156(1) or (2); and
- (b) regulation 156(5) and (6) apply in connection with any such absence as is mentioned in paragraph (1) as they apply for the purpose of filling any such vacancy as is mentioned in regulation 156(1) or (2).

**Appointment of other teachers**

**160.** Regulation 162 applies in relation to the filling of a vacancy in any teaching post (whether full-time or part-time) at the school, other than the post of head teacher or deputy head teacher.

**Temporary appointment of other teachers: pending permanent appointment to post**

**161.**—(1) Regulation 162 does not apply in relation to any temporary appointment or engagement to fill a vacancy in any such post as is mentioned in regulation 160—

- (a) for a period not exceeding 4 months, or
- (b) where it appears to the governing body that the period for which the person appointed or engaged will act in the post in question will not exceed 4 months.

(2) Where it appears to the governing body in the case of any post that it would be appropriate for such an appointment as is mentioned in paragraph (1) to be made—

- (a) it may recommend a person for appointment to the post on such terms as to the duration of the appointment as it may specify, and
- (b) the local authority must appoint the person recommended on the terms specified unless the person does not meet any staff qualification requirements which are applicable in relation to the person's appointment.

(3) Where it appears to the governing body in the case of any post that it would be appropriate for such an engagement as is mentioned in paragraph (1) to be made, the governing body may—

- (a) engage, or
- (b) make arrangements for the engagement of,

a person ("P") to provide P's services as a teacher at the school otherwise than under a contract of employment with the local authority.

(4) Any engagement under paragraph (3) is to be on such terms as to the duration of the engagement as the governing body may specify; but no person is to be engaged under that paragraph unless that person meets all the staff qualification requirements applicable in relation to a teacher in the post in which that person would be acting as a temporary teacher.

### **Permanent appointment of other teachers**

**162.**—(1) Before taking any of the steps mentioned in this regulation or regulation 163, the governing body must—

- (a) determine a specification for the post in consultation with the head teacher; and
- (b) send a copy of the specification to the local authority.

(2) The local authority may nominate for consideration for appointment to the post any person who appears to the local authority to be qualified to fill it and who at the time of that person's nomination either—

- (a) is an employee of the local authority's or has been appointed to take up employment with the local authority at a future date; or
- (b) is employed by the governing body of a foundation, voluntary aided or foundation special school maintained by the local authority.

(3) No person who is employed at any school maintained by the local authority is to be nominated by the local authority under paragraph (2) without the consent of the governing body of that school.

(4) The governing body may advertise the vacancy at any time after it has sent a copy of the specification

for the post to the local authority in accordance with paragraph (1), and must do so unless either—

- (a) it accepts for appointment to the post a person nominated by the local authority under paragraph (2); or
- (b) it decides to recommend to the local authority for appointment to the post a person who is already employed to work at the school.

(5) Where the governing body advertises the vacancy, it must do so in a manner likely in its opinion to bring it to the notice of persons (including employees of the local authority) who are qualified to fill it.

(6) Where the governing body advertises the vacancy, it must—

- (a) interview such applicants for the post and such of the persons (if any) nominated by the local authority under paragraphs (2) and (3) as it thinks fit; and
- (b) where it considers it appropriate to do so, either recommend to the local authority for appointment one of the applicants interviewed by it or notify the local authority that it accepts for appointment any person nominated by the local authority under paragraph (2).

(7) If the governing body is unable to agree on a person to recommend or accept for appointment, it must repeat the steps mentioned in paragraph (6), but it may do so without first re-advertising the vacancy in accordance with paragraph (5).

(8) Where a person is recommended or accepted for appointment by the governing body and the person meets all relevant staff qualification requirements, the local authority must appoint the person.

(9) If the local authority declines to appoint a person recommended by the governing body because they do not meet the staff qualification requirements which are applicable in relation to that person's appointment, the governing body must repeat such of the steps mentioned in paragraph (6) as it thinks fit, but it may do so without first re-advertising the vacancy in accordance with paragraph (5).

#### **Temporary appointment of other teachers: temporary absence of post holder**

**163.**—(1) The governing body may, in connection with any absence of the person for the time being holding any such post as is mentioned in regulation 160—

- (a) engage; or
- (b) make arrangements for the engagement of,

a person (“P”) to provide P’s services as a teacher at the school otherwise than under a contract of employment with the local authority.

(2) No person is to be engaged under paragraph (1) unless that person meets all the staff qualification requirements applicable in relation to a teacher in the post in which that person would be acting as a temporary teacher.

#### **Advice of chief education officer on appointments of teachers**

**164.**—(1) The chief education officer of the local authority (“CEO”), or the CEO’s representative, is entitled to attend, for the purpose of giving advice—

- (a) all proceedings (including interviews) of the governing body, relating to appointment or engagement of an acting head teacher or acting deputy head teacher under this Chapter; and
- (b) all proceedings (including interviews) of the governing body, and of any persons to whom any functions of the governing body are delegated, relating to appointments or engagements to which regulations 160 to 163 apply.

(2) The CEO, or the CEO’s representative, is entitled to offer such advice as they consider appropriate with respect to—

- (a) the appointment or engagement of an acting head teacher or acting deputy head teacher; or
- (b) any matter arising in connection with any such appointment or engagement.

(3) If requested to do so by the governing body, the CEO, or the CEO’s representative, is entitled to give such advice as they consider appropriate in relation to any appointment or engagement to which regulations 160 to 163 apply.

(4) Any advice given by the CEO, or the CEO’s representative, to—

- (a) the governing body; or
- (b) any persons or committee to whom any functions of the governing body are delegated,

with respect to any matter which relates to an appointment or engagement and falls to be determined by them must be considered by them before determining that matter, whether or not the advice was given at their request.

#### **Advice of head teacher on appointments of teachers**

**165.**—(1) The head teacher is entitled to attend for the purposes of giving advice—

- (a) all proceedings (including interviews) of the governing body, and of any selection panel, (if not otherwise entitled to be present at the proceedings there mentioned) relating to the appointment or engagement of the deputy head teacher or the acting deputy head teacher; and
- (b) all proceedings (including interviews) of the governing body, and of any persons to whom any functions of the governing body are delegated, relating to appointments or engagements under this Chapter except in relation to the appointment of a head teacher or acting head teacher.

(2) Any advice given by the head teacher to—

- (a) the governing body; or
- (b) any persons or committee to whom any functions of the governing body are delegated,

with respect to any matter which relates to an appointment or engagement and falls to be determined by them must be considered by them before determining that matter, whether or not the advice was given at their request.

### **Appointment of support staff**

**166.**—(1) Subject to regulation 171, where the governing body identifies a support staff post to be filled, it may recommend a person to the local authority for appointment.

(2) Any such recommendation must be sent to the local authority with a job specification for the post and the job specification must include the governing body's recommendations as to—

- (a) the duties to be performed,
- (b) the hours of work (where the post is part-time),
- (c) the duration of appointment,
- (d) the grade, and
- (e) the remuneration.

(3) The grade must be on the scale of grades applicable in relation to employment with the local authority, and such as the governing body considers appropriate.

(4) Before selecting a person to recommend under this paragraph and determining in relation to such a recommendation any matters mentioned in paragraph (2), the governing body must consult—

- (a) the head teacher (where the head teacher would not otherwise be involved in the decision), and

- (b) the chief education officer of the local authority, or that person's representative.

(5) Where the local authority has discretion with respect to remuneration, it must exercise that discretion in accordance with the governing body's recommendation.

(6) The local authority is regarded as having discretion if any provisions regulating the rates of remuneration or allowances payable to persons in the local authority's employment either—

- (a) do not apply in relation to that appointment; or
- (b) leave to the local authority any degree of discretion as to the rate of remuneration.

(7) If within a period of 7 days after receiving the job specification the local authority makes written representations to the governing body relating to the grade or remuneration to be paid, the governing body must—

- (a) consider those representations; and
- (b) where it decides not to change the grade or remuneration to be paid, notify the local authority in writing of its reasons.

(8) The local authority must appoint a person recommended to the post by the governing body, subject to the person meeting all relevant staff qualification requirements.

### **Supply staff**

**167.**—(1) No person supplied by an employment business to a school ("P") may begin work as a teacher or member of support staff of the school unless the local authority or (as the case may be) the governing body have received—

- (a) written notification from the employment business in relation to P—
  - (i) that the checks referred to in paragraph (6) have been made;
  - (ii) that an application for an enhanced criminal record certificate has been made, or such a certificate has been obtained in response to an application made by that or another employment business; and
  - (iii) whether, if the employment business has obtained such a certificate before P is due to begin work at the school, it disclosed any matter or information, or any information was supplied to the employment business in accordance with section 113B of the 1997 Act; and

- (b) where the employment business has obtained an enhanced criminal record certificate before P is due to begin work at the school, and it discloses any matter or information, or any information was provided to the employment business in accordance with section 113B of the 1997 Act, a copy of the certificate.

(2) Except in the case of a person to whom paragraph (3) applies the certificate referred to in paragraph (1)(a)(ii) must have been obtained not more than 3 months before the date on which P is due to begin work at the school.

(3) This paragraph applies to P where P has worked in—

- (a) a school in Wales in a post which brought P regularly into contact with children or young persons; or
- (b) an institution within the further education sector in Wales in which P's post involved the provision of education which brought P regularly into contact with children or young persons,

during a period which ended not more than 3 months before the date on which P is due to begin work at the school.

(4) Before P may begin work at the school P's identity must be checked by the governing body at the school (irrespective of any such check carried out by the employment business before P was offered for supply).

(5) The local authority or (as the case may be) the governing body must in the contract or other arrangements which they make with any employment business require it, in respect of P—

- (a) to provide the notification referred to in paragraph (1); and
- (b) if any enhanced criminal record certificate which the employment business obtains contains any matter or information, or if any information was supplied to the employment business in accordance with section 113B of the 1997 Act, to provide a copy of the certificate.

(6) For the purposes of paragraph (1)(a)(i) "checks" means—

- (a) a check of P's identity;
- (b) a check to establish whether P is subject to any direction made under section 142 of the 2002 Act or any prohibition, restriction or order having effect as such a direction;
- (c) a check to establish if P is barred from regulated activity relating to children in

- accordance with section 3(2) of the Safeguarding Vulnerable Groups Act 2006;
- (d) a check to establish whether P meets the requirements with respect to any staff qualification requirements;
- (e) a check pursuant to regulation 153(4);
- (f) an enhanced criminal record certificate was obtained in respect of P; and
- (g) a check of P's right to work in the United Kingdom.

### **Suspension of staff**

**168.**—(1) Subject to regulation 171—

- (a) in a non-federated school both the governing body and the head teacher have power to suspend any person (“P”) employed, or engaged otherwise than under a contract of employment, to work at the school where, in the opinion of the governing body or (as the case may be) the head teacher, that P's suspension is required; and
- (b) in a federated school where in the opinion of the governing body or (as the case may be) the head teacher, P's suspension is required—
  - (i) both the governing body and the head teacher of the federation have the power to suspend any P employed, or engaged otherwise than under a contract of employment, to work at the federation;
  - (ii) both the governing body and the head teacher of a federated school have the power to suspend any P employed to work, or engaged otherwise than under a contract of employment, at that federated school.

(2) The governing body or head teacher must, when exercising that power, immediately inform—

- (a) the local authority; and
- (b) the head teacher or (as the case may be) the governing body.

(3) A suspension under this regulation may only be ended by the governing body.

(4) The governing body must, on ending such a suspension, immediately inform—

- (a) the local authority; and
- (b) the head teacher.

(5) In this regulation “suspend” means suspend without loss of emoluments.

## **Dismissal of staff**

**169.**—(1) Subject to regulation 171, where the governing body determines that any person employed or engaged by the local authority to work at the school (“P”) should cease to work there, it must notify the local authority in writing of its determination and the reasons for it.

(2) If P is employed or engaged to work solely at the school (and does not resign), the local authority must, before the end of the period of 14 days beginning with the date on which the notification under paragraph (1) is given, either—

- (a) give P notice terminating P’s contract with the local authority as is required under that contract, or
- (b) terminate that contract without notice if the circumstances are such that it is entitled to do so by reason of P’s conduct.

