

NATIONAL ASSEMBLY FOR WALES

STATUTORY INSTRUMENTS

2005 No. (W.)

EDUCATION, WALES

The Government of Maintained
Schools (Wales) Regulations 2005

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set out the new arrangements for the constitution of governing bodies of maintained schools, including maintained nursery schools, in Wales. After 31 October 2005, all governing bodies of new schools must be constituted in accordance with these Regulations. After 1 September 2008, all existing governing bodies must be constituted in accordance with these regulations, but until that date they may choose whether to retain their existing Instruments of Government or to adopt a new one in accordance with these Regulations.

Part 1 provides for the Regulations to come into force on 31 October 2005 and 1 January 2006, sets out the Regulations that are to be revoked or amended (mainly Parts I to III and Part VIII of the Education (School Government) (Wales) Regulations 1999 SI 1999/2242 (W.2)) and contains the interpretation provisions.

Part 2 describes the various categories of governor. Regulation 4 and Schedule 1 deal with parent governors and set out the basis on which a person may qualify to stand for election and to vote for a parent governor or to be appointed as a parent governor.

Regulation 5 deals with teacher governors and regulation 6 deals with staff governors who are not teachers. The head teacher is a governor by virtue of his or her position but may resign his or her governorship (or withdraw his or her resignation) at any time. Schedule 2 deals with the election process for teacher and staff governors.

Regulation 7 deals with the appointment of LEA governors.

Regulation 8 sets out who is eligible for appointment as a community governor. Regulation 9 deals with the appointment of foundation governors, including ex officio foundation governors and substitute governors. Regulation 10 and Schedule 3 deal with the nomination process for, and the appointment of, partnership governors.

Regulation 11 provides for the appointment of sponsor governors and Schedule 4 deals with the process for their appointment.

Regulation 12 and paragraphs (4) and (5) of regulation 15 make provision for representative governors in community special schools.

Part 3 sets out the general principles by which the size and composition of school governing bodies are to be determined. Regulations 13 to 19 set out the specific requirements for the constitution of the governing bodies of each category of school.

Regulation 20 makes provision for additional community governors for community and voluntary primary schools and maintained nursery schools that serve areas in which there are one or more community councils.

Regulation 21 sets out the requirements to be observed by a person wishing to exercise the power of nominating or appointing a governor. If there is any dispute between persons jointly entitled to nominate or appoint a governor, the appointment is to be made by the National Assembly for Wales under regulation 22. Regulation 23 makes provision for the removal of surplus governors.

Part 4 deals with qualifications and term of office. Regulation 24 and Schedule 5 set out the circumstances in which a governor is disqualified from standing for election, being appointed or continuing in office as a governor.

Regulation 25 provides that (with some exceptions) a governor's term of office is a maximum of 4 years. In the event that an ex officio foundation governor is unable or unwilling to take up office, a substitute governor may be appointed. Regulation 26 sets out the procedure for resigning as a governor. Regulations 27 to 29 provide for the removal of governors who have been appointed (rather than elected) to office.

Part 5 deals with the procedure for making, reviewing and varying instruments of government and the content of instruments. The first instrument of government of a maintained nursery school will be prepared and made by the LEA. Regulation 32 sets out the duty to have regard to guidance given by the National Assembly for Wales in this regard. Regulation 36 sets out the duty to provide copies of the

instrument of government to every member of the governing body, the head teacher, the trustees of the school (if any) and the diocesan authority or other appropriate religious body (in the case of faith schools). Regulation 37 lays a duty on LEAs to ensure that all schools have an instrument of government that conforms to these Regulations by 31 March 2006 in the case of a nursery school, and by 31 August 2008 in the case of other schools.

Part 6 and Schedule 6 enable governors appointed or elected to office prior to or on 31 October 2005 to continue in office when an instrument of government made in accordance with these Regulations comes into effect.

Part 7 deals with the appointment and removal of officers of the governing body, and their functions. Regulation 40 deals with delegation of functions to the chair or vice-chair in cases of urgency. Under regulation 42 the governing body is required to appoint a clerk to the governing body, and has the power to remove the clerk from office at any time. Regulation 43 sets out the functions of the clerk to the governing body.

Part 8 provides for meetings and proceedings of the governing body. This Part includes provisions for access to meetings, convening meetings, quorum, minutes and their publication. Decisions on all matters are to be made by majority of governors voting.

Regulation 49 sets out the circumstances in which a governor may be suspended from meetings for up to 6 months. Regulations 50 to 52 relate to delegation of governing body functions.

Part 9 deals with the establishment and proceedings of committees of governing bodies, including clerking arrangements, convening meetings, quorum, voting and publication of minutes.

Part 10 and Schedule 7 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, he or she should withdraw from the meeting and not vote.

A regulatory appraisal of these Regulations has been prepared and can be viewed on the National Assembly for Wales website (www.wales.gov.uk). Copies can be obtained from the Schools Management Division of the Department for Training and Education, Welsh

Assembly Government, Cathays Park, Cardiff, CF10
3NQ.

2005 No. (W.)

EDUCATION, WALES

**The Government of Maintained
Schools (Wales) Regulations 2005**

Made 2005

Coming into force in accordance
with regulation 1(1)

ARRANGEMENT OF REGULATIONS

PART 1

Introduction

1. Title, commencement and application
2. Revocations, savings and amendments
3. Interpretation

PART 2

Categories of Governor

4. Parent governors
5. Teacher governors
6. Staff governors
7. LEA governors
8. Community governors
9. Foundation governors
10. Partnership governors
11. Sponsor governors
12. Representative governors

PART 3

Composition of Governing Bodies

13. Community Schools
14. Maintained nursery schools
15. Community special schools
16. Foundation schools
17. Foundation special schools
18. Voluntary controlled schools
19. Voluntary aided schools
20. Additional Community Governors
21. Notification of vacancies and appointments
22. Joint appointments
23. Surplus governors

PART 4

Qualifications and Tenure of Office

24. Qualifications and disqualifications
25. Term of office
26. Resignation
27. Removal of LEA, foundation, representative, additional community and sponsor governors
28. Removal of community governors
29. Removal of appointed parent governors
30. Procedure for removal of governors by the governing body

PART 5

Instrument of Government

31. Interpretation of “appropriate diocesan authority” and “appropriate religious body”
32. Duty to have regard to guidance
33. Contents and form of instrument of government
34. Procedure for making an instrument
35. Review of instruments of government

36. Other requirements relating to instruments of government

37. Duty to secure making of instruments of government

PART 6

Transitional Provisions

38. Transitional provision

PART 7

Appointment, Functions and Removal of Officers

39. Election of the chair and vice-chair

40. Delegation of functions to the chair or vice-chair in cases of urgency

41. Removal of the chair or vice-chair from office

42. Appointment and removal of the clerk to the governing body

43. Functions of the clerk to the governing body

PART 8

Meetings and Proceedings of Governing Bodies

44. Right of persons to attend meetings of the governing body

45. Convening meetings of the governing body

46. Quorum and proceedings of the governing body

47. Minutes and papers

48. Publication of minutes and papers

49. Suspension of governors

50. Delegation of functions

51. Restrictions on delegation

52. Reporting to the governing body following the exercise of delegated functions

PART 9

Committees of Governing Bodies

53. Application of this Part

54. Establishment of committees of the governing body

55. Staff disciplinary and dismissal committee and disciplinary and dismissal appeals committee

56. Pupil discipline and exclusions committee

57. Admissions committee

58. Clerks to committees

59. Right of persons to attend meetings of committees

60. Meetings of committees

61. Minutes of meetings of committees

62. Publication of minutes and papers

Part 10

63. Restrictions on persons taking part in proceedings

SCHEDULE 1

Election and Appointment of Parent Governors

SCHEDULE 2

Election of Teacher and Staff Governors

SCHEDULE 3

Appointment of Partnership Governors

SCHEDULE 4

Appointment of Sponsor Governors

SCHEDULE 5

Qualifications and Disqualifications

SCHEDULE 6

Transitional Provisions

SCHEDULE 7

Restrictions on Persons Taking Part in Proceedings of the Governing Body or its Committees

The National Assembly for Wales, in exercise of the powers conferred on it by sections 19(2) and (3), 20(2) and (3), 21(3), 23, 210(7) and 214 (1) and (2) of the Education Act 2002⁽¹⁾, makes the following regulations —

(1) 2002 C.32.

