
STATUTORY INSTRUMENTS

2000 No. 2872

EDUCATION, ENGLAND

The Education (Foundation Body) (England) Regulations 2000

Made - - - - *20th October 2000*
Laid before Parliament *25th October 2000*
Coming into force - - *15th November 2000*

In the exercise of the powers conferred on the Secretary of State by sections 21(5) and (6), 35(1), 138(7) and (8) and 144 of, and paragraph 5(2) of Schedule 4, paragraphs 2, 3, 4, and 5 of Schedule 8, and paragraph 1(5) of Schedule 12 to, the School Standards and Framework Act 1998⁽¹⁾ the Secretary of State for Education and Employment hereby makes the following Regulations:

Citation, commencement and application

1.—(1) These Regulations may be cited as the Education (Foundation Body) (England) Regulations 2000.

(2) These Regulations shall come into force on 15th November 2000.

(3) These Regulations apply only in relation to England.

Interpretation

2.—(1) In these Regulations:

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

“the Change of Category Regulations” means the Education (Change of Category of Maintained Schools) (England) Regulations 2000⁽²⁾;

“the clerk” means the clerk to the foundation body appointed in accordance with regulation 15;

“community member” means a member of the foundation body nominated by the governing bodies of schools within the group and appointed by the governor members of the foundation body under regulation 6(b) or 9(4);

“the dissolution date” means the date on which a foundation body is to be dissolved, specified in an order of the Secretary of State in accordance with regulation 25(1) or regulation 10(5);

(1) 1998 c. 31; by virtue of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I.1999/672) as amended by the National Assembly for Wales (Transfer of Functions) (Variation) Order 2000 (S.I. 2000/1829) the powers conferred by these provisions are exercisable by the Secretary of State only in relation to England. For the meaning of “regulations” see section 142(1) of the 1998 Act.

(2) S.I. 2000/2195.

“the formation date” means the date on which a group is to be formed, specified in writing by the Secretary of State under regulation 7(1);

“governor member” means a member of the foundation body appointed by the governing body of a school under regulation 9(1) or (3) or regulation 22(8);

“group” means the group of three or more schools for which a foundation body performs the following functions, namely

- (a) to hold property of those schools for the purposes of those schools, and
- (b) to appoint foundation governors for those schools;

“initial governor member” shall be construed in accordance with regulation 5(4);

“the joining date” means the date on which a school joins a group, specified in writing by the Secretary of State under regulation 22(3); and

“the leaving date” means the date on which a school leaves a group, specified in writing by the Secretary of State under regulation 23(1).

(2) In these Regulations, unless the context otherwise requires, a reference to a numbered regulation or Schedule is a reference to a numbered regulation or, as the case may be, to a numbered Schedule to these Regulations.

(3) Where any land is transferred to and vests in any body in accordance with these Regulations, any rights or liabilities—

- (a) enjoyed or incurred by the transferor in connection with the land; and
- (b) subsisting immediately before the transfer of the land,

shall also be transferred to, and by virtue of these Regulations vest in, that body.

(4) Expressions used in these Regulations set out in the first column of the following table shall have the meanings attributed to them by the provisions set out opposite thereto in the second column.

Table

financial year	section 579(1) of the Education Act 1996(3)
foundation	section 21(3) of the 1998 Act
foundation body	section 21(4) of the 1998 Act
foundation governor	paragraph 2 of Schedule 9 to the 1998 Act.

(5) A reference to a category in any provision of these Regulations is a reference to one of the categories set out in section 20(1) of the 1998 Act.

Foundation bodies and groups

3.—(1) Subject to paragraph (2) below—

- (a) a school may only form part of a group; and
- (b) the governing body of a school may only apply to the Secretary of State for the establishment of a foundation body,

if that school is a foundation or voluntary school or if it is a community school which the governing body propose should become a foundation or voluntary school.

(2) A school which has a foundation, other than a foundation body, may not form part of a group and its governing body may not propose the establishment of a foundation body.

Change of Category

4.—(1) Where a school proposes to enter, join or leave a group under a different category from its existing category, or to become on or prior to the dissolution date of its foundation body a school of a different category, the Change of Category Regulations shall apply with the modifications set out in Schedule 1.