(3) If P is not employed or engaged by the local authority to work solely at the school, the local authority must require P to cease to work at the school with immediate effect.

(4) Where paragraph (3) applies, no part of the costs incurred by the local authority in respect of the emoluments of P, so far as they relate to any period falling after the expiration of P’s contractual notice period, is to be met from the school’s budget share.

(5) The reference in paragraph (4) to P’s contractual notice period is to the period of notice that would have been required under P’s contract of employment with the local authority for termination of that contract if such notice had been given on the date on which the notification under paragraph (1) was given.

(6) The governing body must—

- (a) make arrangements for giving P an opportunity of making representations as to the action it proposes to take (including, if P so wishes, oral representations to such person or persons as the governing body may appoint for the purpose), and
- (b) have regard to any representations made by P.

(7) The governing body must also make arrangements for giving any person in respect of whom it has made a determination under paragraph (1) an opportunity of appealing against it before it notifies the local authority of the determination.

(8) The local authority must not dismiss a person employed by it to work solely at the school except as provided by paragraphs (1) and (2).

(9) Paragraph (8) does not apply in a case where—

- (a) the dismissal of the person in question is required by virtue of a direction made under

section 142 of the 2002 Act or regulations made under section 19 of the Teaching and Higher Education Act 1998;

- (b) the dismissal of the person in question is required by virtue of regulations made under section 17 of the 2014 Act;
- (c) the person in question is the subject of a conditional registration, suspension or prohibition order made under Schedule 2 to the Teaching and Higher Education Act 1998; or
- (d) the person in question is the subject of a conditional registration, suspension or prohibition order made under section 26 of the 2014 Act.

(10) Nothing in paragraph (6) is to apply to a person who—

- (a) is due to cease to work at the school by reason of the termination of that person's contract of employment by effluxion of time; and
- (b) has not been continuously employed at the school, within the meaning of the Employment Rights Act 1996, for a period at least as long as the period for the time being specified in section 108(1) of that Act.

#### **Attendance and advisory rights of the head teacher and the chief education officer**

**170.**—(1) The chief education officer of the local authority, or the chief education officer's representative, and the head teacher (except where the head teacher is the person concerned) are entitled to attend, for the purpose of giving advice, all hearings of the staff disciplinary committee and the disciplinary appeal committee.

(2) The staff disciplinary committee and the disciplinary appeal committee must consider any advice given by a person who is entitled to attend such hearings under paragraph (1) before making a determination under regulation 169.

#### **School meals staff**

**171.**—(1) Subject to paragraphs (2) to (4), the local authority is responsible for the appointment, discipline, suspension and dismissal of school meals staff who work or are to work at a school and before exercising any such function the local authority must consult the school's governing body to such extent as the local authority thinks fit.

(2) Where an order is in force under section 512A(1) of the 1996 Act<sup>(1)</sup> imposing on the governing body of a school a duty to provide school lunches corresponding to a duty of the local authority mentioned in section 512(3) and (4) of the 1996 Act<sup>(2)</sup> or section 512ZB(1) of the 1996 Act, paragraph (3) or (4) applies as appropriate.

(3) Where the governing body has entered into an agreement with the local authority that the local authority should provide lunches at the school and the governing body determines that any school meals staff member should cease to work at the school it must notify the local authority in writing of its determination and the reason for it, and the local authority must then require the person to cease to work at the school.

(4) Where no such agreement has been entered into, regulations 150, 166, 168 and 169 apply to such staff members.

### **Checks on change of post**

**172.** Where a member of the school staff (“P”) moves from a post which did not bring P regularly into contact with children or young persons to a post which does, an enhanced criminal record certificate must be obtained by the local authority in respect of P before or as soon as practicable after P moves to P’s new post.

### **Rights for appropriate diocesan authorities**

**173.—**(1) This regulation applies to a voluntary controlled school which is a Church of England, Church in Wales or Roman Catholic Church school.

(2) The governing body may agree with the appropriate diocesan authority to accord to the appropriate diocesan officer the right to be a member of the selection panel and to vote in relation to the appointment or engagement of head teachers and deputy head teachers under this Chapter.

(3) If a governing body does not agree with the appropriate diocesan officer to accord to the appropriate diocesan officer the rights set out in paragraph (2) the governing body may agree with the appropriate diocesan authority to accord to the appropriate diocesan officer—

- (a) with respect to teachers (including head teachers and deputy head teachers) at the school; or

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(1) 1996 (c.56); section 512A was inserted by section 116 of the School Standards and Framework Act 1998.

(2) Section 512, together with sections 512ZA and 512ZB, was substituted for section 512 as originally enacted by section 201(1) of the Education Act 2002.

- (b) with respect to any particular description of such teachers (including head teachers and deputy head teachers),

the same advisory rights in relation to their appointment, engagement or dismissal as are exercisable by the chief education officer in accordance with regulations 164 and 170.

(4) The agreement of the governing body for the purposes of paragraphs (2) and (3) must be given in writing and may only be withdrawn by notice in writing to the appropriate diocesan authority.

(5) For the purposes of this regulation any references to the chief education officer in regulations 164 and 170 include the appropriate diocesan officer, so far as necessary for giving effect to any advisory rights exercisable by the chief education officer under this regulation.

### CHAPTER 3

#### PROVISIONS RELATING TO FOUNDATION AND VOLUNTARY AIDED SCHOOLS

##### **Application of Chapter 3**

**174.** The provisions in this Chapter have effect in relation to—

- (a) foundation and voluntary aided schools(1); and
- (b) a federation comprising voluntary controlled or voluntary aided schools.

##### **Criminal records checks for members of staff**

**175.—**(1) The identity of any person (“P”) appointed under this Chapter must be checked by the governing body and a check must be made by the governing body of that person’s right to work in the United Kingdom.

(2) An enhanced criminal record certificate issued pursuant to Part V of the 1997 Act must be obtained by the governing body in respect of P before or as soon as practicable after P’s appointment.

(3) In the case of P for whom, by reason of P having lived outside the United Kingdom, obtaining such a certificate is not sufficient to establish P’s suitability to work in a school, such further checks as the governing body consider appropriate, having regard to any guidance issued by the Welsh Ministers, must be made by the governing body.

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(1) But where a school does not have a delegated budget as defined by section 39(2) of the Education Act 2002, Chapter 3 of Part 8 of these Regulations has effect subject to the provisions of Part 2 of Schedule 2 to the 2002 Act, in accordance with section 36(7) of the Education Act 2002.

(4) The checks referred to in paragraphs (1) and (3) must be completed prior to P's appointment.

(5) Paragraphs (2) and (3) do not apply to P who has worked in—

- (a) a school in Wales in a post which brought P regularly into contact with children or young persons; or
- (b) an institution within the further education sector in Wales in which P's post involved the provision of education which brought P regularly into contact with children or young persons,

during a period which ended not more than 3 months before P's appointment.

#### **Appointment of head teacher and deputy head teacher: notification of vacancy**

**176.**—(1) The governing body must notify the local authority in writing of a vacancy in the post of head teacher or deputy head teacher of the school before taking any of the steps mentioned in regulations 177 to 179.

(2) During the federation transition period the governing bodies of the federating schools must notify the local authority of a vacancy in the post of head teacher or deputy head teacher before taking any of the steps mentioned in regulations 177 to 179.

(3) During the federation transition period nothing in these Regulations prevents the governing bodies of schools intending to federate from forming a joint selection panel.

#### **Temporary appointment of acting head teacher and acting deputy head teacher: pending permanent appointments**

**177.**—(1) Where the vacancy is in the post of head teacher and either the post has not been filled, or it appears to the governing body that the post will not be filled, by an appointment made in accordance with regulations 178, 179 and 195 before the date on which it falls vacant, the governing body must either—

- (a) appoint a person as acting head teacher; or
- (b) exercise its power under paragraph (4).

(2) Where the vacancy is in the post of deputy head teacher and either the post has not been filled, or it appears to the governing body that the post will not be filled, by an appointment made in accordance with regulations 178, 179 and 195 before the date on which it falls vacant, the governing body may—

- (a) appoint a person as acting deputy head teacher; or

(b) exercise its power under paragraph (4).

(3) A person must not be appointed under paragraph (1) or (2) unless that person meets all the staff qualification requirements which are applicable in relation to that person's appointment.

(4) Instead of making an appointment under paragraph (1) or (2) the governing body may for the purpose of filling the vacancy—

(a) engage; or

(b) make arrangements for the engagement of,

a person ("P") to provide P's services as acting head teacher, or (as the case may be) acting deputy head teacher, otherwise than under a contract of employment.

(5) No person is to be engaged under paragraph (4) unless that person meets all the staff qualification requirements applicable in relation to the head teacher or (as the case may be) deputy head teacher at the school.

#### **Appointment of head teacher and deputy head teacher: advertising of vacancy**

**178.**—(1) The governing body must advertise any vacancy in such publications circulating throughout England and Wales as it considers appropriate.

(2) The governing body must advertise the vacancy not less than twice a school year until such time as the vacancy is filled.

(3) The governing body may decide not to advertise in accordance with paragraph (1) the vacancy in the post of head teacher where the vacancy is at a school named in proposals made under sections 43, 44, 80 or 81 of the 2013 Act as one which pupils at a school to be discontinued may attend ("the receiving school") and—

(a) a person employed as a head teacher at the school to be discontinued has expressed the wish in writing to the governing body of the receiving school to apply for the vacancy in the post of head teacher; or

(b) there is no such person as described in subparagraph (a), but there is a person employed as a head teacher at a school elsewhere in the local authority's area which is either to be discontinued pursuant to proposals made under sections 43, 44, 80 or 81 of the 2013 Act, or has been named in such proposals as one which pupils at the school to be discontinued may attend and who has expressed the wish in writing to the governing body of the receiving school to apply for the vacancy in the post of head teacher.

(4) The governing body may decide not to advertise in accordance with paragraph (1) the vacancy in the post of deputy head teacher where the vacancy is at a school named in proposals made under sections 43, 44, 80 or 81 of the 2013 Act as one which pupils at a school to be discontinued may attend ("the receiving school") and—

- (a) a person employed as a deputy head teacher at the school to be discontinued has expressed the wish in writing to the governing body of the receiving school to apply for the vacancy in the post of deputy head teacher; or
- (b) there is no such person as described in subparagraph (a), but there is a person employed as a deputy head teacher at a school elsewhere in the local authority's area which is either to be discontinued pursuant to proposals made under sections 43, 44, 80 or 81 of the 2013 Act, or has been named in such proposals as one which pupils at the school to be discontinued may attend and who has expressed the wish in writing to the governing body of the receiving school to apply for the vacancy in the post of deputy head teacher.

(5) The governing body may decide not to advertise in accordance with paragraph (1) the vacancy in the post of head teacher of the federation or a federated school where the vacancy occurs in a federation or a federated school within the federation and—

- (a) there is a person employed as a head teacher in any federated school within the federation; and
- (b) one or more of those persons has expressed the wish in writing to the governing body to apply for the vacancy in the post of head teacher of the federation or a federated school.

(6) The governing body may decide not to advertise in accordance with paragraph (1) the vacancy in the post of deputy head teacher of the federation or a federated school where the vacancy occurs in a federation or a federated school within the federation and—

- (a) there is a person employed as a deputy head teacher in any federated school within the federation; and
- (b) one or more of those persons has expressed the wish in writing to the governing body to apply for the vacancy in the post of deputy head teacher of the federation or a federated school.

### **Appointment of head teacher and deputy head teacher: selection panels**

**179.**—(1) The governing body must appoint a selection panel consisting of—

- (a) in the case of a voluntary aided school no less than seven and no more than nine members;
- (b) in the case of a foundation school to which sub-paragraph (h) applies no less than seven and no more than nine members;
- (c) in the case of a foundation school to which sub-paragraph (h) does not apply no less than five and no more than seven members;
- (d) a majority of governor members;
- (e) at least one but no more than two independent persons who must be entitled to vote;
- (f) the chief education officer of the local authority or that person's representative who must be entitled to vote;
- (g) in the case of a voluntary aided school to which regulation 187(2) applies the appropriate diocesan officer; and
- (h) in the case of a foundation school where the governing body has agreed to accord to the appropriate diocesan officer membership and voting rights in accordance with regulation 187(3) the appropriate diocesan officer.