PART 1

Introduction

Title, commencement and application

1.—(1) The title of these Regulations is the Government of Maintained Schools (Wales) Regulations 2005 and they come into force on 31 October 2005, except for paragraph (2) of regulation 2, and regulation 38 and Schedule 6, which come into force on 1 January 2006.

(2) These Regulations apply in relation to Wales.

Revocations, savings and amendments

2.—(1) The Education (School Government) (Transition to New Framework) Regulations 1998⁽²⁾ are hereby revoked.

(2) The Education (School Government) (Wales) Regulations 1999⁽³⁾ are revoked with effect from 1 January 2006, except for the following provisions which remain in force in respect of every maintained school until a new instrument of government is made for the school in accordance with regulation 33 —

Regulation 1 except for the words “and new schools” in paragraph (3);

Regulation 2(1) except for the definitions of “the First Transitional Regulations”, “new school” “School Organisation Regulations” and “the Second Transitional Regulations”;

Regulation 2(2) except for the definitions of “temporary governing body” and “temporary governors”;

Regulation 3 except for the words “or temporary governing body (however constituted)” and “or (as the case may be) new school”;

Regulation 4 except for the words in brackets, for which are substituted the words “in accordance with the 1998 Act”;

Regulation 5(1) (a) except for the words “or will maintain” and “or a new school”; and after the words “for which an instrument of government has been made” are added the words “in accordance with the 1998 Act”;

Regulation 5(2) (i), (iii) and (iv), except for the words “and (b)” and the words “or, in the case of a new school which has not opened, the diocesan

(2) S.I. 1998/2763, as amended by S.I. 1999/362, 1999/2242 (W. 2), 2001/2263 (W. 164).

(3) S.I. 1999/2242 (W. 2) as amended by S.I. 2001/2263 (W. 164).

authority which will be the appropriate diocesan authority when the school opens”;

Regulation 6(1) and Schedule 1;

Regulations 9 to 12 and Schedules 2 to 4;

Regulation 15 except for the words “Subject to Part VIII (transitional provisions), Schedule 6 sets”, for which are substituted “Paragraphs (12) to (16) of Schedule 6 to these Regulations and Schedule 5 to the Government of Maintained Schools (Wales) Regulations 2005 set”, and paragraphs (12) to (16) of Schedule 6;

Regulations 16 and 17;

Regulation 18 except in paragraph (1) for the words “and to Part VIII (transitional provisions)”;

and

Regulations 19 and 20.

(3) Paragraph (1) of regulation 31 of the Education (New Schools) (Wales) Regulations 1999⁽⁴⁾, is amended by substituting the words “Part 5 of the Government of Maintained Schools (Wales) Regulations 2005” for the words “Schedule 12 to the 1998 Act”.

Interpretation

3.—(1) In these Regulations —

“the 1996 Act” (“*Deddf 1996*”) means the Education Act 1996⁽⁵⁾;

“the 1998 Act” (“*Deddf 1998*”) means the School Standards and Framework Act 1998⁽⁶⁾;

“the 2002 Act” (“*Deddf 2002*”) means the Education Act 2002;

“school teacher” (“*athro neu athrawes ysgol*”) is to be interpreted in accordance with section 122 of the 2002 Act;

“working day” (“*diwrnod gwaith*”) means any day other than a Saturday, a Sunday or a day which is a bank holiday within the meaning of the Banking and Financial Dealings Act 1971⁽⁷⁾.

(2) Any reference in these Regulations to —

(a) the governing body or to the governing body of a school is a reference to the governing body of any maintained school to which the provision applies;

⁽⁴⁾ S.I. 1999/2243; this regulation is also amended by regulation 6 of the Education Act 2002 (Transitional Provisions etc) (Wales) Regulations 2005, S.I. 2005/xxx (W. xx).

⁽⁵⁾ 1996 c.56.

⁽⁶⁾ 1998 c.31.

⁽⁷⁾ 1971 c.80.

- (b) a governor is a reference to a member of a governing body of any school to which the provision applies;
 - (c) the local education authority is a reference to the local education authority that maintains the school.
- (3) Any reference in these Regulations to —
- (a) a numbered regulation, Part or Schedule is a reference to the regulation, Part or Schedule bearing that number in these Regulations;
 - (b) a numbered paragraph is a reference to the paragraph bearing that number in the regulation or Schedule in which the reference appears; and
 - (c) a numbered sub-paragraph is a reference to the sub-paragraph bearing that number in the paragraph in which the reference appears.

PART 2

Categories of Governor

Parent governors

4.—(1) In these Regulations “parent governor” (*“rhiant-lywodraethwr”*) means —

- (a) a person who is elected in accordance with paragraphs 4 to 9 of Schedule 1 as a governor by parents of registered pupils at the school and is himself or herself such a parent at the time when he or she is elected, or
- (b) a person appointed as a parent governor in accordance with paragraphs 10 to 12 of Schedule 1.

(2) A person is disqualified from appointment as a parent governor in accordance with paragraphs 10 to 12 of Schedule 1 if he or she is —

- (a) an elected member of the local education authority;
- (b) employed by the local education authority in connection with its functions as a local education authority; or
- (c) paid to work at the school for more than 500 hours in any twelve month period commencing on 1 August and finishing on 31 July,

unless he or she is a parent of a registered pupil at the school.

(3) A person is not disqualified from continuing to hold office as a parent governor when he or she ceases to be a parent of a registered pupil at the school or to fulfil any of the requirements set out in paragraphs 11

and 12 of Schedule 1 (as the case may be) unless he or she is otherwise disqualified under these Regulations.

(4) Schedule 1 applies to the election and appointment of parent governors.

Teacher governors

5.—(1) In these Regulations “teacher governor” (“*athro neu athrawes lywodraethwr*”) means a person —

- (a) who is elected in accordance with Schedule 2 as a governor by school teachers at the school, and
- (b) who is himself or herself such a school teacher at a time when he or she is elected.

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

Staff governors

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

- (a) who is elected in accordance with Schedule 2 as a governor by persons employed to work at the school otherwise than as school teachers, and
- (b) who is himself or herself a person so employed at the time when he or she is elected;

and for this purpose “employed” (“*a gyflogir*”) means employed under a contract of employment or a contract for services.

(2) Where the instrument of government of a maintained nursery school makes provision in accordance with regulation 14(3), “staff governor” (“*staff lywodraethwr*”) means a person —

- (a) who is elected in accordance with Schedule 2 as a governor by persons employed to work at the school, and
- (b) who is himself or herself a person so employed at the time when he or she is elected;

and for this purpose “employed” means employed under a contract of employment or a contract for services.

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

LEA governors

7.—(1) In these Regulations “LEA governor” (*“llywodraethwr AALL”*) means a person who is appointed as a governor by the local education authority.

(2) A person is disqualified from appointment or continuing to hold office as a LEA governor of a school if he or she is eligible to be a teacher or staff governor of the school.

Community governors

8.—(1) In these Regulations —

“community governor” (*“llywodraethwr cymunedol”*) means a person who is appointed as a governor by the governing body and who is —

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

“additional community governor” (*“llywodraethwr cymunedol ychwanegol”*) means a governor appointed in accordance with regulation 20.

(2) A person is disqualified from appointment or continuing to hold office as a community governor of a school if he or she is —

- (a) a registered pupil at the school;
- (b) eligible to be a teacher or staff governor of the school.

(3) A person is disqualified from appointment as a community governor of a school if he or she is an elected member of the local education authority.

(4) Paragraphs (2) and (3) do not apply in the case of an additional community governor.

Foundation governors

9.—(1) In these Regulations —

“foundation governor” (*“llywodraethwr sefydliedig”*) means a person who is appointed as a governor otherwise than by the local education authority and who —

- (a) where the school has a particular religious character⁽⁸⁾, is appointed for the purpose of securing that that character is preserved and developed,

(8) As designated by Order of the National Assembly for Wales under section 69(3) of the 1998 Act. See the Designation of Schools Having a Religious Character (Wales) Order 1999, S.I. 1999/1814 and the Designation of Schools Having a Religious Character and Amendments (Wales) Order 2004, S.I. 2004/1734 (W. 177).

- (b) where there is a trust relating to the school, is appointed for the purpose of securing that the school is conducted in accordance with that trust, or
- (c) where the school does not have a religious character and there is no trust relating to it, is appointed as a foundation governor of the school;

“ex officio foundation governor” (*“llywodraethwr sefydliedig ex officio”*) means a foundation governor who is the holder of an office by virtue of which he or she is entitled to be a foundation governor;

“substitute governor” (*“dirprwy llywodraethwr”*) means a foundation governor appointed to act in the place of an ex officio foundation governor -

- (a) who is unwilling or unable to act as a governor,
- (b) who has been removed as a governor under regulation 27(2), or
- (c) if there is a vacancy in the office by virtue of which such a governorship exists.