(2) The provisions of Schedule 6 to the Change of Category Regulations so applied are set out as modified in Schedule 2.

Establishment of foundation bodies

5.—(1) A foundation body may only be established under section 21 of the 1998 Act in accordance with the following provisions of this regulation.

(2) The governing bodies of the three or more schools which wish a particular foundation body to be established and which propose to form the group for which the foundation body will act shall together apply to the Secretary of State for the establishment of that foundation body.

(3) The application shall contain—

- (a) a statement that the application has been agreed by the governing body of each school;
- (b) a draft instrument of government for the foundation body based on the model set out in Schedule 3; and
- (c) a statement containing—
 - (i) the names of the initial governor members of the foundation body to be appointed in accordance with regulation 9(1),
 - (ii) the date on which it is proposed that the foundation body will be established, and
 - (iii) the category in which it is proposed that each school will enter the group or a statement that a particular school will enter in its existing category.

(4) If the Secretary of State approves the application, a foundation body shall be established as a body corporate under section 21 of the 1998 Act on a date specified by him in writing. On the date of establishment, the initial governor members specified in the application, subject to any changes agreed by the Secretary of State with the governing body or bodies in question, shall be the initial governor members of the foundation body.

6. After establishment of the foundation body and before the formation date, the initial governor Members shall—

- (a) adopt the instrument of government in the form approved by the Secretary of State;
- (b) appoint community members from those nominated in accordance with regulation 9(2); and
- (c) select persons to be appointed as foundation governors to schools in the group,

and the foundation body may only exercise its powers before that date for or in connection with those purposes.

7.—(1) If the Secretary of State is satisfied that the membership of the foundation body has been properly constituted, that the instrument of government has been adopted and that the schools have or will on entering the group become schools of the category specified in the application then he shall by notice in writing provide that—

- (a) the foundation body shall perform the functions conferred on it by these Regulations for the schools in the group as from a date specified by him; and
- (b) the schools specified in the application shall on that date form the group for which the foundation body is to act.

(2) If the Secretary of State is not so satisfied within what is, in his opinion, a reasonable time in all the circumstances he may by order dissolve the foundation body on such date as he may specify in the order.

(3) Where any of the schools is entering the group under a different category from its existing category, the date specified in accordance with paragraph (1) of this regulation shall be the date on which it is intended that the change of category should take place in accordance with the Change of Category Regulations.

(4) Subject to paragraph (5), on the date specified in accordance with paragraph (1) above any land, other than land held on trust, which immediately before that date is held by the governing body of any school entering the group for the purposes of that school shall on that date be transferred to, and by virtue of this regulation vest in, the foundation body for the purposes of the schools comprising the group for which that body acts.

(5) Paragraph (4) does not apply in relation to a school where, following approval of proposals published in accordance with the Change of Category Regulations, the school is entering the group in a different category from its existing category.

8. The governing body of a school in or to be in the group which is not entering the group in a different category from its existing category shall notify the local education authority that the instrument of government for the school should identify the foundation body as the appointing body for the purpose of appointing foundation governors.

Membership of foundation bodies

9.—(1) The governing body of each school which proposes the establishment of the foundation body shall appoint a member of the governing body to be a governor member of that foundation body.

(2) The governing bodies of the schools which propose the establishment of the foundation body shall nominate persons to be community members.

(3) If a governor member ceases to hold office then—

- (a) the clerk shall notify all the governing bodies of schools in the group; and
- (b) the governing body who appointed that governor member shall appoint a new governor member at their next full meeting.

(4) If a community member ceases to hold office or there is a need to appoint a new community member because a school has joined the group, the clerk shall notify the governing bodies of all schools in the group. The governor members of the foundation body shall appoint a replacement or a new community member on the basis of nominations made by the governing bodies of schools in the group.

10.—(1) The quorum for a decision of the governing body of a school under regulation 9 shall be two-thirds (rounded up to a whole number) of the governors in post who are entitled to vote.

(2) The term of office of a member of a foundation body shall be four years but a member may be re-appointed.