(2) For the purposes of paragraph (1)(e) an independent person will be not be regarded as independent if any of the descriptions in regulation 151(11) apply to them.

(3) Paragraph (2) does not prevent an associate member from being an independent person for the purposes of paragraph (1)(e) provided not of the statements in regulation 151(11)(b) to (h) apply.

(4) The purpose of the selection panel is to—

- (a) select for interview such applicants for the post as it thinks fit and, where the post is that of head teacher, notify the local authority in writing of the names of the applicants so selected;
- (b) interview such of those applicants as attend for the purpose; and
- (c) where the panel considers it appropriate to do so, recommend to the governing body for appointment one of the applicants interviewed by the panel.

(5) The foundation governors appointed in respect of a particular voluntary aided school must agree any recommendation at paragraph (4)(c) in respect of the head teacher of that school or federation.

(6) The selection panel must elect a chair from among their number.

(7) The following persons are not eligible to be a chair of the selection panel—

- (a) a governor who is paid to work at the school;
- (b) a governor who is a pupil at the school;
- (c) an independent person member;
- (d) the chief education officer of the local authority that maintains the school; and
- (e) the appropriate diocesan officer.

(8) The governing body may remove the chair to any selection panel from office at any time.

(9) Subject to paragraph (1)(d) the membership of a selection panel may include persons who are not governors and the extent to which such members are entitled to vote is to be determined by the governing body.

(10) During the federation transition period membership of the selection panel may include persons from the federating schools.

(11) The persons referred to in paragraph (10) must be entitled to vote.

(12) 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), has a second or casting vote.

(13) Any decision of the selection panel must be taken by a vote representing an absolute majority of all the members of the panel (whether or not taking part in the vote).

(14) If within a period of 14 days beginning with the date when it receives notification under paragraph (4)(a), the local authority makes written representations to the selection panel that any of the applicants is not a suitable person for the appointment, the selection panel must—

- (a) consider those representations; and
- (b) where it decides to recommend for appointment the person about whom the representations have been made—
  - (i) notify the local authority in writing of its reasons; and
  - (ii) supply the governing body with a copy of those representations and a copy of the panel's response to them.

(15) The governing body may appoint the person recommended by the selection panel to the vacancy or the post to be filled, subject to the person meeting all relevant staff qualification requirements.

(16) If—

- (a) the selection panel does not recommend a person to the governing body; or
- (b) the governing body declines to appoint the person selected by the selection panel,

the selection panel may select another person for appointment in accordance with this regulation (but this does not prevent the selection of an existing applicant).

**Temporary appointment of acting head teacher or acting deputy head teacher: temporary absence of post holder**

**180.**—(1) The governing body may, in connection with any absence of the person for the time being holding the post of head teacher or deputy head teacher, take either of the steps mentioned in regulation 177(1) or (2) (as the case may be).

(2) For the purposes of this paragraph—

- (a) regulation 177(3) applies in relation to any recommendation made by virtue of paragraph (1) as it applies in relation to any recommendation made by virtue of regulation 177(1) or (2); and
- (b) regulation 177(4) and (5) apply in connection with any such absence as is mentioned in paragraph (1) as they apply for the purpose of filling any such vacancy as is mentioned in regulation 177(1) or (2).

**Appointment of other teachers**

**181.** Regulation 183 applies in relation to the filling of a vacancy in any teaching post (whether full-time or part-time) at the school, other than the post of head teacher or deputy head teacher.

**Temporary appointment of other teachers: pending permanent appointment to post**

**182.**—(1) Regulation 183 does not apply in relation to any temporary appointment or engagement to fill a vacancy in any such post as is mentioned in regulation 181—

- (a) for a period not exceeding 4 months; or
- (b) where it appears to the governing body that the period for which the person appointed or engaged will act in the post in question will not exceed 4 months.

(2) Where it appears to the governing body in the case of any post that it would be appropriate for such an appointment as is mentioned in paragraph (1) to be made, they may appoint a person to the post on such

terms as to the duration of the appointment as they think fit.

(3) A person must not be appointed under paragraph (1) unless that person meets all the staff qualification requirements which are applicable in relation to the person's appointment.

(4) Where it appears to the governing body in the case of any post that it would be appropriate for such an engagement as is mentioned in paragraph (1) to be made, the governing body may—

- (a) engage; or
- (b) make arrangements for the engagement of,

a person ("P") to provide P's services as a teacher at the school otherwise than under a contract of employment.

(5) Any engagement under paragraph (4) is to be on such terms as to the duration of the engagement as the governing body may specify; but no person is to be engaged under that paragraph unless that person meets all the staff qualification requirements applicable in relation to a teacher in the post in which that person would be acting as a temporary teacher.

### **Permanent appointment of other teachers**

**183.**—(1) Before taking any of the steps mentioned in this regulation or regulation 184, the governing body must—

- (a) determine a specification for the post in consultation with the head teacher; and
- (b) send a copy of the specification to the local authority.

(2) The local authority may nominate for consideration for appointment to the post any person who appears to it to be qualified to fill it and who at the time of that person's nomination either—

- (a) is an employee of the local authority's or has been appointed to take up employment with the local authority at a future date; or
- (b) is employed by the governing body of a foundation, voluntary aided or foundation special school maintained by the local authority.

(3) No person who is employed at any school maintained by the local authority is to be nominated by the local authority under paragraph (2) without the consent of the governing body of that school.

(4) The governing body may advertise the vacancy at any time after it has sent a copy of the specification for the post to the local authority in accordance with paragraph (1), and must do so unless it appoints to the post either—

- (a) a person nominated by the local authority under paragraph (2); or
- (b) a person who is already employed to work at the school.

(5) Where the governing body advertises the vacancy, it must do so in a manner likely in its opinion to bring it to the notice of persons (including employees of the local authority) who are qualified to fill it.

(6) Where the governing body advertises the vacancy, it must—

- (a) interview such applicants for the post and such of the persons (if any) nominated by the local authority under paragraph (2) as it thinks fit; and
- (b) where it considers it appropriate to do so, appoint to the post either one of the applicants interviewed by it or a person so nominated by the local authority.

(7) If the governing body are unable to agree on a person to appoint to the post, it may repeat the steps mentioned in paragraph (6), with or without first re-advertising the vacancy in accordance with paragraph (5).

(8) A person must not be appointed under paragraph (6) unless that person meets all the staff qualification requirements which are applicable in relation to that person's appointment.

#### **Temporary appointment of other teachers: temporary absence of post holder**

**184.**—(1) The governing body may, in connection with any absence of the person for the time being holding any such post as is mentioned in regulation 181—

- (a) engage; or
- (b) make arrangements for the engagement of,

a person ("P") to provide P's services as a teacher at the school otherwise than under a contract of employment.

(2) No person is to be engaged under paragraph (1) unless that person meets all the staff qualification requirements applicable in relation to a teacher in the post in which that person would be acting as a temporary teacher.

#### **Advice of chief education officer on appointments of teachers**

**185.**—(1) The chief education officer ("CEO") of the local authority, or the CEO's representative, is entitled to attend, for the purpose of giving advice—

- (a) all proceedings (including interviews) of the governing body, relating to the appointment or engagement of an acting head teacher or acting deputy head teacher under this Chapter; and
- (b) all proceedings (including interviews) of the governing body, and of any persons or committee to whom any functions of the governing body are delegated, relating to appointments or engagements under regulations 181 to 184.

(2) The CEO, or the CEO's representative, is entitled to offer such advice as they consider appropriate with respect to—

- (a) the appointment or engagement of an acting head teacher or an acting deputy head teacher;
- (b) all proceedings (including interviews) of the governing body, and of any persons to whom any functions of the governing body are delegated, relating to appointments or engagements under regulations 181 to 184; or
- (c) any matter arising in connection with any such appointment or engagement.

(3) Any advice given by the CEO, or the CEO's representative, to—

- (a) the governing body; or
- (b) any persons or committees to whom any functions of the governing body are delegated,

with respect to any matter which relates to an appointment or engagement and falls to be determined by them must be considered by them before determining that matter, whether or not the advice was given at their request.

### **Advice of head teacher on appointments of teachers**

**186.**—(1) The head teacher is entitled to attend for the purposes of giving advice—

- (a) all proceedings (including interviews) of the governing body, and of any selection panel, (if not otherwise entitled to be present at the proceedings there mentioned) relating to the appointment or engagement of the deputy head teacher or the acting deputy head teacher;
- (b) all proceedings (including interviews) of the governing body, and of any persons or committee to whom any functions of the governing body are delegated, relating to appointments or engagements under this Chapter except in relation to the appointment of a head teacher or acting head teacher, and

- (c) all proceedings (including interviews) of the governing body, relating to appointments and engagements under regulation 195.

(2) Any advice given by the head teacher, to—

- (a) the governing body; or
- (b) any persons or committees to whom any functions of the governing body are delegated,

with respect to any matter which relates to an appointment or engagement and falls to be determined by them must be considered by them before determining that matter, whether or not the advice was given at their request.

### **Rights for appropriate diocesan authorities in faith based voluntary aided and foundation schools**

**187.**—(1) This paragraph applies to a voluntary aided or foundation school which is a Church of England, Church in Wales or Roman Catholic Church school.

(2) In a voluntary aided school the appropriate diocesan officer has the right to be a member of the selection panel and to vote in relation to the appointment or engagement of head teachers and deputy head teachers.

(3) In a foundation school the governing body may agree with the appropriate diocesan authority to accord to the appropriate diocesan officer the right to be a member of the selection panel and to vote in relation to the appointment or engagement of head teachers and deputy head teachers.

(4) If a governing body of a foundation school does not agree with the appropriate diocesan authority to accord to the appropriate diocesan officer the rights set out in paragraph (3), the governing body may agree with the appropriate diocesan authority to accord to the appropriate diocesan officer—

- (a) with respect to teachers (including head teachers and deputy head teachers) at the school; or
- (b) with respect to any particular description of such teachers (including head teachers and deputy head teachers),

the same advisory rights in relation to their appointment, engagement or dismissal as are exercisable by the chief education officer in accordance with regulations 185 and 192.

(5) The agreement of the governing body for the purposes of paragraph (3) must be given in writing and may only be withdrawn by notice in writing to the appropriate diocesan authority.

(6) In regulation 185 and 192, as they apply to a school within this regulation, references to the chief

education officer accordingly include the appropriate diocesan officer, so far as necessary for giving effect to any advisory rights exercisable by the appropriate diocesan officer under this regulation.

### **Appointment of support staff**

**188.**—(1) Except in a case where the governing body and the local authority agree that the appointment of a member of the support staff of the school should be made by the local authority—

- (a) any such appointment must be made by the governing body; and
- (b) the person appointed must be employed by the governing body under a contract of employment, or engaged by the governing body otherwise than under a contract of employment, on such terms as it thinks fit.

(2) Before making an appointment under this regulation the governing body must consult the head teacher (where the head teacher would not otherwise be involved in the decision to make the appointment).

(3) No person is to be appointed as a member of the support staff of the school, whether—

- (a) by the governing body; or
- (b) by the local authority,

unless that person meets all the staff qualification requirements which are applicable in relation to that person's appointment.

### **Supply staff**

**189.**—(1) No person supplied by an employment business to a school ("P") may begin work as a teacher or member of support staff of the school unless the governing body have received—

- (a) written notification from the employment business in relation to that person—
  - (i) that the checks referred to in regulation 167(6) have been made;
  - (ii) that an application for an enhanced criminal record certificate has been made, or such a certificate has been obtained in response to an application by that or another employment business; and
  - (iii) whether, if the employment business has obtained such a certificate before the person is due to begin work at the school, it disclosed any matter or information, or any information was supplied to the employment business in accordance with section 113B of the 1997 Act; and

- (b) where the employment business has obtained an enhanced criminal record certificate before P is due to begin work at the school, and it discloses any matter or information, or any information was provided to the employment business in accordance with section 113B of the 1997 Act, a copy of the certificate.