(2) An ex officio foundation governor is, upon ceasing to hold the office from which his or her governorship derives, disqualified from continuing to hold office as such a governor.

Partnership governors

10.—(1) In these Regulations “partnership governor” (*“llywodraethwr partneriaeth”*) means a person who is nominated as a partnership governor and appointed as such in accordance with Schedule 3.

(2) A person is disqualified from nomination or appointment as a partnership governor of a school if he or she is —

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

Sponsor Governors

11. In these Regulations “sponsor governor” (*“noddwr-lywodraethwr”*) means a person who is nominated as a sponsor governor and is appointed as

such by the governing body in accordance with Schedule 4.

Representative Governors

12. In these Regulations “representative governor” (*“llywodraethwr cynrychiadol”*) means a person who is appointed as such in accordance with paragraphs (4) or (5) of regulation 15.

PART 3

CONSTITUTION OF GOVERNING BODIES

Community schools

13.—(1) The governing body of a community school must consist of the following —

- (a) the head teacher, unless he or she resigns the position in accordance with regulation 26(1);
- (b) governors of each of the categories specified in the first column of the table below in the numbers specified in whichever of the other columns relates to the school.

TABLE

Category of governor	Secondary school-normal basis	Secondary school-option if less than 600 registered pupils	Primary school-normal basis	Primary school-option if less than 100 registered pupils
Parent Governors	6	5	4 or 5	3
LEA governors	5	4	3 or 4	2
Teacher Governors	2	2	1 or 2	1
Staff governors	1	1	1	1 or 0
Community Governors	5	4	3 or 4	2

(2) The option of having a smaller governing body constituted in accordance with the third or fifth column is available —

- (a) in the case of a secondary school, where the school has less than 600 registered pupils, and
- (b) in the case of a primary school, where the school has less than 100 registered pupils.

(3) As regards the alternatives specified in the fourth column of the table, the governing body of a primary school to which that column applies must be constituted in such a way as to reflect either all the first alternatives or all the second alternatives.

Maintained Nursery Schools

14.—(1) Subject to paragraph (3), the governing body of a maintained nursery school must consist of the following —

- (a) the head teacher, unless he or she resigns the position in accordance with regulation 26(1);
- (b) governors of each of the categories specified in the first column of the table below in the numbers specified in whichever of columns 2 or 3 relates to the school.

TABLE

Category of governor	Normal basis	Option if less than 100 registered pupils
Parent Governors	4 or 5	3
LEA governors	3 or 4	2
Teacher Governors	1 or 2	1
Staff governors	1	1 or 0
Community Governors	3 or 4	2

(2) The option of having a smaller governing body constituted in accordance with the third column is available in the case of a maintained nursery school where the school has less than 100 registered pupils.

(3) The instrument of government of a maintained nursery school may provide for a single category of staff governor instead of the two categories of teacher governor and staff governor in such numbers, being no less than one, as may be specified in the instrument of government.

(4) As regards the alternatives specified in the second column of the table, the governing body of a maintained nursery school to which that column applies must be constituted in such a way as to reflect

either all the first alternatives or all of the second alternatives.

Community special schools

15.—(1) The governing body of a community special school must consist of the following —

- (a) the head teacher, unless he or she resigns the position in accordance with regulation 26(1),
- (b) subject to paragraphs (4) and (5), governors of each of the categories specified in the first column of the table below, in the numbers specified in either the second or the third column.

TABLE

Category of governor	Normal basis	Option if less than 100 registered pupils
Parent Governors	4 or 5	3
LEA governors	3 or 4	2
Teacher Governors	1 or 2	1
Staff governors	1	1 or 0
Community Governors	3 or 4	2

(2) The option of having a smaller governing body constituted in accordance with the third column of the table is accordingly available whether or not the school has less than 100 registered pupils.

(3) As regards the alternatives specified in the second of the table, the governing body of a community special school to which that column applies must be constituted in such a way as to reflect either all the first alternatives or all the second alternatives.

(4) Where a community special school is established in a hospital the local education authority must designate as the appropriate body—

- (a) one local health board or more than one board to act jointly, or
- (b) the National Health Service Trust, with which the school is most closely associated and the appropriate body must appoint a representative governor to take the place of one of the number of community governors specified in

whichever of the second or third column of the table as applies to the school.

(5) Where a community special school is not established in a hospital -

- (a) the local education authority may designate one voluntary organisation or more than one such organisation to act jointly, as the appropriate voluntary organisation concerned with matters in respect of which the school is specially organised, and
- (b) where an appropriate voluntary organisation is so designated, it must appoint the representative governor to take the place of one of the number of community governors specified in whichever of the second or third column of the table as applies to the school.

Foundation schools

16.—(1) The governing body of a foundation school must consist of the following —

- (a) the head teacher, unless he or she resigns the position in accordance with regulation 26(1);
- (b) governors of each of the categories specified in the first column of the table below in the numbers specified in whichever of the other columns relates to the school.

TABLE

Category of governor	Secondary school-normal basis	Secondary school-option if less than 600 registered pupils	Primary school-normal basis	Primary school-option if less than 100 registered pupils
Parent governors	7	6	5 or 6	4
LEA governors	2	2	2	2
Teacher governors	2	2	1	1
Staff governors	1	1	1	1 or 0
Foundation governors	5	4	3 or 4	2
Community governors	3	2	1	1

(2) Where the school does not have a foundation, the reference to foundation governors in the first column is to be read as a reference to partnership governors.

(3) The option of having a smaller governing body constituted in accordance with the third or fifth column is available —

- (a) in the case of a secondary school, where the school has less than 600 registered pupils, and
- (b) in the case of a primary school, where the school has less than 100 registered pupils.

(4) As regards the alternatives specified in the fourth column of the table, the governing body of a primary school to which that column applies must be constituted in such a way as to reflect either both of the first alternatives or both of the second alternatives.

Foundation special schools

17.—(1) The governing body of a foundation special school must consist of the following —

- (a) the head teacher, unless he or she resigns the position in accordance with regulation 26(1),
- (b) governors of each of the categories specified in the first column of the table below in the numbers specified in either the second or the third column.

TABLE

Category of governor	Normal basis	Option if less than 100 registered pupils
Parent Governors	5 or 6	4
LEA governors	2	2
Teacher Governors	1	1
Staff governors	1	1 or 0
Foundation Governors	3 or 4	2
Community Governors	1	1

(2) Where the school does not have a foundation, the reference to foundation governors in the first column is to be read as a reference to partnership governors.

(3) The option of having a smaller governing body constituted in accordance with the third column of the table is accordingly available whether or not the school has less than 100 registered pupils.

(4) As regards the alternatives specified in the second column of the table, the governing body of a foundation special school to which that column applies must be constituted in such a way as to reflect either both of the first alternatives or both of the second alternatives.

Voluntary controlled schools

18.—(1) The governing body of a voluntary controlled school must consist of the following —

- (a) the head teacher, unless he or she resigns the position in accordance with regulation 26(1),
- (b) governors of each of the categories specified in the first column of the table below in the numbers specified in whichever of the other columns relates to the school.

TABLE

Category of governor	Secondary school-normal basis	Secondary school-option if less than 600 registered pupils	Primary school-normal basis	Primary school-option if less than 100 registered pupils
Parent governors	6	5	4 or 5	3
LEA governors	4	3	3	2
Teacher governors	2	2	1	1
Staff governors	1	1	1	1 or 0
Foundation governors	5	4	3 or 4	2
Community governors	2	2	1	1

(2) The option of having a smaller governing body constituted in accordance with the third or fifth column is available —

- (a) in the case of a secondary school, where the school has less than 600 registered pupils, and
- (b) in the case of a primary school, where the school has less than 100 registered pupils.

(3) As regards the alternatives specified in the fourth column, the governing body of a primary school to which that column applies must be constituted in such a way as to reflect either both of the first alternatives or both of the second alternatives.

Voluntary aided schools

19.—(1) The governing body of a voluntary aided school must consist of the following —

- (a) the head teacher, unless he or she resigns the position in accordance with regulation 26(1),
- (b) governors of each of the categories specified in the first column of the table below in the numbers specified in whichever of the other columns relates to the school, and
- (c) such number of foundation governors as will lead to their outnumbering the other governors mentioned in paragraphs (a) and (b) —
 - (i) by three, in the case of a school to which the second column applies, or
 - (ii) by two, in the case of any other school.