(3) A person may not vote for his own appointment or re-appointment as a member of a foundation body.

(4) Vacancies must be filled by the next meeting of the foundation body or the meeting after if the vacancy arises fewer than three months before the next meeting.

(5) If a vacancy of a member is not filled then the Secretary of State may by order on such date as he may specify in the order dissolve the foundation body and the provisions of regulation 25(1) (d) and (e) and 25(2) to (5) shall apply to such a dissolution, save that the 6 months period referred to in paragraph 25(2) shall commence on such date as may be specified by the Secretary of State in writing.

Eligibility and disqualification

11.—(1) A foundation governor who has been appointed to a school in the group by a foundation body may not be a governor member of that foundation body and may not vote on appointments to the foundation body.

(2) A community member must—

- (a) have business or other interests in the local community;
- (b) not be a parent of a registered pupil, a member of the governing body, teaching or non-teaching staff or a registered pupil, at any school in the group;
- (c) not be an elected member of a local education authority which maintains any school in the group or a person employed by such an authority in their capacity as a local education authority; and
- (d) have attained the age of 18 years at the date of his appointment.

(3) A governor member of the foundation body shall cease to hold office on ceasing to be a member of the governing body of the school which appointed him.

(4) A member of the foundation body may not be an employee of that body.

Disqualification for holding office

12. Schedule 4 to these Regulations shall have effect in relation to the disqualification of a person for holding, or for continuing to hold, office as a member of a foundation body.

13. A member may resign at any time by notice in writing to the clerk.

Restrictions

14. A member of a foundation body shall receive no payment, other than reasonable and necessary out-of-pocket expenses, and may take no direct or indirect benefit from any contracts entered into by the foundation body or have any interest in any land held by the foundation body.

Clerk

15.—(1) The foundation body shall appoint a person to be the clerk to the foundation body.

(2) A member of a foundation body may not act as clerk except that, where the clerk fails to attend a meeting, the foundation body may appoint a member to be the clerk for the purposes of that meeting (but without prejudice to his position as a member).

Conduct and meetings

16.—(1) The foundation body shall—

- (a) elect a member as chairman who shall be elected (or re-elected) at the first ordinary meeting of each year;
- (b) define a quorum which cannot be less than half (rounded up to the nearest whole number) the total number of members of the foundation body when complete; and

- (c) keep minutes of the proceedings of meetings and make them available to the governing bodies of schools in the group on request.
- (2) At the first meeting the foundation body shall appoint foundation governors to schools in the group in accordance with the instruments of government of the schools in question.

Annual report and records

- 17.**—(1) The foundation body shall publish an annual report of its activities for the information of the governing bodies of the schools in the group setting out—
- (a) the names of each member, including any changes since the last annual report and identifying the chairman;
 - (b) a summary of the decisions and actions of the foundation body since the last annual report was published unless minutes of the foundation body’s meetings are published separately;
 - (c) a statement of any income and expenditure showing the balance as at the end of each financial year falling within the period of the report; and
 - (d) a statement of any significant disposals, purchases or gifts and of any outstanding liabilities at the end of each financial year falling within the period of the report.
- (2) The first report shall be issued within two years of the formation date and may deal with a period longer than a year.
- (3) Following the first report, annual reports must be issued no later than the next meeting after the end of the year being reported on.

Accounts

- 18.**—(1) The foundation body shall maintain accounts and ensure that they are audited by independent external auditors. The foundation body shall publish in each financial year a copy of the accounts for the previous financial year as audited together with a statement that they have been audited.
- (2) The foundation body shall comply within 1 month with a written request from any person that he be supplied with a copy of the body’s most recent accounts.

Information and records

- 19.**—(1) The foundation body shall provide the Secretary of State with such information as he requests from time to time.
- (2) The foundation body shall keep all records for at least 6 years.

Functions of foundation bodies

- 20.** Foundation bodies shall have the following functions—
- (a) to hold land and other property of schools in the group for the purposes of those schools;
 - (b) to appoint foundation governors to every school in the group; and
 - (c) to promote co-operation between schools in the group.