(2) Except in the case of a person to whom paragraph (3) applies the certificate referred to in paragraph (1)(a)(ii) must have been obtained not more than 3 months before the date on which P is due to begin work at the school.

(3) This paragraph applies to P where P has worked in—

- (a) a school in Wales in a post which brought P regularly into contact with children or young persons; or
- (b) an institution within the further education sector in Wales in which P's post involved the provision of education which brought P regularly into contact with children or young persons,

during a period which ended not more than 3 months before the date on which P is due to begin work at the school.

(4) Before P may begin work at the school P's identity must be checked by the governing body at the school (irrespective of any such check carried out by the employment business before the P was offered for supply).

(5) The governing body must in the contract or other arrangements which they make with any employment business require it, in respect of P—

- (a) to provide the notification referred to in paragraph (1); and
- (b) if any enhanced criminal record certificate which the employment business obtains contains any matter or information, or if any information was supplied to the employment business in accordance with section 113B of the 1997 Act, to provide a copy of the certificate.

### **Suspension of staff**

**190.**—(1) In a—

- (a) non-federated school both the governing body and the head teacher have power to suspend any person employed or engaged otherwise than under a contract of employment to work at the school where, in the opinion of the governing body or (as the case may be) the head teacher, that person's suspension from the school is required;

- (b) federated school where in the opinion of the governing body or as the case may be the head teacher, P's suspension is required—
  - (i) both the governing body and the head teacher of the federation have the power to suspend any P employed, or engaged otherwise than under a contract of employment, to work at the federation;
  - (ii) both the governing body and the head teacher of a federated school have the power to suspend any P employed to work, or engaged otherwise than under a contract of employment, at that federated school.
- (2) The governing body or head teacher must in exercising that power, immediately inform—
  - (a) the head teacher or (as the case may be) the governing body; and
  - (b) the local authority.
- (3) A suspension under this regulation may only be ended by the governing body.
- (4) The governing body must, on ending such a suspension, immediately inform—
  - (a) the head teacher; and
  - (b) the local authority.
- (5) In this regulation “suspend” means suspend without loss of emoluments.

### **Dismissal of staff**

**191.**—(1) Before making a decision that a person employed to work at the school (“P”) should have P's contract of employment with the governing body terminated or should not have that contract renewed, the governing body must—

- (a) make arrangements for giving P an opportunity of making representations as to the action it proposes to take (including, if P so wishes, oral representations to such person or persons as the governing body may appoint for the purpose); and
  - (b) have regard to any representations made by P.
- (2) The governing body must also make arrangements for giving P an opportunity of appealing against the decision before it gives effect to it.
- (3) Where its decision is that P should have P's contract of employment terminated, then, subject to any such appeal, the governing body must give effect to its decision by—
- (a) giving P such notice terminating P's contract of employment as is required under that contract; or

- (b) terminating that contract without notice if the circumstances are such that they are entitled to do so by reason of P's conduct.

(4) Where the governing body determines that any person employed or engaged by the authority to work at the school should cease to work there, it must notify the authority in writing of its determination and the reasons for it.

(5) The governing body is not required to comply with this regulation in relation to the making of such a decision as is mentioned in paragraph (1) in a case where—

- (a) the dismissal of the person in question is required by virtue of a direction made under section 142 of the 2002 Act or regulations made under section 19 of the Teaching and Higher Education Act 1998;
- (b) the dismissal of the person in question is required by virtue of regulations made under section 17 of the 2014 Act;
- (c) the person in question is the subject of a conditional registration, suspension or prohibition order made under Schedule 2 to the Teaching and Higher Education Act 1998; or
- (d) the person in question is the subject of a conditional registration, suspension or prohibition order under section 26 of the 2014 Act.

(6) Nothing in this paragraph is to be read as referring to a person ("P") who—

- (a) is due to cease to work at the school by reason of the termination of P's contract of employment by effluxion of time; and
- (b) has not been continuously employed at the school, within the meaning of the Employment Rights Act 1996, for a period at least as long as the period for the time being specified in section 108(1) of that Act.

#### **Attendance and advisory rights of the head teacher and the chief education officer**

**192.**—(1) The head teacher (except where the head teacher is the person concerned) and the chief education officer of the local authority are entitled to attend, for the purpose of giving advice, all hearings of the staff disciplinary committee and the disciplinary appeal committee.

(2) The governing body must consider any advice given by a person who is entitled to attend such proceedings under this paragraph before making any such decision.

### **Staff employed by the local authority**

**193.**—(1) Nothing in regulation 191 applies in relation to a person employed by the local authority to work at the school.

(2) In a non-federated school regulations 168 and 169 apply in relation to the suspension, dismissal or withdrawal from the school of any member of the staff who is employed by the local authority as they apply in relation to the suspension, dismissal or withdrawal from a school to which Chapter 2 of this Part applies of a person who is employed to work at the school.

(3) In a federated school regulations 168 and 169 apply in relation to the suspension, dismissal or withdrawal from the federation or federated school of any member of staff who is employed by the local authority as they apply in relation to the suspension, dismissal or withdrawal from a federation or federated school to which Chapter 2 of this Part applies of a person who is employed to work at the federation or federated school.

(4) Regulation 171 applies to any person who is, or is to be, employed by the authority to work at the school solely in connection with the provision of meals as if it were a school to which Chapter 2 of this Part applies.

### **Checks on change of post**

**194.** Where a member of the school staff ("P") moves from a post which did not bring P regularly into contact with children or young persons to a post which does, an enhanced criminal record certificate must be obtained by the governing body in respect of P before or as soon as practicable after P moves to P's new post.

### **Appointment of head teachers for schools of Roman Catholic religious orders**

**195.**—(1) This regulation applies to the appointment of a head teacher in a voluntary aided school where the trustees under a trust deed relating to the school are also trustees of a Roman Catholic religious order ("the order").

(2) The governing body must notify the Major Superior of the vacancy in writing.

(3) The governing body must—

- (a) appoint a selection panel in accordance with regulation 179(1) to (11);
- (b) interview such persons who are members of the order as are proposed as candidates for appointment to the post by the Major Superior;

- (c) interview such other persons for appointment to the post as the governing body considers appropriate; and
  - (d) in all other respects comply with the appointment process set out in regulations 176 to 180 in relation to the filling of the vacancy.
- (4) No person (“P”) is to be appointed to the post if P—
- (a) does not meet any staff qualification requirements which are applicable in relation to P’s appointment; or
  - (b) the governing body has good reason for not making any such appointment.
- (5) In this paragraph—
- “the Major Superior” means the Major Superior of the order;
- “Roman Catholic religious order” means a Roman Catholic religious institute or society of apostolic life.

## CHAPTER 4

### STAFFING OF NEW SCHOOLS

#### **Interpretation of provisions in Chapter 4**

**196.** Any provision of this Chapter or Schedule 2 to the 2002 Act which applies in relation to a proposed school as a result of this Chapter has effect for that purpose as if—

- (a) any reference to a “governing body” were a reference to a temporary governing body; and
- (b) any reference to a “governor” were a reference to a temporary governor.

#### **Staffing of proposed community, voluntary controlled, community special and maintained nursery schools having delegated budgets**

**197.** Where a proposed school which will be a community, voluntary controlled, community special or maintained nursery school has a delegated budget<sup>(1)</sup>, Chapters 1 and 2 of this Part apply.

#### **Staffing of proposed voluntary aided schools having delegated budgets**

**198.** Where a proposed school which will be a voluntary aided school has a delegated budget, Chapters 1 and 3 of this Part apply.

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(1) See section 49(2) and (3) of the School Standards and Framework Act 1998 Act as to whether a school has a delegated budget. A school having a delegated budget is defined by section 39(2) of the Education 2002.

### **Staffing of proposed community, voluntary controlled, community special and maintained nursery schools without delegated budgets**

**199.** Where a proposed school which will be a community, voluntary controlled, community special or maintained nursery school does not have a delegated budget, Part 1 of Schedule 2 to the 2002 Act applies.

### **Staffing of proposed voluntary aided schools without delegated budgets**

**200.** Where a proposed school which will be a voluntary aided school does not have a delegated budget, Part 2 of Schedule 2 to the 2002 Act applies.

## **PART 9**

### **GOVERNOR ALLOWANCES**

#### **Interpretation of this Part**

**201.**—(1) In this Part—

“governing body” includes a temporary governing body constituted under section 34 of the 2002 Act;

“governor” includes a member of a temporary governing body.

(2) A reference to “receipt” in this Part includes a reference to any evidence establishing the amount of the expenditure.

#### **Schools with delegated budgets**

**202.**—(1) The governing body of a school which has a delegated budget may make payments by way of allowance in accordance with this regulation to—

- (a) a member of that governing body; or
- (b) a member of any committee of that governing body.

(2) Payments made under paragraph (1) must be in accordance with the provisions of a scheme made by the governing body for the purpose of these Regulations and such scheme may not make different provision in relation to members of the governing body and members of committees of the governing body or in relation to different categories of governor or committee member.

(3) Payments may only be made under paragraph (1) in respect of expenditure necessarily incurred by a member of the governing body or by a member of a governing body committee for the purpose of enabling that governor or member to perform their duty as a

governor or as a member of a committee of the governing body.

(4) Subject to regulation 204, payments under paragraph (1) must be at a rate determined by the governing body and made on provision of a receipt for the relevant amount.

### **Schools without delegated budgets and other institutions**

**203.**—(1) The allowances referred to in paragraph (2) are prescribed as allowances which a local authority may, in accordance with the provisions of a scheme made by them for the purposes of section 519 of the 1996 Act, pay to—

- (a) a governor of a school which does not have a delegated budget;
- (b) a person appointed to represent the local authority on the governing body of any institution providing higher education or further education (or both); and
- (c) a person appointed to represent the local authority on the governing body of any independent school or special school which is not maintained by that local authority.

(2) The payments by way of allowance referred to in paragraph (1) are in respect of expenditure necessarily incurred by that person for the purpose of enabling that person to perform any duty as a governor or as a person appointed to represent the local authority being payments at a rate determined by the authority, subject to regulation 204, and made on provision of a receipt for the relevant amount.

(3) Where a school does not have a delegated budget a local authority may pay the allowances referred to in paragraph (4) to members of committees of the governing body who are not governors in accordance with the provisions of a scheme made by the local authority for that purpose.

(4) The payments by way of allowance referred to in paragraph (3) are in respect of expenditure necessarily incurred by that person for the purposes of enabling that person to perform any duty as a member of a committee being payments at a rate determined by the authority, subject to regulation 204, and made on provision of a receipt for the relevant amount.

(5) A scheme referred to in paragraph (3) may not make different provision in relation to different categories of committee member.

### **Travel and subsistence payments**

**204.** Payments under these Regulations for travel or subsistence expenses may not exceed such rates as may be set by the Independent Remuneration Panel for

## PART 10

### CHANGING OF SCHOOL SESSION TIMES

#### **Procedure for changing school session times by local authority**

**205.**—(1) Where a local authority propose to issue a notice under section 32(6) of the 2002 Act to the governing body of a school, it must—

- (a) before taking any of the actions mentioned in paragraphs (b) to (f), consult the governing body, the head teacher and all the other staff of the school in question;
- (b) prepare a statement—
  - (i) indicating that it proposes to make a change in the school session times,
  - (ii) specifying the proposed change and when it is proposed that it should take effect,
  - (iii) giving details of the date, time and place of the meeting which it is required to hold by virtue of paragraph (e) and explaining that those unable to attend the meeting may submit written comments on the proposed change before the meeting takes place;
- (c) produce that statement and any annex in such language or languages (in addition to Welsh or English), if any, as it considers appropriate;
- (d) take such steps as are reasonably practicable to secure—
  - (i) that the parents of all registered pupils at the school are given (free of charge) a copy of the statement not less than 2 weeks before the meeting which it is required to hold by virtue of paragraph (e), and
  - (ii) that copies of the statement are available for inspection (at all reasonable times and free of charge) at the school during the 2 week period immediately preceding that meeting;
- (e) provide an opportunity for discussion of the proposal at a meeting which is open to—
  - (i) all parents of registered pupils at the school,
  - (ii) the head teacher and all the other staff of the school in question,

- (iii) members of the governing body,
  - (iv) such other persons as the local authority may invite;
  - (f) consider any written comments submitted in accordance with paragraph (b)(iii) and any comments made at the meeting on the proposal before determining whether any change in those times should be made and (if so) whether the proposal should be implemented with or without any modification.
- (2) Subject to paragraph (3), if the local authority determines to implement the proposed change (with or without modification), it must, not less than 3 months before any change is to take effect—
- (a) inform the governing body and head teacher of the change and of when it is to take effect, and
  - (b) take such steps as are reasonably practicable to secure that the parents of all registered pupils at the school are so informed.
- (3) A change in the times of a school session must only be made so as to take effect at the beginning of a school term.
- (4) The proceedings of any meeting held by virtue of paragraph (1)(e) are to be under the control of the local authority.