TABLE

Category of governor	Secondary school-normal basis	Secondary school-option if less than 600 registered pupils	Primary school-normal basis	Primary school-option if less than 100 registered pupils
Parent governors	3	2	1 or 2	1
LEA governors	2	1	1 or 2	1
Teacher governors	2	2	1	1
Staff governors	1	1	1	1 or 0

(2) The option of having a smaller governing body constituted in accordance with the third or fifth column is available —

- (a) in the case of a secondary school, where the school has less than 600 registered pupils, and
- (b) in the case of a primary school, where the school has less than 100 registered pupils.

(3) As regards the alternatives specified in the fourth column, the governing body of a primary school to which that column applies must be constituted in such a way as to reflect either both of the first alternatives or both of the second alternatives.

(4) The foundation governors required by subparagraph (1)(c) must include —

- (a) at least three governors who at the time of their appointment are parents of registered pupils at the school, in the case of a school to which the second column applies, or
- (b) at least two such governors in the case of any other school.

Maintained primary schools

20.—(1) This regulation applies to –

- (a) any community, voluntary or foundation school which is a primary school, and
- (b) any maintained nursery school,

which serves an area for which there are one or more community councils.

(2) The instrument of government of a school may provide for the governing body to include (in addition to the governors required by virtue of regulations 13, 14, 16, 18 and 19, as the case may be) one community governor nominated by the community council .

(3) If a school serves an area for which there are two or more community councils, the governing body may seek nominations from one or more of those councils.

Notification of vacancies and appointments

21.—(1) Subject to paragraphs (2) and (3), where a vacancy in the office of an appointed member of the governing body arises, the clerk to the governing body must as soon as is reasonably practicable give notice in writing of that fact to the person entitled to appoint or nominate a person to that office.

(2) Subject to paragraph (3), the clerk to the governing body must, at least two months before the date of the expiry of the term of office of an appointed member, give notice in writing of that fact to the person entitled to appoint or nominate a person to that office.

(3) Paragraphs (1) and (2) above do not apply where the person entitled to appoint a person to the office in question has already notified the clerk to the governing body in writing of the person appointed or nominated.

(4) Where any person other than a governing body makes an appointment or nominates a person to be appointed to the governing body, he or she 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 so appointed or nominated.

(5) For the purposes of this regulation, “appointed member” (“*aelod penodedig*”) means –

- (a) a foundation governor;
- (b) an LEA governor;
- (c) a community governor (including an additional community governor);
- (d) a representative governor;
- (e) a sponsor governor; and
- (f) a partnership governor.

Joint appointments

22. 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,

the appointment is to be made by, or in accordance with a direction given by, the National Assembly for Wales.

Surplus governors

23.—(1) Where a maintained school has more governors of a particular category than are provided for by the instrument of government for the school, such number of governors of that category as is required to eliminate the excess must cease to hold office in accordance with paragraphs (2) and (3) unless a sufficient number resign.

(2) The governors who are to cease to hold office are to be determined on the basis of seniority, the governors whose current period of office as a governor of any category at the school is the shortest being the first to cease to hold office.

(3) Where it is necessary for the purposes of paragraph (2) to select one or more governors from a group of equal seniority, it must be done by drawing lots.

(4) For the purposes of this regulation, additional community governors are treated as if they constituted a separate category of governor.

PART 4

Qualifications and tenure of office

Qualifications and disqualifications

24. Schedule 5 sets out the circumstances in which a person is qualified for or disqualified from holding or continuing in office as a governor.

Term of office

25.—(1) Subject to paragraphs (2) to (7), a governor holds office for a fixed period of four years from the date of his or her election or appointment.

(2) Paragraph (1) does not apply to any governor who is the head teacher of the school, or to any ex officio foundation governor, who may hold office for as long as he or she holds the position from which his or her governorship derives.

(3) Paragraph (1) does not apply to any foundation governor whose term of office is to be determined by the person who appointed him or her, up to a maximum of 4 years.

(4) Paragraph (1) does not apply to any additional governor, additional foundation governor or interim executive member appointed under sections 16(9), 16A(10), 18(11) or 18A(12) of the 1998 Act whose term of office is to be determined by the person who appointed him or her, up to a maximum of 4 years.

(5) Paragraph (1) does not apply to any parent governor of a maintained nursery school who is to hold office for a fixed period of two years from the date of his or her election or appointment.

(6) A substitute governor may hold office until the earlier of the following —

- (a) the expiry of four years from the date when his or her appointment takes effect;
- (b) the date when the original governor (not having been removed from office under regulation 27 (2)) gives written notice to the clerk to the governing body to the effect that he or she is able and willing to act as a foundation governor; or

(9) Amended by section 56 of, and Schedule 5 to, the 2002 Act.

(10) Prospectively inserted by section 57 of the 2002 Act.

(11) Amended by section 56 of the 2002 Act.

(12) Prospectively inserted by section 58 of the 2002 Act.

- (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.

(7) 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 his or her office in accordance with regulation 26(1);
- (c) being removed from office under regulations 27 to 29; or
- (d) being disqualified, by virtue of any provision of these Regulations, from holding or continuing to hold office.

(8) In this regulation “the original governor” (“y llywodraethwr gwreiddiol”) means the ex officio foundation governor in whose place the substitute governor is appointed to act.

Resignation

26.—(1) A governor may at any time resign his or her office by giving written notice to the clerk to the governing body.

(2) The head teacher may withdraw his or her 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 his or her resignation does not prejudice the ex officio governorship of his or her successor in the office from which the ex officio governorship derives.

Removal of LEA, foundation, representative, additional community and sponsor governors

27.—(1) Any LEA governor, foundation governor, or representative governor may be removed from office by the person who appointed him or her, who must give written notice thereof to the clerk to the governing body and to the governor so 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 him or her, and that person must give written notice thereof to the clerk to the governing body and to the governor so removed.

(3) Any additional community governor or sponsor governor may be removed by the person who nominated him or her, who must give written notice thereof to the clerk to the governing body and to the governor so removed.

Removal of community governors

28. The governing body may remove any community governor (except an additional community governor) from office in accordance with the procedure set out in regulation 30.

Removal of appointed parent governors and partnership governors

29. Any parent governor appointed by the governing body under paragraphs 10 to 12 of Schedule 1 and any partnership governor may be removed by the governing body in accordance with the procedure set out in regulation 30.

Procedure for removal of governors by the governing body

30.—(1) This regulation applies in relation to the removal of a governor from office in accordance with regulation 28 or 29.

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

- (a) before the governing body resolve to remove the governor from office, the governor or governors proposing his or her removal at that meeting state their reasons for doing so and the governor whom it is proposed to remove is given an opportunity to make a statement in response; and
- (b) the matter of the 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 governing body must inform the person removed from office of the reasons for the removal in writing.

PART 5

Instrument of Government

Interpretation of “appropriate diocesan authority” and “appropriate religious body”

31. In this Part,

“appropriate diocesan authority” (*“awdurdod esgobaethol priodol”*) has the meaning given by section 142(1) and (4) of the 1998 Act;

“appropriate religious body” (*“corff crefyddol priodol”*), in relation to a school designated under section 69(3) of the 1998 Act as having a religious character that is not a Church in Wales school or a

Roman Catholic Church school, means the body that the National Assembly for Wales considers appropriate in relation to the religion or religious denomination to which the school belongs.

Duty to have regard to guidance

32. 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 education authorities must have regard to any guidance given from time to time by the National Assembly for Wales.

Contents and form of instrument of government

33.—(1) The instrument of government for a maintained school must set out —

- (a) the name of the school;
- (b) the category of school to which the school belongs;
- (c) the name of the governing body of the school;
- (d) the manner in which the governing body is to be constituted in accordance with Part 3, specifying —
 - (i) the number of governors in each category of governor,
 - (ii) the categories of person from whom or from amongst whose members nominations for the appointment of any additional community governor or sponsor governor are authorised by these Regulations; and
 - (iii) the total membership of the governing body;
- (e) where the term of office for a category of governor is to be less than four years, the length of that term of office;
- (f) where the school 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;

- (g) where the school is a community special school, the name of any appropriate body or appropriate voluntary organisation entitled to nominate a person for appointment as a representative governor under regulation 15(4) or (5);
- (h) where there is a trust relating to the school, that fact;
- (i) where the school is a foundation or a voluntary school designated under section 69(3) of the 1998 Act as having a religious character, a description of the religious ethos of the school; and
- (j) the date when the instrument of government takes effect, which must not be earlier than 1 January 2006.