Additional powers

- 21.**—(1) Foundation bodies may in connection with their functions—

- (a) borrow such sums as the foundation body thinks fit and in connection with such borrowing, grant any mortgage, charge or other security over any land or other property of the foundation body;
 - (b) accept gifts of money, land or other property, and apply it or hold it for the purposes of the schools in the group;
 - (c) engage in fund raising so far as is compatible with their charitable status;
 - (d) acquire and dispose of any land or property;
 - (e) enter into contracts including contracts of employment;
 - (f) make standing orders for the management of the foundation body and any committees and for the conduct of their business;
 - (g) appoint committees;
 - (h) delegate the exercise of any powers to individual members or to committees, except those relating to the appointment of foundation governors, the granting of any security or the disposal of any land; and
 - (i) employ such staff (who cannot be members) as are necessary and to make all necessary provisions for those staff.
- (2) The power to borrow sums and grant security or to dispose of any land mentioned above may only be exercised with the written consent of the Secretary of State.

Joining a group after the initial establishment of the foundation body

22.—(1) A school may only join a group with the agreement of the governing bodies of all the schools already in the group.

(2) An application to the Secretary of State shall be made jointly in writing by the governing body of the school seeking to join the group and the foundation body and shall contain—

- (a) a statement that the governing bodies of all the schools in the group agree to the school joining the group; and
- (b) a statement of the category in which it is proposed that the school will enter the group or a statement that the school will enter in its existing category.

(3) The Secretary of State shall, if he considers it appropriate, declare in writing that the school forms part of the group as from such date and on satisfaction of such conditions as he specifies.

(4) Where the school joining the group is doing so under a different category from its existing category, the date specified in accordance with paragraph (3) above shall be the date on which it is intended that the change of category should take place in accordance with the Change of Category Regulations.

(5) The foundation body shall seek approval from the Secretary of State to the modification of the instrument of government.

(6) Subject to paragraph (7), on the date specified in accordance with paragraph (3) above any land, other than land held on trust, which immediately before that date is held by the governing body for the purposes of the school shall be transferred to, and by virtue of this regulation vest in, the foundation body for the purposes of the schools comprising the group for which that body acts.

(7) Paragraph (6) does not apply in relation to a school where, following approval of proposals published in accordance with the Change of Category Regulations, the school is joining the group in a different category from its existing category.

(8) On the date specified in accordance with paragraph (3) above, the governing body of the school joining the group shall appoint a member of their governing body to be a governor member of the foundation body.

(9) Where the school joining the group is not doing so under a different category from its existing category, the governing body shall apply to the local education authority for that authority to vary or replace the instrument of government for the school so as to name the foundation body as the appointing body for the purpose of appointing foundation governors and the local education authority shall do so in order that the appointment of foundation governors can take effect from the date that the school joins the group.

Leaving a group

23.—(1) If the governing body of a school wish that school to leave the group they shall serve a notice in writing of at least 3 months on the governing bodies of all the other schools in the group, on the foundation body and on the Secretary of State. On the expiry of that period the Secretary of State may declare in writing that the school leaves the group and on such date as he may specify.

(2) Where the school leaving the group is doing so under a different category from its existing category, the date specified in accordance with paragraph (1) of this regulation shall be the date on which it is intended that the change of category should take place in accordance with the Change of Category Regulations.

(3) Subject to paragraph (4), on the date specified in accordance with paragraph (1) above, any land which immediately before that date is held by the foundation body for the purposes of the schools in the group and used for the purposes of that school shall be transferred to, and by virtue of this regulation vest in, the governing body of the school.

(4) Paragraph (3) does not apply in relation to a school where, following approval of proposals published in accordance with the Change of Category Regulations, the school is leaving the group in a different category from its existing category.

(5) Where the school leaving the group is not doing so under a different category from its existing category, the governing body shall apply to the local education authority for the instrument of government of the school to be varied or replaced so that references to the foundation body can be removed as from the leaving date.

24. If a school leaves a group or is discontinued and the group still has three or more members the foundation body shall modify the instrument of government with the approval of the Secretary of State.