**Procedure for changing school session times by governing body**

**206.**—(1) Where the governing body of a community, voluntary controlled or community special school or maintained nursery school propose to make any change in the times of the school sessions (or, if there is only one, the school session), it must—

- (a) before taking any of the actions mentioned in paragraphs (b) to (g), consult the local authority, the head teacher and all the other staff of the school in question;
- (b) prepare a statement—
  - (i) indicating that it proposes to make a change in those times,
  - (ii) specifying the proposed change and when it is proposed that it should take effect,
  - (iii) drawing attention to any comment on the proposal included as an annex to the statement by virtue of paragraph (c) and including such response to the comment as it may consider appropriate, and
  - (iv) giving details of the date, time and place of the meeting which it is required to

- hold by virtue of paragraph (f) and explaining that those unable to attend the meeting may submit written comments on the proposed change before the meeting takes place;
- (c) if so required by the local authority, include as an annex to that statement such written comment on the proposal as the authority may provide for that purpose;
  - (d) produce that statement and any annex in such language or languages (in addition to Welsh or English), if any, as it considers appropriate or as the local authority may direct;
  - (e) take such steps as are reasonably practicable to secure—
    - (i) that the parents of all registered pupils at the school are given (free of charge) a copy of the statement and any annex not less than 2 weeks before the meeting which the governing body is required to hold by virtue of paragraph (f), and
    - (ii) that copies of the statement and any annex are available for inspection (at all reasonable times and free of charge) at the school during the 2 week period immediately preceding that meeting;
  - (f) provide an opportunity for discussion of the proposal at a meeting which is open to—
    - (i) all parents of registered pupils at the school,
    - (ii) the head teacher and all the other staff of the school in question, and
    - (iii) such other persons as the governing body may invite;
  - (g) consider any written comments submitted in accordance with paragraph (b)(iv) and any comments made at the meeting on the proposal before determining whether any change in those times should be made and (if so) whether the proposal should be implemented with or without any modification.
- (2) Subject to paragraph (3), if the governing body determine to implement the proposed change (with or without modification), it must, not less than 6 weeks before any change in those times is to take effect—
- (i) inform the local authority of the change and of when it is to take effect, and
  - (ii) take such steps as are reasonably practicable to secure that the parents of all registered pupils at the school are so informed.

(3) The period referred to in paragraph (2) must not be less than 3 months where the change concerns—

- (a) the times at which the first school session is to begin or the second school session is to end (or both), or
- (b) if there is only one school session, the time it is to begin or end (or both).

(4) A change in the times of a school session must only be made so as to take effect at the beginning of a school.

(5) The proceedings of any meeting held by virtue of paragraph (1)(f) are to be under the control of the governing body.

## PART 11

### MODIFICATION TO THE SCHOOL COUNCILS REGULATIONS

#### **Modification to the schools council regulations**

**207.** The School Councils Regulations apply to the governing body of a federation and its members subject to the modifications in Schedule 8.

## PART 12

### AMENDMENTS TO REGULATIONS

#### **Amendment to the School Councils (Wales) Regulations 2005**

**208.** For regulation 7 of the School Councils (Wales) Regulations 2005(1) substitute—

##### **“7. Pupil Governors**

(1) The head teacher of a school must ensure that the school council has the opportunity to nominate up to two pupils from years 11 to 13 (inclusive) from its membership to be pupil governors on the school’s governing body.

(2) The governing body must accept any pupil nominated in accordance with paragraph (1) above, and appoint that pupil as a pupil governor on the governing body, provided the pupil is not disqualified from membership in accordance with Schedule 5 of the Government and Staffing of Maintained Schools (Wales) Regulations 2017.”

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(1) S.I. 2005/3200 (W.236).

**Amendment to the Education (Pupil Referral Units) (Application of Enactments) (Wales) Regulations 2007**

**209.** The Education (Pupil Referral Units) (Application of Enactments) (Wales) Regulations 2007<sup>(1)</sup> are amended as follows—

- (a) omit paragraphs 14 and 15 in Part 2 of Schedule 1; and
- (b) after paragraph 16 insert—

**“Government and Staffing of Maintained Schools (Wales) Regulations 2017**

**17.**

(1) Chapter 1 of Part 8 of the Government and Staffing of Maintained Schools (Wales) Regulations 2017 applies in relation to units as it applies in relation to schools referred to in regulation 145 with the following modifications.

(2) The duty under regulation 146 is a duty of the local authority.

(3) In regulation 147—

- (a) in paragraph (1), “,166, 181 to 184 and 188” are omitted;
- (b) in paragraph (2), sub-paragraphs (b), to (d) are omitted; and
- (c) paragraph (3) is omitted.

(4) Regulation 149 is omitted.

(5) Omit paragraph (3) of regulation 150.

(6) Omit paragraph (5)(c)(i) of regulation 151.

**18.**

(1) Chapter 2 of Part 8 of those Regulations applies in relation to units as it applies in relation to schools referred to in regulation 152 with the following modifications.

(2) For regulations 155 to 159 there is substituted—

**“Appointment of head teacher and deputy head teacher**

- (a) The local authority must ensure that whenever there is a vacancy in the post of teacher in charge of the unit a person

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(1) S.I. 2007/1069 (W.109) as amended by S.I. 2010/1142 (W.101), S.I. 2014/1609 (W.165) and S.I. 2015/1793 (W.253).

is appointed as acting teacher in charge in order to carry out the functions of the teacher in charge under any enactment.

- (b) In determining whether a person is suitable for appointment as a teacher in charge, or an acting teacher in charge, or an acting teacher in charge, of a unit, the local authority must have regard to any guidance given from time to time by the Welsh Ministers.”.

(3) For regulations 160 to 163, there is substituted—

- “(a) In appointing a person to a post, or engaging a person otherwise to work, at a unit, the local authority must have regard to any guidance given from time to time by the Welsh Ministers.

- (b) This regulation applies in relation to support staff posts and the work of support staff as it applies in relation to teaching posts and the work of teachers”.

(4) Regulation 164 is omitted.

(5) For regulation 165, there is substituted—

“In so far as it is reasonably practicable to do so, the local authority must seek the advice of the teacher in charge of the unit, and must consider any advice given, before making any appointment or entering into any engagement under regulations 160 to 163.”

(6) Regulations 166 and 169 to 171 and 173 are omitted.

(7) For regulation 168, there is substituted—

“(1) Both the local authority and the teacher in charge of a unit have power to suspend any person employed, or engaged otherwise than under a contract of employment, to work at the school where, in the opinion of the local authority or (as the case may be) the teacher in charge, suspension is required.

(2) A person who exercises the power to suspend must immediately inform the other person with the power to suspend under paragraph (1).

(3) A suspension under this regulation may be ended only by the local authority and, when a suspension is ended, the local authority must immediately inform the head teacher.

(4) In this regulation “suspend” means suspend without loss of emoluments.”.

**Amendment to the School Governance (Transition from an Interim Executive Board) (Wales) Regulations 2012**

**210.** The School Governance (Transition from an Interim Executive Board) (Wales) Regulations 2012<sup>(1)</sup> are amended as follows—

- (a) in regulation 2—
  - (i) omit the definition of “the 1998 Act”;
  - (ii) after the definition of “the 2002 Act” insert—

““the 2013 Act” means the School Standards and Organisation (Wales) Act 2013<sup>(2)</sup>”;
  - (iii) in the definition of “the Government Regulations” for “the Government of Maintained Schools (Wales) Regulations 2005” substitute “the Government and Staffing of Maintained Schools (Wales) Regulations 2017”; and
  - (iv) in the definitions of “interim executive board” and “interim executive member for “Schedule 1A to the 1998 Act” substitute “Schedule 1 to the 2013 Act”;
- (b) in regulation 5(1) for “section 16A or 18A(1) of, or paragraph 17(1) of Schedule 1A to, the 1998 Act” substitute “section 7(2) or 14(2) of, or paragraph 15(2) of Schedule 1 to, the 2013 Act”;
- (c) in regulation 6 for “regulations 4 to 12A” substitute “Part 4”;
- (d) in regulation 7 for “regulations 13 to 20” substitute “Chapter 1 of Part 5”;
- (e) in regulation 8 for “Regulations 24 and 26 to 30 of, and Schedule 5 to” substitute “Regulations 39 and 41 to 44 of, and Schedule 5 to”; and
- (f) in regulation 15—
  - (i) in paragraph (c) for “regulation 39(1)” substitute “regulation 52(1)”; and
  - (ii) in paragraph (d) for “regulation 42” substitute “regulation 55”.

**Collaboration Between Education Bodies (Wales) Regulations 2012**

**211.** The Collaboration Between Education Bodies (Wales) Regulations 2012<sup>(1)</sup> are amended as follows—

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(1) S.I. 2012/1643 (W.212).  
(2) 2013 anaw 1.

- (a) in paragraph (1) of regulation 3—
  - (i) omit the definition of “the Federation of Maintained Schools Regulations”;
  - (ii) in the definition of “federation transition period” for “regulations 7(1), 10(2) or 12(2) of the Federation of Maintained Schools (Wales) Regulations 2014” substitute “regulations 82(1), 85(2) or 87(2) of the Government and Staffing of Maintained Schools Regulations”; and
  - (iii) omit the definition of “the Government of Maintained Schools Regulations”;
  - (iv) in the appropriate place insert—
 

““the Government and Staffing of Maintained Schools Regulations” means the Government and Staffing of Maintained Schools (Wales) Regulations 2017;” and
  - (v) omit the definition of “the Staffing of Maintained Schools Regulations”;
- (b) in regulation 4—
  - (i) in paragraph (1)(a) for “regulation 50 of the Government of Maintained Schools Regulations or regulation 62 of the Federation of Maintained Schools Regulations” substitute “regulation 64 of the Government and Staffing of Maintained Schools Regulations”;
  - (ii) in paragraph (2)(c) for “the Staffing of Maintained Schools Regulations” substitute “Part 8 of the Government and Staffing of Maintained Schools Regulations”; and
  - (iii) after paragraph (2) insert—
 

“(2A) Paragraph (2)(a) does not prevent a collaborating governing body from delegating to a joint committee its functions in respect of the appointment of school staff in Chapter 2 of Part 8 of the Government and Staffing of Maintained Schools Regulations.”; and
  - (iv) in paragraph (4) for “regulations 50 to 52 of the Government of Maintained Schools Regulations and regulations 62 to 64 of the Federation of Maintained Schools Regulations” substitute “regulations 64 to 66 of the Government and Staffing of Maintained Schools Regulations”;
- (c) in paragraph (7) of regulation 5 omit “associate”;

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(1) S.I. 2012/2655 (W.287) as amended by S.I. 2014/1132 (W.111).

- (d) in paragraph (2) of regulation 7 for “regulation 24 of, and paragraphs 2 to 12 of Schedule 5 to, the Government of Maintained Schools Regulations or under regulation 35 of, and paragraphs 2 to 13 of Schedule 7 to, the Federation of Maintained Schools Regulations” substitute “paragraphs 3 to 11 of Schedule 5 to the Government and Staffing of Maintained Schools Regulations”;
- (e) in paragraph (1)(a) of regulation 8 for “regulation 49 of the Government of Maintained Schools Regulations or regulation 58 of the Federation of Maintained Schools Regulations” substitute “regulation 63 of the Government and Staffing of Maintained Schools Regulations”;
- (f) for regulation 11 substitute—

**“Minutes**

**11.**—(1) Minutes of the proceedings of a meeting of a joint committee must—

- (a) be drawn up by the clerk or by the person acting as the clerk for the purposes of the meeting; and
- (b) must be signed (subject to the approval of the joint committee) by the chair of the next meeting of the joint committee.