(2) The manner in which the governing body is to be constituted, as set out in accordance with subparagraph (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) Where, for the purposes of Part 3, it is material to determine the number of registered pupils at the school, that number is to be determined as at the date when the instrument is made.

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

Procedure for making an instrument

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

(2) Where the school has foundation governors, the governing body must not submit the draft to the local education 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 designated under section 69(3) of the 1998 Act as having a religious character, the appropriate religious body.

(3) On receiving the draft the local education authority must consider whether it complies with all applicable statutory provisions, and if —

- (a) it is content that the draft so complies, or
- (b) there is agreement between it, the governing body and (if the school has foundation

governors) the persons mentioned in paragraph (2) that the draft should be revised to any extent and the revised draft complies with all the applicable statutory provisions,

the instrument of government must be made by it in the form of the draft or (as the case may be) in the form of the revised draft.

(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 National Assembly for Wales which 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 education 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 education authority must prepare and make the first instrument of government.

Review of instruments of government

35.—(1) The governing body or the local education 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 education authority decides that the instrument of government should be varied, the governing body or (as the case may be) the local education 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 education authority as to whether or not it is content with the proposed variation and, if not content, its reasons.

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

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

unless the persons listed in regulation 34(2) have approved the proposed variation.

(5) If –

- (a) whichever of the governing body and the local education authority is the recipient of a notification under paragraph (2) agrees with the proposed variation, or
- (b) there is agreement between the local education authority, the governing body and (if the school has foundation governors) the other persons listed in regulation 34(2) that some other variation should be made instead,

the local education authority must vary the instrument of government accordingly..

(6) If, in the case of a school which has foundation governors, at any time the persons listed in regulation 34(2) disagree with the proposed variation any of those persons may refer it to the National Assembly for Wales; and on such a reference the National Assembly for Wales must give such direction as it thinks fit having regard, in particular, to the category of school to which the school belongs.

(7) If neither sub-paragraphs (a) and (b) of paragraph (5) applies in the case of a school which does not have foundation governors, the local education 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, and
- (b) give the governing body a reasonable opportunity to reach agreement with it with regard to the variation;

and the instrument of government must be varied by it 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 the category of school to which the school belongs.

(8) Nothing in this regulation is to be taken as requiring the local education 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 —

- (a) the instrument must set out the date on which the variation takes effect; and
- (b) regulation 33(3) applies in relation to any variation relating to the manner in which the governing body is to be constituted as if it referred to the date when the variation is made rather than the date when the instrument is made.

Other requirements relating to instruments of government

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

- (a) a copy of the school's instrument of government, and
- (b) where any variation is made to the school's instrument of government, a consolidated version of the instrument of government incorporating all variations made by the local education 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 of the school;
- (b) the head teacher, whether or not the head teacher is a member of the governing body;
- (c) the trustees of any trust relating to the school;
- (d) in the case of a Church in Wales school or Roman Catholic Church school, the appropriate diocesan authority; and
- (e) in the case of any other school designated under section 69(3) of the 1998 Act as having a religious character, the appropriate religious body.

Duty to secure making of instruments of government

37. A local education authority must make an instrument of government in accordance with these Regulations -

- (a) for each nursery school which is maintained by them no later than 31 March 2006, and
- (b) for all other schools maintained by them, no later than 31 August 2008.

PART 6

Transitional Provision

Transitional provision

38. Schedule 6 has effect for the purpose of continuing the term of office of governors on transition to an instrument of government made in accordance with these Regulations.

PART 7

Appointment, functions and removal of officers

Election of the chair and vice-chair

39.—(1) Subject to paragraph (2) and to section 18 of the 1998 Act(**13**) (*Power of National Assembly for Wales to appoint additional governors*), the governing body must elect a chair and a vice-chair from among their number annually.

(2) 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 of that school.

(3) Subject to paragraphs (5) and (6), the chair or vice-chair is to hold office until his or her successor has been elected in accordance with paragraph (1).

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

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

- (a) when he or she ceases to be a member of the governing body;
- (b) if he or she is paid to work at the school in question;
- (c) if he or she is removed from office in accordance with regulation 41 or replaced by a chair nominated by the National Assembly for Wales pursuant to section 18 of the 1998 Act; or
- (d) in the case of the vice-chair, he or she is elected in accordance with paragraph (6) to fill a vacancy in the office of chair.

(6) Where a vacancy arises in the office of chair or vice-chair, the governing body must at their next meeting elect one of their number to fill that vacancy, subject to paragraph (2) and to section 18 of the 1998 Act.

(13) Amended by section 56 of the 2002 Act.

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

(8) 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.

(9) Where in the circumstances referred to in paragraph (8) 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 their number to act as chair for the purposes of that meeting, subject to paragraph (2).

(10) 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

40.—(1) The chair may, where in his or her opinion the circumstances mentioned in paragraph (2) apply, exercise any function of the governing body which can be delegated under regulation 50(1).

(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 his or her parent; or
- (c) a person who works at the school.

(3) In paragraph (2), “delay” (“*oedi*”) 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 be read as if it were a reference to the vice-chair.

Removal of the chair or vice-chair from office

41.—(1) Subject to paragraphs (3) and (4), the governing body may by resolution remove the chair from office, unless he or she has been nominated by the National Assembly for Wales pursuant to section 18 of the 1998 Act.

(2) Subject to paragraphs (3) and (4), 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 45(7).

(4) Before the governing body resolve to remove the chair or the vice-chair from office, the governor proposing his or her removal must at that meeting state his or her reasons for doing so and the chair or 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

42.—(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 education 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 of theirs, appoint any one of their number (who is not the head teacher) 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 a delegated budget⁽¹⁴⁾, the local education authority may remove the clerk to the governing body and appoint a substitute, provided the local education authority consults the governing body before taking such action.

Functions of the clerk to the governing body

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

- (a) convene meetings of the governing body in accordance with regulation 45;

⁽¹⁴⁾ See section 39(2) of the 2002 Act.

- (b) attend meetings of the governing body and ensure minutes of the proceedings are produced in accordance with regulation 47(1);
- (c) maintain a register of members of the governing body 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 21 (*Notification of vacancies and appointments*), 26 (*Resignation*), 27 (*Removal of governors*), 39(4) (*Resignation of chair or vice chair*), and 45(4) (*convening meetings*) of, and paragraph 13 of Schedule 5 (*Notification of disqualification*) to, these Regulations.
- (f) report to the governing body as required on the discharge of his or her 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.

PART 8

Meetings and proceedings of governing bodies

Right of persons to attend meetings of the governing body

44.— Subject to regulation 63 of, and Schedule 7 to, these Regulations the following persons are entitled to attend any meeting of the governing body —

- (a) subject to regulation 49, a governor;
- (b) the head teacher of the school, whether or not he is a governor;
- (c) the clerk to the governing body; and
- (d) such other persons as the governing body may determine.

Convening meetings of the governing body

45.—(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 five clear working days in advance to –

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

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

(6) This paragraph applies in relation to any meeting at which –

- (a) the removal of the chair or vice-chair from office,
- (b) the suspension of any governor,
- (c) the removal of a community governor or sponsor governor, or
- (d) a decision to serve notice of discontinuance of the school under section 30 of the 1998 Act

is to be considered.

(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 seven 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

46.—(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 49.

(2) 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) 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.

(4) No decision to serve notice of discontinuance of the school under section 30 of the 1998 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 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 45(7).

(5) The proceedings of the governing body of a school 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 school having more governors of a particular category than are provided for by the instrument of government⁽¹⁵⁾.

Minutes and papers

47.—(1) The clerk (or the person appointed to act as clerk for the purpose of the meeting in accordance with regulation 42(4)) 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 minutes of proceedings must be entered into a book kept for the purpose by the clerk and may be entered on loose-leaf pages consecutively numbered;

⁽¹⁵⁾ See section 20(1) of the 2002 Act and regulation 22.

but in that case the person signing the minutes must initial each page.

(3) The person acting as clerk to the governing body for the purposes of any meeting must record immediately before the entry recording the minutes of that meeting in the book or pages used for that purpose the names of those members of the governing body and of any other person present at the meeting concerned.

(4) The governing body must supply a copy of the draft or signed minutes of a particular meeting to the local education authority that maintains the school in question on request by the authority concerned.