Winding-up of foundation bodies

25.—(1) If membership of a group would fall below three as a result of one or more schools leaving or being discontinued then—

- (a) the clerk shall inform the Secretary of State that this is the case;
- (b) the notice to leave given by the school or the publication of the proposals to discontinue shall be taken as a notice of dissolution;
- (c) the foundation body shall be dissolved on such date as the Secretary of State may by order specify;
- (d) the governing body of each school in the group (other than a school which is to be discontinued) shall apply to the local education authority for their own instrument of government to be modified (so that references to the foundation body can be removed as from the dissolution date); and
- (e) the governing body of a foundation school shall replace foundation governors with partnership governors as from the dissolution date unless by that date it has either applied to join another group or has applied, together with the governing bodies of two or more other schools, for the establishment of a foundation body.

(2) The governing body of a voluntary school must publish change of category proposals in accordance with the Change of Category Regulations to become a foundation or community school, if (as the case may be) within 6 months of the date of the notice to leave given by the school or within 6 months of the approval of the proposals to discontinue the school it has not—

- (a) formed or joined another group; or
- (b) established a foundation, other than a foundation body, which satisfies the Secretary of State that it can meet any requirements that may be specified from time to time under paragraph 4(2)(b) of Schedule 8 to the 1998 Act.

(3) At any time after the expiry of the relevant 6 months period referred to in paragraph (2) above, the Secretary of State can require the governing body of a school to publish proposals for the school to change to another specified category.

(4) Subject to paragraph (5), in the case of a school which is not being discontinued, on the dissolution date any land or other property which immediately before that date is held by the foundation body for the purposes of the schools in the group and used for the purposes of that school shall be transferred to, and by virtue of this regulation vest in, the governing body of the school.

(5) Paragraph (4) does not apply in relation to a school where, following approval of proposals published in accordance with the Change of Category Regulations, the school becomes on or before the dissolution date a school of another category.

Resolution of Disputes

26. Where there is a dispute between the governing bodies of schools in the group or between the governing body of one or more schools in the group and the foundation body then one of the parties to that dispute can apply in writing to the Secretary of State for him to determine the matter.

Use of Land

27. The transfer of land to a foundation body under these Regulations or under the Change of Category Regulations as modified by Schedule 1 to these Regulations shall not affect the rights of the governing body in relation to that land under Schedule 13 to the 1998 Act.

Transfers of land

28. Regulations 7(4), 22(6), 23(3) and 25(4) are subject to section 198 of the Education Reform Act 1988(4) (which with Schedule 10 to that Act makes further provision in relation to transfers of property, rights and liabilities), and references in that Schedule as applied by virtue of this regulation to the transfer date are (as the case may be) to the formation date, the joining date, the leaving date or the dissolution date.

Revocation

29. The Foundation Body Regulations 1999(5) are hereby revoked in relation to England.

(4) 1998 c. 40. Section 198 and Schedule 10 are amended by section 137 of and Schedule 29 to the 1998 Act.

(5) S.I. 1999/1502.

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20th October 2000

Jacqui Smith
Parliamentary Under-Secretary of State,
Department for Education and Employment

SCHEDULE 1

Regulation 4(1)

Modifications to provisions of the Change of Category Regulations

The provisions of the Change of Category Regulations shall have effect where a school proposes to enter, join or leave a group under a different category from its existing category, with the modifications set out below.

Modifications to Schedule 1

1. In Schedule 1, the modified paragraph 3(3) of Schedule 6 to the 1998 Act shall have effect as if—

(a) for sub-paragraphs (b) and (c) there were substituted—

“(b) the Secretary of State gives notice under regulation 7(1) of the Education (Foundation Body) (England) Regulations 2000⁽⁶⁾ (that a foundation body shall become operative and that the school shall form part of a group for which the foundation body shall act) by a date specified in the approval,

(c) the Secretary of State makes a declaration under regulation 22(3) of the Education (Foundation Body) (England) Regulations 2000 (that the school shall form part of a group for which a foundation body acts) by a date specified in the approval, or”;

(b) after sub-paragraph (c) there were inserted—

“(d) the Secretary of State makes a declaration under regulation 23(1) of the Education (Foundation Body) (England) Regulations 2000 (that the school shall leave a group for which a foundation body acts) by a date specified in the approval.”.