(2) The person acting as clerk to the joint committee for the purposes of any meeting must record in the minutes of that meeting the names of those members of the joint committee and of any other person present at the meeting concerned.

(3) The minutes and agenda kept for the purposes of this regulation may be kept in electronic form and where that is the case the minutes may be signed electronically.

(4) The joint committee must, as soon as reasonably practicable make available for inspection (which may be of electronic copies) at each of the collaborating education bodies by any interested person, and give to the collaborating education bodies a copy (which may be in electronic form) of—

- (a) the agenda for every meeting;
- (b) the signed minutes of every such meeting;
- (c) of any report or other paper considered at any such meeting;
- (d) the draft minutes of any meeting, if they have been approved by the person acting as chair of that meeting; and

- (e) a copy of any report or other paper considered at a meeting.

(5) The joint committee may exclude from any item required to be made available in pursuance of paragraph (4) any material relating to—

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

(6) Published copies of any draft minutes of proceedings of meetings approved by the chair must indicate that they are draft minutes.”; and

- (g) omit sub-paragraph (1)(c) of paragraph 2 to the Schedule.

#### **Government of Maintained Schools (Training Requirements for Governors) (Wales) Regulations 2013**

**212.** The Government of Maintained Schools (Training Requirements for Governors) (Wales) Regulations 2013<sup>(1)</sup> are amended as follows—

- (a) in regulation 2—
  - (i) omit the definition of “the 2005 Regulations”;
  - (ii) omit the definition of “the 2014 Regulations”; and
  - (iii) after the definition of the “2012 Regulations” insert—

““the 2017 Regulations” means the Government and Staffing of Maintained Schools (Wales) Regulations 2017;”;
  - (iv) in the definition of “chair of a governing body” for “regulation 39 of the 2005 Regulations or regulation 50 of the 2014 Regulations” substitute “regulation 52 of the 2017 Regulations”; and
  - (v) for the definition of “a governor” substitute—

““a governor” (*“llywodraethwr”*) means any of the categories of governor, except pupil

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(1) S.I. 2013/2124 (W.207) as amended by S.I. 2014/1132 (W.111), S.I. 2014/2225 (W.214) and S.I. 2016/137 (W.66).

governors, referred to in Part 4 of the 2017 Regulations”;

- (b) in regulation 4—
  - (i) in paragraph (4)(b) for “regulation 30 of the 2005 Regulations or regulation 41 of the 2014 Regulations” substitute “regulation 44 of the 2017 Regulations”;
  - (ii) in paragraph (5) for “paragraph 5 of Schedule 5 to the 2005 Regulations or under paragraph 5 of Schedule 7 to the 2014 Regulations (as the case may be)” substitute “paragraph 4 of Schedule 5 to the 2017 Regulations”; and
  - (iii) in paragraph (6) for “regulation 24 of, and Schedule 5 to, the 2005 Regulations or under regulation 35 of, and Schedule 7 to the 2014 Regulations (as the case may be)” substitute “Schedule 5 to the 2017 Regulations”;
- (c) in regulation 5—
  - (i) in paragraph (4)(b) for “regulation 30 of the 2005 Regulations or regulation 41 of the 2014 Regulations (as the case may be)” substitute “regulation 44 of the 2017 Regulations”;
  - (ii) in paragraph (5) for “paragraph 5 of Schedule 5 to the 2005 Regulations or under paragraph 5 of Schedule 7 to the 2014 Regulations (as the case may be)” substitute “paragraph 4 of Schedule 5 to the 2017 Regulations”; and
  - (iii) in paragraph (6) for “regulation 24 of, and Schedule 5 to, the 2005 Regulations or under regulation 35 of, and Schedule 7 to the 2014 Regulations (as the case may be)” substitute “Schedule 5 to the 2017 Regulations”.

#### **Government of Maintained Schools (Clerk to a Governing Body) (Wales) Regulations 2013**

**213.** The Government of Maintained Schools (Training Requirements for Governors) (Wales) Regulations 2013<sup>(1)</sup> are amended as follows—

- (a) in regulation 2—
  - (i) omit the definition of “the 2005 Regulations”;
  - (ii) omit the definition of “the 2014 Regulations”; and

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(1) S.I. 2013/2127 (W.208) as amended by S.I. 2014/1132 (W.111).

- (iii) after the definition of the “2012 Regulations” insert—
  - ““the 2017 Regulations” means the Government and Staffing of Maintained Schools (Wales) Regulations 2017;”;
- (b) for paragraph (1) in regulation 3 substitute—
  - “(1) For the purpose of this regulation a clerk to a governing body is a person appointed by virtue of regulation 55 of the 2017 Regulations to perform the functions in regulation 56 of those Regulations.”;
- (c) in regulation 4—
  - (i) for paragraph (1) substitute—
    - “(1) For the purpose of this regulation a clerk to a governing body is—
    - (a) a person appointed by virtue of regulation 55 of the 2017 Regulations to perform the functions in regulation 56 of those Regulations;
    - (b) a person appointed by virtue of regulation 73(1) of the 2017 Regulations to perform the functions set out in regulation 73(5) in respect of a committee established in accordance with regulations 70 to 72 of those Regulations; or
    - (c) a person appointed by virtue of regulation 10 of the 2012 Regulations.”
    - ; and
  - (ii) in paragraph (3)(c) for “regulation 42 of the 2005 Regulations, regulation 53 of the 2014 Regulations” substitute “55 of the 2017 Regulations”.

#### **Amendment to the Education (School Development Plans) (Wales) Regulations 2014**

**214.** In regulation 3(2) of the Education (School Development Plans) (Wales) Regulations 2014<sup>(1)</sup> for “the School Government (Terms of Reference) (Wales) Regulations 2000” substitute “Part 3 of the Government and Staffing of Maintained Schools (Wales) Regulations 2017 (*Terms of reference*)”.

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(1) S.I. 2014/2677 (W.265).

**Amendment to the Education (Pupil Referral Units) (Management Committees etc) (Wales) Regulations 2014**

**215.** Schedule 3 of the Education (Pupil Referral Units) (Management Committees etc) (Wales) Regulations 2014<sup>(1)</sup> is amended as follows—

- (a) in the heading to Schedule 3 substitute “Part 7, 8, 9 and 10 of the Government of Maintained Schools (Wales) Regulations 2005” for “Chapters 5, 6, 7 and 8 of Part 5 of the Government and Staffing of Maintained Schools (Wales) Regulations 2017”;
- (b) in paragraph 1 for “Parts 7, 8, 9 and 10 of the Government of Maintained Schools (Wales) Regulations 2005” substitute “Chapters 5, 6, 7 and 8 of Part 5 of the Government and Staffing of Maintained Schools (Wales) Regulations 2017”;
- (c) in paragraph 2 for “39” substitute “52”;
- (d) in paragraph 3 for “39(5)(c)” substitute “52(5)(c)”;
- (e) in paragraph 4 for “41(1)” substitute “54(1)”;
- (f) in paragraph 5 for “42” substitute “55”;
- (g) for paragraph 6 substitute—

“6. In regulation 56(1) for sub-paragraph (e) substitute—

“(e) give and receive notices in accordance with regulations 15 (notification of appointments) and 18 (resignation) of, and paragraph 12 of Schedule 2 (notification to clerk) to the Education (Pupil Referral Units) (Management Committees etc) (Wales) Regulations 2014 and regulations 52(5) and 59(4) of these Regulations;”;

- (h) for paragraph 7 substitute—

“7. In regulation 57—

- (a) in paragraph (1) for sub-paragraph (c) substitute—

“(c) the teacher in charge of the unit or, as the case may be, of each unit in the group of units, whether or not that person is a member;”;

- (b) omit paragraph (3);”;

- (i) in paragraph 8 for “44A” substitute “58”;
- (j) in paragraph 9—
  - (i) for “45” substitute “59”; and

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<sup>(1)</sup> S.I. 2014/2709 (W.270).

- (ii) in sub-paragraph (b) for “(d)” substitute “(e)”;
- (k) omit paragraph 10;
- (l) in paragraph 11 for “49” substitute “63”;
- (m) in paragraph 12—
  - (i) for “50(1)” substitute “64(1)”;
  - (ii) in sub-paragraph (a) for ““2000”” substitute ““1998””;
- (n) for paragraph 13 substitute—
 

“(2) The committee may not delegate under regulation 50(1) its functions under—

  - (a) regulations 52 and 54 (election and removal of chair and vice chair);
  - (b) regulation 55 (appointment and removal of clerk to the governing body);
  - (c) regulation 63 (suspension of governors);
  - (d) regulation 64 (delegation of functions);
  - (e) regulation 68 (establishment of committees); and
  - (f) regulations 7 (review of instrument of government), 9 (parent members), 12 (community members), 13 (sponsor members), 19 (removal of members) and 20 (procedure for removal of members by the committee) of the Education (Pupil Referral Units) (Management Committees etc) (Wales) Regulations 2014.

(2) The committee may not delegate to an individual under regulation 64(1)—

  - (a) its functions in section 88 of the Education and Inspections Act 2006; or
  - (b) the functions that must be delegated to the committee specified in regulation 71.”;
- (o) in paragraph 14 for “52” substitute “66”;
- (p) before paragraph 15 insert—
 

“**14A.** In regulation 68(5) in sub-paragraph (a) omit “or, in the case of a federated school, the federation”;
- (q) in paragraph 15 for “55 and 57” substitute “70 and 72”;
- (r) in paragraph 16 for “58” substitute “73”;
- (s) in paragraph 17—
  - (i) for “59” substitute “74”;
  - (ii) after sub-paragraph (a) insert—
 

“(ab) omit paragraph (1)(c);”;

(t) before paragraph 18 insert—

“**17A.** In regulation 77(2) in sub-paragraphs (a) and (b) omit “or, in the case of a federated school the federation”;

(u) for paragraph 18 substitute—

“**18.** In regulation 78—

- (a) in paragraph (1)(a) for “the head teacher (whether or not that person is a governor)” substitute “the teacher in charge of the unit or, as the case may be, of each unit in the group units, whether or not that person is a member”; and
- (b) in paragraphs (2), (4) and (5) for “or in the case of a federated school the federation”.

**Amendment to the Government of Maintained Schools (Change of Category) (Wales) Regulations 2015**

**216.** The Government of Maintained Schools (Change of Category) (Wales) Regulations 2015(1) are amended as follows—

(a) in regulation 2—

- (i) omit the definition of “the 2005 Regulations”;
- (ii) omit the definition of “the 2014 Regulations”; and
- (iii) insert immediately before definition of “the governing body”—

““the 2017 Regulations” means the Government and Staffing of Maintained Schools (Wales) Regulations 2017”;

- (b) in regulation 3(1) for “the 2005 Regulations or the 2014 Regulations (as the case may be)” substitute “the 2017 Regulations”; and
- (c) in regulation 4(1) for “the 2005 Regulations or the 2014 Regulations (as the case may be)” substitute “the 2017 Regulations”.

*Kirsty Williams*

Cabinet Secretary for Education, one of the Welsh Ministers

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(1) S.I. 2015/1521 (W.178).