Publication of minutes and papers

48.—(1) Subject to paragraph (2), the governing body must, as soon as reasonably practicable, make available for inspection at the school by any interested person, a copy 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; or
- (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) Each page of published copies of any draft minutes of proceedings of meetings approved by the chair must indicate that they are draft minutes.

Suspension of governors

49.—(1) Subject to paragraphs (2), (3) and (4), 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 his or her employment;

- (b) that the governor is the subject of proceedings in any court or tribunal, the outcome of which may be that he or she 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 or the governing body or his or her office into disrepute; or
- (d) that the governor is in breach of his or her 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 45(7).

(3) Before a vote is taken on a resolution to suspend a governor, the governor proposing the resolution must at the meeting state his or her 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 paragraph 2(2) of Schedule 7.

(4) 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 30 to consider his or her removal from office, during the period of his or her suspension.

(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 5 of Schedule 5 for failure to attend any meeting of the governing body while suspended under this regulation.

Delegation of functions

50.—(1) Subject to regulation 51 of these Regulations, regulation 3(2) of the Religious Character

of Schools (Designation Procedure) Regulations 1998(16) and regulation 7 of the School Government (Terms of Reference) (Wales) Regulations 2000(17), the governing body may delegate any of its functions to —

- (a) a committee;
- (b) any governor; or
- (c) the head teacher (whether or not he or she 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

51.—(1) The governing body may not delegate under regulation 50(1) its functions under the following regulations - :

- (a) those in Part 2 (*categories of governors*);
- (b) those in Part 3 (*constitution of governing bodies*);
- (c) those in Part 4 (*removal of governors*);
- (d) those in Part 5 (*instruments of government*);
- (e) regulations 39 and 41 (*election and removal of chair and vice chair*);
- (f) regulation 42 (*appointment and removal of the clerk to the governing body*);
- (g) regulation 49 (*suspension of governors*);
- (h) regulation 50 (*delegation of functions*);
- (i) regulation 54 (*establishment of committees*)

nor may it delegate its functions in respect of head teacher and deputy head teacher selection panels under paragraph 6 of Schedule 16 and paragraphs 7 and 30 of Schedule 17 to the 1998 Act.

(2) The governing body may not delegate to an individual under regulation 50(1) -

- (a) the functions in:
 - (i) sections 28, 29, 30 and 31 of, and paragraph 10(4) of Schedule 6 to the 1998 Act (*Alteration or discontinuance of maintained schools*);
 - (ii) sections 28(18) and 31 of the 1998 Act as they have effect by virtue of Regulations made under Schedule 8 to the 1998 Act

(16) S.I. 1998/2535, as amended in relation to Wales by S.I. 1999/2243.

(17) S.I. 2000/3027 (W. 195) as amended by S.I. 2002/1396 (W. 138) and S.I. 2005/xxx (W. xxx).

(18) Amended by section 154 of the 2002 Act.

- in relation to proposals under that Schedule (*Change of category of maintained schools*);
- (iii) a scheme made by the local authority under section 48(1) of the 1998 Act, to the extent that it requires the governing body to give their approval to the first formal budget plan of the financial year;
 - (iv) section 61(1) to (3) of the 1998 Act (*School discipline policies*);
 - (v) sections 88, 89⁽¹⁹⁾, 89A⁽²⁰⁾ 90(8) and 91 of the 1998 Act (*which relate to the determination of admission arrangements*), section 90(1) of the 1998 Act (*which relates to the reference to the National Assembly for Wales of objections about admission arrangements*), section 93 of and Schedule 23 to the 1998 Act (*which relate to fixing admission numbers and variation of standard numbers*), or section 94⁽²¹⁾ of the 1998 Act in so far as it relates to the determination of appeal arrangements by the governing body;
 - (vi) section 63 of the 1998 Act (*school attendance targets*);
 - (vii) section 439(7) of the 1996 Act (*school attendance orders*);
 - (viii) section 95(2) and 97(3) of the 1998 Act (*appeal against a decision of the local education authority to admit a child and referral to the Assembly in respect of a direction made by the local education authority to admit a child*); or
- (b) the functions that must be delegated to the committees specified in regulations 55 to 57.

Reporting to the governing body following the exercise of delegated functions

52.—(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 he or she is a governor); or
- (c) a committee.

⁽¹⁹⁾ Amended by paragraph 5 of Schedule 4 to the 2002 Act

⁽²⁰⁾ Inserted by section 47(2) of the 2002 Act. Note also that section 93 of and Schedule 23 to the 1998 Act are prospectively repealed by the 2002 Act.

⁽²¹⁾ Amended by section 50 of, and paragraph 8 of Schedule 4 to the 2002 Act.

(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.

PART 9

Committees of governing bodies

Application of this Part

53. This Part does not apply in relation to head teacher and deputy head teacher selection panels established under Schedule 16 or 17 to the 1998 Act.

Establishment of committees of the governing body

54.—(1) This regulation applies to committees of the governing body subject to regulations 55, 56 and 57.

(2) The governing body is to 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) No person who is employed to work at the school, nor a registered pupil of the school may act as chair of a committee.

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

(7) The membership of a committee 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.

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

Staff disciplinary and dismissal committee and disciplinary and dismissal appeals committee

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

- (i) at a community, voluntary controlled or community special school, the initial determination under paragraph 25 of Schedule 16 to the 1998 Act that any

person employed by the local education authority to work at the school should cease to work there;

- (ii) at a foundation, voluntary aided or foundation special school, the initial decision that a person employed to work at the school should have his or her contract of employment with the governing body terminated or should not have his or her contract renewed (except where the dismissal is pursuant to a direction of the local education authority under section 55(5) of the 1998 Act); and
- (iii) 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) Subject to paragraph (9), the staff disciplinary and dismissal committee must include not less than three governors.

(4) The disciplinary and dismissal appeals committee must include no fewer governors than the staff disciplinary and dismissal committee the decision of which is subject to appeal.

(5) 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.

(6) 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.

(7) The head teacher of the school shall not be a member of the staff disciplinary and dismissal committee or the disciplinary and dismissal appeal committee.

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

(9) Where it is not reasonably practicable for the staff disciplinary and dismissal committee and the disciplinary and dismissal appeal committee each to include three governors, the staff disciplinary and dismissal committee may include two governors.

Pupil discipline and exclusions committee

56.—(1) The governing body of a school 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*)(22).

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

(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 he or she 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

57.—(1) Where the governing body of a school is the admissions authority for that 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) the head teacher of the school (who is entitled to vote whether or not he or she is a governor); and
- (b) at least two other governors

(3) In the case of a school which has more than one head teacher, the reference in paragraph (2)(a) to the head teacher is to be interpreted as a reference to one of the head teachers.

(4) The quorum for the admissions committee and any vote on any matter at the committee is the same as

(22) See the Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, S.I. 2003/3227(W. 308) as amended by S.I. 2004/1805 (W. 193).

the minimum requirement for the composition of the committee specified in this regulation.

Clerks to committees

58.—(1) The governing body must appoint a clerk to each committee established in accordance with regulations 55 to 57 and may appoint a clerk to any other committee established by it.

(2) The head teacher of the school may not be appointed as 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

59.—(1) Subject to paragraphs (2) and (3) and Schedule 7 to these Regulations the following persons are entitled to attend any meeting of a committee —

- (a) any member of the committee, provided he or she is not a governor who has been suspended in accordance with regulation 49;
- (b) the head teacher of the school, whether or not he or she is a member of the committee;
- (c) the clerk to the committee; and
- (d) 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 he or she is otherwise entitled to attend when the business under consideration concerns an individual member of staff or pupil.

(3) Paragraph (1)(b) does not apply in relation to the committees referred to in regulations 55 and 56 or in relation to any committee or selection panel exercising any function under Schedules 16 or 17 to the 1998 Act.

Meetings of committees

60.—(1) Subject to paragraph (2) 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 five clear working days in advance the clerk must give to each member of the committee and to the head teacher (whether or not he or she 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;

but where the chair of the committee so determines on the ground that there are matters demanding urgent consideration, it is sufficient if the written notice of the meeting states that fact and the notice, agenda and reports or other papers to be considered at the meeting are given within such shorter period as he or she directs or decides (as the case may be).

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

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

(5) Subject to regulations 55(5), 56(3) and 57(4), 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.

(6) 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.

(7) 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.

(8) 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.