Modifications to Schedule 6

2. Schedule 6 shall have effect as if—

(a) after paragraph 1 there were inserted—

“1A Any reference in this Schedule, in relation to a school, to land being transferred to, and vesting in, a foundation body is a reference to its being transferred to, and vesting in, that body for the purposes of the schools comprising the group for which that body acts.”;

(b) for paragraph 3 there were substituted—

“3.—(1) This paragraph applies where—

(a) any proposals that a community school should become a foundation school have been approved under paragraph 3 of the modified Schedule 6 to the Act or a local education authority have determined under paragraph 4 to the modified Schedule 6 to the Act to implement any such proposals; and

(b) as from the implementation date the school (as a foundation school) will be a member of a group for which a foundation body acts.

(2) In such a case, any land, other than land held on trust, which, immediately before the implementation date, was held or used by a local authority for the purposes of the community school shall on that date be transferred to, and by virtue of this paragraph vest in, the foundation body.”;

(c) for paragraph 4 there were substituted—

(6) S.I. 2000/2872.

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“(4)

(1) This paragraph applies where—

- (a) any proposals that a community school should become a voluntary aided school have been approved under paragraph 3 of the modified Schedule 6 to the Act; and
- (b) as from the implementation date the school (as a voluntary aided school) will be a member of a group for which a foundation body acts.

(2) In such a case, any land other than playing fields or land held on trust which, immediately before the implementation date, was held or used by a local authority for the purposes of the community school shall on that date be transferred to, and by virtue of this paragraph vest in, the foundation body.”;

(d) for paragraph 5 there were substituted—

“5.—(1) This paragraph applies where—

- (a) any proposals that a community school should become a voluntary controlled school have been approved under paragraph 3 of the modified Schedule 6 to the Act; and
- (b) as from the implementation date the school (as a voluntary controlled school) will be a member of a group for which a foundation body acts.

(2) In such a case, any land other than playing fields or land held on trust which, immediately before the implementation date, was held or used by a local authority for the purposes of the community school shall on that date be transferred to, and by virtue of this paragraph vest in, the foundation body.”;

(e) in paragraph 6—

- (i) in sub-paragraph (2)(a) for “trustees of the school or the governing body” there were substituted “foundation body for the purposes of the schools in the group and used”,
- (ii) in sub-paragraph (2)(b) for “trustees of the school or the governing body” there were substituted “foundation body for the purposes of the schools in the group and used”, and
- (iii) in sub-paragraph (4)(a) for “trustees mentioned in that sub-paragraph or (as the case may be) the governing body” there were substituted “foundation body mentioned in that sub-paragraph, with the prior consent in writing of the governing body”;

(f) after paragraph 6 there were inserted—

“6A.—(1) This paragraph applies where—

- (a) any proposals that a foundation school which is not a member of a group for which a foundation body acts should become a voluntary aided or voluntary controlled school have been approved under paragraph 3 of the modified Schedule 6 to the Act; and
- (b) as from the implementation date the school (as a voluntary aided or controlled school) will be a member of such a group.

(2) In such a case any land, other than land held on trust, which, immediately before the implementation date, was held by the governing body for the purposes of the foundation school shall on that date be transferred to, and by virtue of this paragraph vest in, the foundation body.

6B.—(1) This paragraph applies where—

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- (a) any proposals that a foundation school which is a member of a group for which a foundation body acts should become a voluntary aided or voluntary controlled school have been approved under paragraph 3 of the modified Schedule 6 to the Act; and
- (b) as from the implementation date the school (as a voluntary aided or voluntary controlled school) will not be a member of such a group.