Date

# SCHEDULE 1 Regulation 3

## Revocations

<i>Regulations revoked</i>	<i>References</i>	<i>Extent of revocation</i>
School Government (Terms of Reference) (Wales) Regulations 2000	S.I. 2000/3027 (W.195)	Fully
New Maintained Schools (Wales) Regulations 2005	S.I. 2005/2912 (W.209)	Fully
Education Act 2002 (Transitional Provisions and Consequential Amendments) (Wales) Regulations 2005	S.I. 2005/2913 (W.210)	Regulation 10
Government of Maintained Schools (Wales) Regulations 2005	S.I. 2005/2914 (W.211)	Fully
Governor Allowances (Wales) Regulations 2005	S.I. 2005/2915 (W.212)	Fully
School Councils (Wales) Regulations 2005	S.I. 2005/3200 (W.236)	Regulation 8
Staffing of Maintained Schools (Wales) Regulations 2006	S.I. 2006/873 (W.81)	Fully
Staffing of Maintained Schools (Miscellaneous Amendments) (Wales) Regulations 2007	S.I. 2007/944 (W.80)	Fully

Changing of School Session Times (Wales) Regulations 2009	S.I. 2009/572 (W.54)	Fully
Staffing of Maintained Schools (Wales) (Amendment) Regulations 2009	S.I. 2009/2708 (W.226)	Fully
Education (Miscellaneous Amendments relating to Safeguarding Children) (Wales) Regulations 2009	S.I. 2009/2544 (W.206)	Regulations 6 and 7
Staffing of Maintained Schools (Wales) (Amendment No 2) Regulations 2009	S.I. 2009/3161 (W.275)	Fully
School Teacher Appraisal (Wales) Regulations 2011	S.I. 2011/2940 (W.316)	Regulation 47
Government of Maintained Schools (Training Requirements for Governors) (Wales) Regulations 2013	S.I. 2013/2124 (W.207)	Regulation 6
Staffing of Maintained Schools (Wales) (Amendment) Regulations 2014	S.I. 2014/1609 (W.165)	Fully
Federation of Maintained Schools (Wales) Regulations 2014	S.I. 2014/1132 (W.111)	Fully

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## Election and appointment of parent governors

### General

1.—(1) Subject to sub-paragraph (2), in this Schedule “appropriate body” means—

- (a) the local authority where a school is a community school, community special school, a voluntary controlled school or a maintained nursery school; or
- (b) the governing body where a school is a foundation school or voluntary aided school.

(2) The local authority is the appropriate body in relation to a school within sub-paragraph (1)(b) if the governing body and the local authority so agree.

### Delegation to head teacher

2. Where a local authority is the appropriate body in relation to a school, that local authority may delegate to the head teacher of the school, or to the head teacher of the federation, any of its functions under this Schedule.

### Election of parent governors

3.—(1) The appropriate body must make all necessary arrangements for the election of parent governors.

(2) The appropriate body must determine for the purposes of an election of parent governors, any question whether a person is a parent of a registered pupil at the school or another school in the federation.

(3) The duty conferred by sub-paragraph (1)—

- (a) does not include power to impose any requirement as to the minimum number of votes required to be cast for a candidate to be elected, but
- (b) does include the power to make provision as to qualifying dates.

(4) Any election which is contested must be held by secret ballot.

(5) The arrangements made under sub-paragraph (1) must provide for every person who is entitled to vote to have an opportunity to do so by post.

(6) For the purposes of sub-paragraph (5), “post” includes delivery by hand.

(7) The arrangements made under sub-paragraph (1) must provide for every person who is entitled to vote to have an opportunity to do so by electronic means.

### **Appointment of parent governors**

4.—(1) The governing body must appoint parent governors.

(2) The governing body must only appoint as a parent governor a person who has, in the opinion of the governing body, the skills required to contribute to the effective governance and success of the school and in the case of a federated school the federation.

### **Vacancy in the post of elected parent governor**

5. The number of elected parent governors required must be made up of parent governors appointed by the governing body if one or more vacancies for parent governors arises and either—

- (a) the number of parents standing for election is less than the number of vacancies;
- (b) at least 50 per cent of the registered pupils at the school are boarders and it would, in the opinion of the appropriate body, be impractical for there to be an election of parent governors; or
- (c) in the case of a school which is a community special school in a hospital, it would, in the opinion of the appropriate body, be impractical for there to be an election of parent governors.

### **Criteria for appointed governors**

6.—(1) A governing body must only appoint a person as a parent governor under paragraphs 4 or 5 if that person is—

- (a) a parent of a registered pupil at the school;
- (b) in the case of a federated school a parent of a registered pupil at another school within the federation;
- (c) a parent of a child of compulsory school age, or in the case of a maintained nursery school, of or under compulsory school age; or
- (d) a parent of a former registered pupil at the school.

(2) Where the school is a community special school, in appointing a parent governor the governing body must appoint—

- (a) a parent of a registered pupil at the school;
- (b) in the case of a federated school a parent of a registered pupil at another school within the federation;

- (c) a parent of a child of compulsory school age with special educational needs;
- (d) a parent of a person of any age with special educational needs; or
- (e) a parent of a child of compulsory school age.

**Duty to inform parents of a vacancy in the post of parent governor**

7. Where a vacancy for a parent governor arises, the appropriate body must take such steps as are reasonably practicable to secure that every person who is known to them to be a parent of a registered pupil at a school is—

- (a) informed of the vacancy and that it is required to be filled by election;
- (b) informed that that person is entitled to stand as a candidate and vote in the election; and
- (c) given the opportunity to do so.

## SCHEDULE 3 Regulation 14

### Election of staff governors

1.—(1) In this Schedule “appropriate authority” has the same meaning as in Schedule 2.

(2) Where a local authority is the appropriate authority in relation to a school, that authority may delegate to the head teacher of the school or to the head teacher of the federation any of its functions under this Schedule.

(3) Subject to sub-paragraphs (4) to (6), the appropriate authority must make all necessary arrangements for the election of staff governors.

(4) The appropriate authority is to determine for the purposes of an election of staff governors whether a person is employed to work at the school or the federation.

(5) The duty conferred by sub-paragraph (3)—

(a) does not include power to impose any requirements as to the minimum number of votes required to be cast for a candidate to be elected;

(b) does include the power to make provision as to qualifying dates.

(6) Any election which is contested must be held by secret ballot.

### Appointment of partnership governors

1.—(1) Where a partnership governor is required, the governing body—

- (a) must seek nominations from parents of registered pupils at a school and from such other persons in the community served by the school as they consider appropriate;
- (b) in the case of a federation may seek nominations from parents of registered pupils at other schools in the federation as they consider appropriate; and
- (c) in the case of a federation may seek nominations from the communities served by other schools in the federation as they consider appropriate.

(2) No person may nominate for appointment, or appoint, a person as a partnership governor unless that person would be eligible for appointment by the governing body as a community governor.

(3) Subject to sub-paragraph (5), no governor may nominate a person for appointment as a partnership governor.

(4) The governing body must appoint such number of partnership governors as is required by the instrument of government from among eligible nominees.

(5) If the number of eligible nominees is less than the number of vacancies, the number of partnership governors required may be made up by persons selected by the governing body.

(6) Where the governing body makes an appointment under sub-paragraph (5), having rejected any person nominated under sub-paragraph (1), it must give written reasons for its decision to—

- (a) the person making the nomination;
- (b) the local authority; and
- (c) the person rejected.

(7) In the case of a federation which includes schools maintained by more than one local authority, the reference in sub-paragraph (6) to the local authority is to be taken as a reference to each local authority.

(8) The governing body must make all necessary arrangements for and determine all other matters relating to the nomination and appointment of partnership governors.

(9) No person is eligible to be—

- (a) nominated for appointment as a partnership governor unless that person has, in the opinion of the person nominating them, the skills required to contribute to the effective governance and success of the school and in the case of a federated school the federation; or
- (b) appointed as a partnership governor unless that person has, in the opinion of the governing body, the skills required to contribute to the effective governance and success of the school and in the case of a federated school the federation.

## Qualifications and disqualifications

### Interpretation

1. For the purposes of this Schedule references to “governor” includes references to “associate member”.

### Age

2. Except in the case of pupil governors no person is qualified to be a governor unless that person is aged 18 or over at the date of that person's election or appointment.

### Holding office in more than one category of governor

3.—(1) No person may at any time hold the office of more than one governor of the same school.

(2) Except as otherwise provided in these Regulations, the fact that a person is qualified to be elected or appointed as a governor of a particular category does not disqualify that person from election or appointment or from continuing as a governor of any other category.

### Failure to attend meetings

4.—(1) This paragraph applies to any governor who is not a governor by virtue of that person's office.

(2) A governor, who, without the consent of the governing body, has failed to attend their meetings for a continuous period of 6 months beginning with the date of the first such meeting that person failed to attend, is, on the expiry of that period, disqualified from continuing to hold office as a governor of that governing body.

(3) Where a governor has sent an apology to the clerk to the governing body before a meeting which that person does not propose to attend, the minutes of the meeting must record the governing body's consent or otherwise to the absence and a copy of the minutes must be sent to the governor concerned at that person's normal place of residence.

(4) A governor who has been disqualified as a governor of a school under sub-paragraph (2) is not qualified for election, nomination or appointment as a governor of any category at that school during the 12 months immediately following that person's disqualification under sub-paragraph (2).

## **Bankruptcy**

**5.** A person (“P”) is disqualified from holding or continuing to hold office as a governor if—

- (a) P’s estate has been sequestrated and the sequestration has not been discharged, annulled or reduced;
- (b) P is made bankrupt, is the subject of a bankruptcy restrictions order, an interim bankruptcy restrictions order, a debit relief restrictions order or an interim debt relief restrictions order or a moratorium period under a debt relief order applies in relation to P; or
- (c) P has made a composition or arrangement with, or granted a trust deed for, P’s creditors and has not been discharged in respect of it.

## **Disqualification of company directors**

**6.** A person is disqualified from holding or from continuing to hold office as a governor at any time when that person is subject to—

- (a) a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986<sup>(1)</sup>;
- (b) a disqualification order the Company Directors Disqualification (Northern Ireland) Order 2002<sup>(2)</sup>;
- (c) a disqualification undertaking accepted under the Company Directors Disqualification (Northern Ireland) Order 2002<sup>(3)</sup>; or
- (d) an order made under section 429(2)(b) of the Insolvency Act 1986<sup>(4)</sup> (failure to pay under county court administration order).

## **Disqualification of charity trustees**

**7.** A person is disqualified from holding or from continuing to hold office as a governor—

- (a) that person (“P”) 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 P was responsible or to which P was privy, or to which P contributed or which P facilitated by P’s conduct; or

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(1) 1986 c.46.  
(2) No. 2404 (N.I. 18).  
(3) No. 3150 (N.I. 4).  
(4) 1986 c.45.

- (b) that person has been removed, under section 34 of the Charities and Trustee Investment (Scotland) Act 2005<sup>(1)</sup> (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 from continuing to hold office as a governor at any time when that person 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<sup>(2)</sup>;
- (b) subject to a direction of the Welsh Ministers or the Secretary of State under section 142 of the 2002 Act<sup>(3)</sup>;
- (c) subject to a direction of the Secretary of State under section 128 of the Education and Skills Act 2008<sup>(4)</sup>;
- (d) disqualified from working with children under sections 28, 29 or 29A of the Criminal Justice and Court Services Act 2000<sup>(5)</sup>;
- (e) disqualified from registration under Part 3 of the Childcare Act 2006<sup>(6)</sup>;
- (f) barred from regulated activity relating to children in accordance with section 3(2) of the Safeguarding Vulnerable Groups Act 2006;
- (g) subject to a direction by the appropriate authority under section 167A of the 2002 Act<sup>(7)</sup>;
- (h) by virtue of an order made under section 470 or section 471 of the 1996 Act<sup>(8)</sup>, disqualified from being the proprietor of any independent school or from being a teacher or other employee in any school; or

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(1) 2005 asp 10.  
 (2) 1999 (c.14); and as saved by article 5 of the Safeguarding Vulnerable Groups Act 2006 (Commencement No.6 Transitional Provisions and Savings) Order 2009 which is S.I. 2009/2611.  
 (3) Repealed for certain purposes by the Safeguarding Vulnerable Groups Act 2006.  
 (4) 2008 c.25.  
 (5) 2000 (c.43); sections 28, 29 and 29A have been repealed for certain purposes by section 63 of the Safeguarding Vulnerable Groups Act 2006.  
 (6) 2006 c.21.  
 (7) Section 167A was inserted by section 169 of the Education and Inspections Act 2006.  
 (8) Repealed by section 216 of the Education Act 2002.