Minutes of meetings of committees

61. (1) Minutes of the proceedings of a meeting of a committee must be drawn up by the clerk to the committee or by the person acting as the clerk for the purposes of the meeting; and must 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 education authority with a copy of the draft or signed minutes of any meeting of theirs on request by that authority.

Publication of minutes and papers

62.—(1) Subject to paragraph (2) the committee must, as soon as reasonably practicable, make available for inspection at the school by any interested person a copy of —

- (a) the agenda for every committee meeting;
- (b) the signed minutes of every such meeting; and
- (c) any report or other 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;
- (b) a named pupil at, or candidate for admission to, the school;
- (c) any other matter that, by reason of its nature, the committee is satisfied should remain confidential.

Part 10

Restrictions on persons taking part in proceedings

63.—(1) In this regulation and in Schedule 7 —

- (a) “relevant person” (*“person perthnasol”*) means a governor, a member of a committee who is not a governor, the head teacher (whether or not he or she 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” (*“cyfarfod o’r ysgol”*) is a reference to a meeting of the governing body or of a committee, including a selection panel established under Schedules 16 or 17 to the 1998 Act.

(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 at which the matter is the subject of consideration, must disclose his or her interest, withdraw from the meeting and not vote on the matter in question.

(3) Nothing in this regulation or in Schedule 7 is to be construed as precluding -

- (a) the governing body, or a committee, from —
 - (i) allowing a person who appears to them to be able to give evidence to attend any hearing conducted by them into any matter and to present his or her 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 he or she is entitled to profit.

(4) A person who is acting as the clerk to a meeting of the school is not required to withdraw from a meeting by this regulation or Schedule 7 unless his or her appointment to office, his or her remuneration, or disciplinary action against him or her is the subject of consideration, but if this regulation or Schedule 7 would have otherwise required him or her to withdraw, he or she 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 7 to withdraw from a meeting of the school and not vote, that question is to be determined by the other governors present at the meeting.

(6) Schedule 7 makes provision about pecuniary interests and other specified conflicts of interest.

Signed on behalf of the National Assembly for Wales
under section 66(1) of the Government of Wales Act
1998(23)

Date

The Presiding Officer of the National Assembly

(23) 1998 c.38.

SCHEDULE 1 (Regulation 4)

Election and appointment of parent governors

1. In this Schedule “appropriate authority” (“*awdurdod priodol*”) means —

- (a) in relation to a community school, a community special school, a maintained nursery school or a voluntary controlled school, the local education authority; and
- (b) subject to paragraph 3, in relation to a voluntary aided school, foundation school or foundation special school, the governing body.

2. Where a local education authority is the appropriate authority in relation to a school, that authority may delegate to the head teacher of the school any of its functions under this Schedule.

3. The local education authority is the appropriate authority in relation to a school within paragraph 1(b) if the governing body and the local education authority so agree.

4. Subject to paragraphs 5 to 9 the appropriate authority must make all the necessary arrangements for the election of parent governors.

5. The appropriate authority is to 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.

6. The power conferred by paragraph 4 –

(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, but

(b) does include the power to make provision as to qualifying dates.

7. Any election which is contested must be held by secret ballot.

8.—(1) The arrangements made under paragraph 4 must provide for every person who is entitled to vote to have an opportunity to do so by post.

(2) For the purposes of sub-paragraph (1), “post” (“*post*”) includes delivery by hand.

(3) The arrangements made under paragraph 4 may provide for every person who is entitled to vote to have an opportunity to do so by electronic means.

9. Where a vacancy for a parent governor arises, the appropriate authority 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 the school is —

- (a) informed of the vacancy and that is required to be filled by election;
- (b) informed that he or she is entitled to stand as a candidate and vote in the election; and
- (c) given the opportunity to do so.

10. The number of parent governors required must be made up by 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 authority, be impractical for there to be an election of parent governors; or
- (c) in the case of a school which is a community special or foundation special school established in a hospital, it would, in the opinion of the appropriate authority, be impractical for there to be an election of parent governors.

11.—(1) Except where paragraph 12 applies, the governing body must appoint as a parent governor —

- (a) a parent of a registered pupil at the school; or
- (b) where it is not reasonably practicable to do so, a parent of a child of compulsory school age, or in the case of a maintained nursery school, of or under compulsory school age.

12.—(1) Where the school is a community special school or a foundation special school, the governing body must appoint —

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

(2) The governing body may only appoint a person referred to in sub-paragraph (1) (b), (c) or (d) if it is not reasonably practicable to appoint a person referred to in the sub-paragraph which immediately precedes it.

SCHEDULE 2 (Regulations 5 and 6)

Election of teacher and staff governors

1. In this Schedule “appropriate authority” (“*awdurdod priodol*”) has the same meaning as in Schedule 1.

2. Where a local education authority is the appropriate authority in relation to a school, that authority may delegate to the head teacher of the school any of its functions under this Schedule.

3. Subject to paragraphs 4 to 6, the appropriate authority must make all the necessary arrangements for the election of teacher and staff governors.

4. The appropriate authority is to determine for the purposes of an election of teacher or staff governors whether a person is a school teacher or otherwise employed to work at the school.

5. The power conferred by 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, but
- (b) does include the power to make provision as to qualifying dates.

6. Any election which is contested must be held by secret ballot.

SCHEDULE 3 (Regulation 10)

Appointment of partnership governors

1. Where a partnership governor is required, the governing body must seek nominations from parents of registered pupils at the school, and from such other persons in the community served by the school 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.—(1) In the case of a foundation special school without a foundation, the governing body must appoint at least one person with experience of education for children with special educational needs as a partnership governor, unless no eligible nominee has such experience.

(2) In seeking nominations for partnership governors for foundation special schools, the governing body must take steps to secure that persons making nominations are aware of the requirement in paragraph (1).

4. Subject to paragraph 5(2), no governor may nominate a person for appointment as a partnership governor.

5.—(1) The governing body must appoint such number of partnership governors as is required by the instrument of government from among eligible nominees.

(2) 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 paragraph 5(2), having rejected any person nominated under paragraph 1, it must give written reasons for its decision to the local education authority and to the person rejected.

7. The governing body must make all necessary arrangements for and determine all other matters relating to the nomination and appointment of partnership governors.

SCHEDULE 4 (Regulation 11)

Appointment of Sponsor Governors

1. In this Schedule, “sponsor” (“*noddwr*”) in relation to a school means –

- (a) a person who gives or has given substantial financial assistance (which for these purposes includes benefits in kind) to the school other than pursuant to statutory obligation; or
- (b) any other person (not being otherwise represented on the governing body) who provides or has provided substantial services to the school.

2. Where the school has one or more sponsors, the governing body may determine that the instrument of government will provide for the governing body to appoint such number of sponsor governors, not exceeding two, nominated in accordance with paragraph 3.

3. The governing body must seek nominations for such appointments from the sponsor or (as the case may be) from any one or more of the sponsors.

SCHEDULE 5 (Regulation 24)

Qualifications and disqualifications

General

1. No person is qualified to be a governor unless he or she is aged 18 or over at the date of his or her election or appointment.

2. No person may at any time hold the office of more than one governor of the same school.

3. Save 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 at a school does not disqualify him or her from election or appointment or from continuing as a governor of any other category at that school.

Mental disorder

4. A person is disqualified from holding or for continuing to hold office as a governor of a school at any time when he or she is liable to be detained under the Mental Health Act 1983(24) or under any re-enactment or statutory modification of that Act in force from time to time.

Failure to attend meetings

5.—(1) This paragraph applies to any governor who is not a governor by virtue of his or her office.

(2) A governor, who, without the consent of the governing body, has failed to attend the meetings thereof for a continuous period of six months beginning with the date of the first such meeting he or she failed to attend, is, on the expiry of that period, disqualified from continuing to hold office as a governor of that school.

(3) Where a governor has sent an apology to the clerk to the governing body before a meeting which he or she 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 his or her 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 twelve months immediately following his or her disqualification under sub-paragraph (2).

(24) 1983 c.20.

Bankruptcy

6. A person is disqualified from holding or continuing to hold office as a governor of a school if —

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

Disqualification of company directors

7. A person is disqualified from holding or from continuing to hold office as a governor of a school at any time when he or she is subject to -

- (a) a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986(25),
- (b) a disqualification order under Part 2 of the Companies (Northern Ireland) Order 1989(26),
- (c) a disqualification undertaking accepted under the Company Directors Disqualification (Northern Ireland) Order 2002(27), or
- (d) an order made under section 429(2)(b) of the Insolvency Act 1986(28) (*failure to pay under county court administration order*).