- (i) disqualified from registration under Part 2 of the Children and Families (Wales) Measure 2010<sup>(1)</sup>.

### **Criminal convictions**

9.—(1) Subject to sub-paragraph (5), a person is disqualified from holding, or continuing to hold, office as a governor where any of sub-paragraphs (2) to (4) or (6) apply to that person.

(2) This sub-paragraph applies to a person (“P”) if—

- (a) within the period of 5 years ending with the date immediately preceding the date on which P's appointment or election as governor would otherwise have taken effect or, as the case may be, on which P would otherwise have become a governor by virtue of an office; or
- (b) since P's appointment or election as governor or, as the case may be, since P became a governor by virtue of an office;

P has been convicted, whether in the United Kingdom or elsewhere, of any offence and a sentence of imprisonment (whether suspended or not) for a period of not less than 3 months without the option of a fine (“Convicted”) has been passed on P.

(3) This sub-paragraph applies to a person (“Q”) if within the period of 20 years ending with the date immediately preceding the date on which Q's appointment or election as governor would otherwise have taken effect or, as the case may be, on which Q would otherwise have become a governor by virtue of an office, Q has been Convicted of any offence and has had passed on them 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 that person has at any time been Convicted of any offence and that person has had passed on them a sentence of imprisonment for a period of not less than 5 years.

(5) For the purposes of sub-paragraphs (2) to (4), 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 in that part of the United Kingdom under the law in force at the time the facts given rise to the offence had taken place, must be disregarded.

(6) This sub-paragraph applies to a person (“R”) if—

- (a) within the period of 5 years ending with the date immediately preceding the date on which R's appointment or election as governor would otherwise have taken effect or, as the

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(1) 2010 nawm 1.

case may be, on which R would otherwise have become a governor by virtue of an office; or

- (b) since R's appointment or election as governor or, as the case may be, since R became a governor by virtue of an office;

R has been convicted under section 547 of the 1996(1) Act (nuisance or disturbance on school premises) or under section 85A of the Further and Higher Education Act 1992(2) (nuisance or disturbance on educational premises) of an offence and has been sentenced to a fine.

### **Failure to complete required training**

**10.**—(1) A governor, who, has remained suspended from office by virtue of regulation 4 or 5 of the Government of Maintained Schools (Training Requirements for Governors) (Wales) Regulations 2013 (“the 2013 Regulations”) for a continuous period of 6 months is, on the expiry of that period, disqualified from holding office as a governor of any school.

(2) A governor who has been disqualified as a governor of a school under sub-paragraph (1) is not qualified for election, nomination or appointment as a governor of any category at any school until such time as that governor has completed the training required by virtue of regulation 4 or 5 of the 2013 Regulations.

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

**11.** A person is disqualified from holding or continuing to hold office as a governor at any time when that person refuses a request by the governing body to make an application under section 113B of the 1997 Act(3) for a criminal records certificate.

### **Notification to clerk**

**12.** Where—

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- (1) As amended by paragraph 163 of Schedule 30 to the 1998 Act and by section 206 of, and Schedule 20, to the 2002 Act and by section 6 of, and Schedule 1 to, the Education and Inspections Act 2006.
- (2) 1992 (c.13); inserted by section 206 of and Schedule 20 to the 2002 Act.
- (3) 1997 (c.50); inserted by section 163 of the Serious Organised Crime and Police Act 2005 (c.15). Subsections (2A) and (12) were inserted, and subsection (6) was amended, by the Police Act 1997 (Criminal Records) (Electronic Communications) Order 2009 (S.I. 2009/203). Paragraph (a) of subsection (10) was substituted for paragraph (a) and (b) as originally enacted by paragraph 149 of Schedule 16 to the Armed Forces Act 2006 (c.52).

(a) by virtue of any paragraphs 3 to 7 a person (“S”) is disqualified from holding, or for continuing to hold, office as a governor of a federation; and

(b) S is, or is proposed to become, a governor;

S must give notice of that fact to the clerk to the governing body.

Restrictions on persons taking part in  
proceedings of the governing body or its  
committees

**Pecuniary interests**

1.—(1) A pecuniary interest in a contract, proposed contract or other matter includes a case where—

- (a) a relevant person was nominated or appointed to office by a person with whom the contract was made or is proposed to be made;
- (b) a relevant person is a business partner of a person with whom the contract was made or is proposed to be made; or
- (c) a relative of a relevant person (including that person's spouse, civil partner within the meaning of the Civil Partnership Act 2004<sup>(1)</sup> or someone living with that person as if that person were that person's spouse or civil partner) to the knowledge of that person has, or would be treated as having, such an interest.

(2) A relevant person is not to be treated as having a pecuniary interest in any matter—

- (a) provided that person's interest in the matter is no greater than the interest of the generality of those paid to work at the school;
- (b) by reason only of the fact that that person was nominated or appointed to office by, is a member of, or is employed by, any public body; or
- (c) by reason only of the fact that that person is a member of a corporation or other body if that person has no financial interest in any securities of that corporation or other body.

(3) A relevant person is not, by reason of that person's pecuniary interest in the matter, prevented from considering and voting upon proposals for the governing body to take out insurance protecting members against liabilities incurred by them arising out of their office and the governing body will not, by reason of the pecuniary interest of its members, be prevented from obtaining such insurance and paying the premiums.

(4) A relevant person is not prevented from considering or voting upon any proposal regarding

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(1) 2004 c.33.

allowances to be paid in accordance with Part 9 of these Regulations by reason that that person has an interest in the payment of such allowances to members of the governing body generally but a member of a governing body or any committee must withdraw from a meeting during a consideration or discussion of, and must not vote on, whether that person should receive a particular allowance, the amount of any payment or any question about an allowance that has been paid to that governor.

#### **Office of governor, chair, vice-chair or clerk**

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

- (a) that person's own appointment, reappointment, suspension or removal as a member of the governing body or a committee;
- (b) that person's own appointment or removal from office as clerk to, or chair or vice-chair of, the governing body or clerk to or chair of a committee.

(2) In any case where sub-paragraph (1) applies, the relevant person's interests are to be treated for the purposes of regulation 78(2) as being in conflict with the governing body's interests.

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

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

(2) This sub-paragraph applies where a head teacher of a school is present at a meeting of the governing body or the school at which a subject of consideration is that person's own pay or performance appraisal.

(3) In any case where sub-paragraph (1) or (2) applies, the relevant person's interests are to be treated for the purpose of regulation 78(2) as being in conflict with the governing body's interests.

#### **Appointment of staff**

4. Where a relevant person who is employed to work at a school is present at a meeting of the governing body or the school at which a subject of consideration is the appointment of a successor to that person, that person must withdraw from the meeting during the consideration or discussion of the matter in question and must not vote on any question with respect to that matter.

**Persons who are members of more than one governing body**

5. The fact that a person is a governor or a member of a committee of the governing body at more than one governing body is not under any circumstances to be considered a conflict of interest for the purpose of these Regulations.

Temporary governing bodies of new  
schools intending to federate

**General principles**

1.—(1) Subject to paragraphs 2 to 5 the size of the membership of the temporary governing body is to be determined by the local authority.

(2) Where application of paragraphs 2 to 5 produces a number other than a whole number, the local authority is to specify either the whole number next above or the whole number next below (at their choice) provided that the total number of temporary governors is within the limits of paragraphs 2 to 5.

**Temporary governing body for new community, community special and maintained nursery schools**

2.—(1) A temporary governing body constituted for any combination of two or more proposed community schools, community special schools and maintained nursery schools (and no other category of school) is to be comprised as follows—

- (a) at least two appointed temporary parent governors;
- (b) at least one staff governor;
- (c) at least one temporary local authority governor;
- (d) one temporary community governor; and
- (e) one co-opted governor.

(2) The temporary governing body of the federation must in addition include—

- (a) the head teacher or the head teacher designate of the federation, unless that person resigns the office of governor in accordance with regulation 41; or
- (b) (if there is no head teacher or head teacher designate of the federation) the head teacher or the head teacher designate of each proposed school, unless that person resigns the office of governor in accordance with regulation 41.

**Temporary governing body for new voluntary controlled schools**

3.—(1) A temporary governing body constituted for two or more proposed voluntary controlled schools only, is to be comprised as follows—

- (a) at least two appointed temporary parent governors;
- (b) at least one staff governor;
- (c) at least one temporary local authority governor;
- (d) one temporary community governor;
- (e) one co-opted governor; and
- (f) at least two temporary foundation governors (but no more than one third of the total number of governors on the governing body when rounded up to the nearest whole number).

(2) The temporary governing body of the federation must in addition include—

- (a) the head teacher or the head teacher designate of the federation, unless that person resigns the office of governor in accordance with regulation 41; or
- (b) (if there is no head teacher or head teacher designate of the federation) the head teacher or the head teacher designate of each proposed school, unless that person resigns the office of governor in accordance with regulation 41.

#### **Temporary governing body for new voluntary aided schools**

4.—(1) A temporary governing body constituted for two or more proposed voluntary aided schools only, is to be comprised as follows—

- (a) at least two appointed temporary parent governors;
- (b) at least one staff governor;
- (c) at least one temporary local authority governor;
- (d) one temporary co-opted governor; and
- (e) such number of temporary foundation governors as will lead to their outnumbering all the other governors by two.

(2) The temporary governing body of the federation must in addition include—

- (a) the head teacher or the head teacher designate of the federation, unless that person resigns the office of governor in accordance with regulation 41; or
- (b) (if there is no head teacher or head teacher designate of the federation) the head teacher or the head teacher designate of each proposed school, unless that person resigns the office of governor in accordance with regulation 41.

**Temporary governing body for new voluntary controlled and voluntary aided schools**

**5.—**(1) A temporary governing body constituted for any combination of two or more proposed voluntary controlled and voluntary aided schools (and no other category of school) is to be comprised as follows—

- (a) at least two appointed temporary parent governors;
- (b) at least one staff governor;
- (c) at least one temporary local authority governor;
- (d) one temporary community governor;
- (e) one temporary co-opted governor; and
- (f) such number of temporary foundation governors as will lead to their outnumbering all the other governors by two.

(2) The temporary governing body of the federation must in addition include—

- (a) the head teacher or the head teacher designate of the federation, unless that person resigns the office of governor in accordance with regulation 41; or
- (b) (if there is no head teacher or head teacher designate of the federation) the head teacher or the head teacher designate of each proposed school, unless that person resigns the office of governor in accordance with regulation 41.

## Modification of the School Councils Regulations

1. In regulation 2 in the definition of “school” for “maintained school” substitute “maintained school which is a federated school” and for “maintained nursery school” substitute “maintained nursery school which is a federated school”.

2. In regulation 2 in the definition of “infant school” for “maintained school” substitute “maintained school which is a federated school”.

3. In regulation 2 in the definition of “special educational needs resource base” after “school” insert “which is a federated school”.

4. In regulation 3 for paragraph (1) substitute—

“(1) The governing body of a federation must establish a school council, the purpose of which is to enable pupils to discuss matters relating to their school, their education and any other matters of concern or interest and to make representations on these to the governing body and the head teacher of the federation or a federated school.”

5. In regulation 3(2) for “head teacher of a school” substitute “head teacher of the federation or a federated school”.

6. In regulation 3(3) for “head teacher of a school” substitute “head teacher of the federation or a federated school”.

7. In regulation 3(4) for “head teacher of a school” substitute “head teacher of the federation or a federated school”.

8. In regulation 4(2) for “head teacher” substitute “head teacher of the federation or a federated school”.

9. In regulation 4(4) for “head teacher of any school” substitute “head teacher of the federation or a federated school”.

10. For regulation 7 substitute—

“(1) The head teacher of the federation or of a federated school must ensure that the school council has the opportunity to nominate up to two pupils from years 11 to 13 (inclusive) from its membership to be pupil governors on the governing body.

(2) The governing body of a federation must accept any pupil nominated in accordance with paragraph (1), and appoint that pupil as a pupil governor on the governing body of the federation, provided the pupil is not disqualified from membership in accordance with Schedule 5 to the Government and Staffing of Maintained Schools (Wales) Regulations 2017.”