Disqualification of charity trustees

8. A person is disqualified from holding or from continuing to hold office as a governor of a school if —

- (a) he or she has been removed from the office of trustee for a charity by an order made by the Charity Commissioners or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity for which he or she was responsible or to which he or she was privy, or to which he or she contributed or which he or she facilitated by his or her conduct; or
- (b) he or she has been removed, under section 7 of the Law Reform (Miscellaneous

(25) 1986 c.46.
(26) No. 2404 (N.I. 18).
(27) No. 3150 (N.I. 4).
(28) 1986 c. 45.

Provisions) (Scotland) Act 1990**(29)** (*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

9. A person is disqualified from holding or from continuing to hold office as a governor of a school at any time when he or she 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**(30)**;
- (b) subject to a direction of the National Assembly for Wales or the Secretary of State under section 142 of the 2002 Act;
- (c) disqualified from working with children under sections 28 and 29 of the Criminal Justice and Court Services Act 2000**(31)**; or
- (d) by virtue of an order made under section 470 or section 471 of the 1996 Act**(32)**, disqualified from being the proprietor of any independent school or from being a teacher or other employee in any school.

Criminal convictions

10.—(1) Subject to sub-paragraph (6) below, a person is disqualified from holding, or continuing to hold, office as a governor of a school where any of sub-paragraphs (2) to (4) or (6) below apply to him or her.

(2) This sub-paragraph applies to a person if —

- (a) within the period of five years ending with the date immediately preceding the date on which his or her appointment or election as governor would otherwise have taken effect or, as the case may be, on which he or she would otherwise have become a governor by virtue of his or her office, or
- (b) since his or her appointment or election as governor or, as the case may be, since he or

(29) 1990 c.40; the functions of the Lord Advocate under this section transferred to the Secretary of State by the Transfer of Functions (Lord Advocate and Secretary of State) Order 1999 (S.I. 1999/678).

(30) 1999 c.14; as amended by the Care Standards Act 2000 (2000 c.14).

(31) 2000 c.43.

(32) Repealed by the 2002 Act.

she became a governor by virtue of his or her office,

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

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

(4) This sub-paragraph applies to a person if he or she has at any time been convicted as aforesaid of any offence and he or she has had passed on him or her a sentence of imprisonment for a period of not less than five years.

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

(6) This sub-paragraph applies to a person if —

- (a) within the period of five years ending with the date immediately preceding the date on which his or her appointment or election as governor would otherwise have taken effect or, as the case may be, on which he or she would otherwise have become a governor by virtue of his or her office, or
- (b) since his or her appointment or election as governor or, as the case may be, since he or she became a governor by virtue of his or her office,

he or she has been convicted under section 547 of the 1996 Act⁽³³⁾ or under section 85A of the Further and Higher Education Act 1992⁽³⁴⁾ (nuisance and disturbance on educational premises) of an offence and has been sentenced to a fine.

⁽³³⁾ As amended by the 1998 Act and by section 206 of and Schedule 20 to the 2002 Act.

⁽³⁴⁾ 1992 c.13; inserted by section 206 of and Schedule 20 to the 2002 Act.

Governors of more than two schools

11. (1) No person may at any time hold office as governor in more than two schools.

(2) For the purposes of sub-paragraph (1) no account is to be taken of ex-officio governorships, governorships to which the New Maintained Schools (Wales) Regulations 2005⁽³⁵⁾ apply or any appointment under sections 16, 16A, 18 or 18A of the 1998 Act

Refusal to make an application for a criminal records certificate

12. A person is disqualified from holding or continuing to hold office as a governor at any time when he or she refuses a request by the governing body to make an application under section 113 of the Police Act 1997⁽³⁶⁾ for a criminal records certificate.

Notification to clerk

13. Where –

- (a) by virtue of any paragraphs 6 to 11 a person is disqualified from holding, or for continuing to hold, office as a governor of a school; and
- (b) he or she is, or is proposed to become, a governor,

he or she must give notice of that fact to the clerk to the governing body.

SCHEDULE 6 (Regulation 38)

Transitional Provisions

1. In this Schedule —

“current governing body” (“*corff llywodraethu cyfredol*”) means a governing body constituted under an instrument of government that is in effect before 31 October 2005;

and

“current governor” (“*llywodraethwr cyfredol*”) means any person who is appointed to or elected to office as a member of a current governing body on or before 31 October 2005 but not any person who is reappointed or re-elected to such office after that date.

⁽³⁵⁾ S.I. 2005/xxx (W. xxx).

⁽³⁶⁾ 1997 c.50; as amended by the Protection of Children Act 1999, the Care Standards Act 2000 and the 2002 Act.

2. On or after the date on which an instrument of government made in accordance with these Regulations becomes effective, a current governor is to continue as a governor of the corresponding category of governor required by the instrument of government, as if he or she had been appointed to or elected to such category in accordance with these Regulations, even if he or she does not conform to the relevant requirements imposed by these Regulations for a governor of that category.

3. For the purposes of paragraph 2, the corresponding categories shall be as follows —

<i>Category of current governor</i>	<i>Category of governor under these Regulations</i>
Co-opted governor	Community governor
Additional co-opted governor appointed under paragraph 15(4) of Schedule 9 to the 1998 Act	Additional Community Governor
Additional co-opted governor appointed under paragraph 2 of Schedule 1 to the 1999 Regulations	Sponsor governor
Representative governor	Representative governor
Foundation governor (including ex officio foundation governor and substitute governor)	Foundation governor (including ex officio foundation governor and substitute governor)
LEA governor	LEA governor
Parent governor	Parent governor
Partnership governor	Partnership governor
Staff governor	Staff governor
Teacher governor	Teacher governor
Head teacher (ex officio governor)	Head Teacher (ex officio)

4. A current governor will hold office as a governor of the corresponding category of governor under these Regulations until —

- (a) the term of office that applied at the date of his election or appointment as a current governor would have expired,
- (b) he or she resigns his or her office,
- (c) he or she becomes disqualified from holding or continuing to hold office as a governor under these Regulations, or
- (d) 31 August 2008

which ever is the earlier.

5. This Schedule does not prevent a current governor from —

- (a) being elected or appointed as a governor of any category required by the instrument of government for a further term, save as otherwise provided in these Regulations; or
- (b) being removed from office under regulations 27 to 29.

6. A current governor, who continues as a governor after an instrument of government made in accordance with these Regulations becomes effective, must be included in calculating the number of governors required in each category under the instrument of government.

SCHEDULE 7 (Regulation 63)

Restrictions on persons taking part in proceedings of the governing body or its committees

Pecuniary interests

1.—(1) For the purposes of regulation 63(2), 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; or
- (b) a relevant person is a 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 his or her spouse, civil partner within the meaning of the Civil Partnership Act 2004⁽³⁷⁾ or someone living with that person as if he or she 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) For the purposes of regulation 63(2) a relevant person is not to be treated as having a pecuniary interest in any matter –

- (a) provided his or her 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 he or she was nominated or appointed to office by, is a

⁽³⁷⁾ 2004 c.33.

member of, or is employed by, any public body; or

- (c) by reason only of the fact that he or she is a member of a corporation or other body if he or she has no financial interest in any securities of that corporation or other body.

(3) A governor is not, by reason of his or her 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 shall not, by reason of the pecuniary interest of its members, be prevented from obtaining such insurance and paying the premiums.

(4) A governor is not prevented from considering or voting upon any proposal regarding allowances to be paid in accordance with the Governor Allowances (Wales) Regulations 2005(38) by reason that he or she 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 thereof must withdraw from a meeting during a consideration or discussion of, and must not vote on, whether he or she should receive a particular allowance, the amount of any payment or any question about an allowance that has been paid to him or her.

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 school at which a subject of consideration is —

- (a) his or her own appointment, reappointment, suspension or removal as a member of the governing body or a committee;
- (b) his or her 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;
- (c) if he or she is a sponsor governor, any determination under paragraph 2 of Schedule 4 as to the provision in the instrument of government for sponsor governors.

(2) In any case where sub-paragraph (1) applies, the relevant person's interests are to be treated for the purposes of regulation 63(2) as being in conflict with the governing body's interests.

(38) S.I. 2005/xxx (W. xxx).

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 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 school at which a subject of consideration is his or her 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 63(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 school at which a subject of consideration is the appointment of a successor to that person, he or she 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 governor or member of a committee of the governing body at more than one school is not under any circumstances to be considered a conflict of interest for the purpose of these Regulations.