(2) In such a case any land which, immediately before the implementation date, was held by the foundation body for the purposes of the schools in the group and used for the purposes of the foundation school shall on that date be transferred to, and by virtue of this paragraph vest in, the trustees of the school, to be held by them on trust for the purposes of the school.”;

(g) in paragraph 7—

- (i) in sub-paragraph (2) (a) for “trustees of the school or the governing body” there were substituted “foundation body for the purposes of the schools in the group and used”,
- (ii) in sub-paragraph 2 (b) for “trustees of the school or the governing body” there were substituted “foundation body for the purposes of the schools in the group and used”, and
- (iii) in sub-paragraph (4) (a) for “trustees mentioned in that sub-paragraph or (as the case may be) the governing body” there were substituted “foundation body mentioned in that sub-paragraph, with the prior consent in writing of the governing body”;

(h) for paragraph 8 there were substituted—

“8.—(1) This paragraph applies where—

- (a) any proposals that a voluntary aided school which is not a member of a group for which a foundation body acts should become a foundation school have been approved under paragraph 3 of the modified Schedule 6 to the Act; and
- (b) as from the implementation date the school (as a foundation school) will be a member of such a group.

(2) In such a case any land, other than land held on trust, which, immediately before the implementation date, was held by the governing body or the local education authority for the purposes of the voluntary aided school shall on that date be transferred to, and by virtue of this paragraph vest in, the foundation body.

8A.—(1) This paragraph applies where—

- (a) any proposals that a voluntary aided school which is a member of a group for which a foundation body acts should become a foundation school have been approved under paragraph 3 of the modified Schedule 6 to the Act; and
- (b) as from the implementation date the school (as a foundation school) will not be a member of such a group.

(2) In such a case any land which, immediately before the implementation date, was held by the foundation body for the purposes of the schools in the group and used for the purposes of the voluntary aided school or was held or used by the local education authority for the purposes of that school shall on that date be transferred to, and by virtue of this paragraph vest in,—

- (a) the trustees of the school, to be held by them on trust for the purposes of the school; or
- (b) if the school has no trustees, the governing body.”;

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(i) after paragraph 8A there were inserted—

“8B.—(1) This paragraph applies where—

(a) any proposals that a voluntary aided school or a voluntary controlled school which is not a member of a group for which a foundation body acts should become (as the case may be) a voluntary controlled or a voluntary aided school have been approved under paragraph 3 of the modified Schedule 6 to the Act; and

(b) as from the implementation date the school will be a member of such a group.

(2) In such a case any land, other than land held on trust, which, immediately before the implementation date, was held by the governing body for the purposes of the school shall on that date be transferred to, and by virtue of this paragraph vest in, the foundation body.

8C.—(1) This paragraph applies where—

(a) any proposals that a voluntary aided school or a voluntary controlled school which is a member of a group for which a foundation body acts should become (as the case may be) a voluntary controlled school or a voluntary aided school have been approved under paragraph 3 of the modified Schedule 6 to the Act; and

(b) as from the implementation date the school will not be a member of such a group.

(2) In such a case any land which, immediately before the implementation date, was held by the foundation body for the purposes of the schools in the group and used for the purposes of the school shall on that date be transferred to, and by virtue of this paragraph vest in, the trustees of the school to be held by them on trust for the purposes of the school.”;

(j) in paragraph 9—

(i) in sub-paragraph (2)(a) for “trustees of the school or the governing body” there were substituted “foundation body for the purposes of the schools in the group and used”,

(ii) in sub-paragraph (2)(b) for “trustees of the school or the governing body” there were substituted “foundation body for the purposes of the schools in the group and used”, and

(iii) in sub-paragraph (4)(a) for “trustees mentioned in that sub-paragraph or (as the case may be) the governing body” there were substituted “foundation body mentioned in that sub-paragraph, with the prior consent in writing of the governing body”;

(k) for paragraph 10 there were substituted—

“10.—(1) This paragraph applies where—

(a) any proposals that a voluntary controlled school which is not a member of a group for which a foundation body acts should become a foundation school have been approved under paragraph 3 of the modified Schedule 6 to the Act; and

(b) as from the implementation date the school (as a foundation school) will be a member of such a group.

(2) In such a case, any land, other than land held on trust, which, immediately before the implementation date, was held by the governing body or the local education authority for the purposes of the voluntary controlled school shall on that date be transferred to, and by virtue of this paragraph vest in, the foundation body.

10A.—(1) This paragraph applies where—

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- (a) any proposals that a voluntary controlled school which is a member of a group for which a foundation body acts should become a foundation school have been approved under paragraph 3 of the modified Schedule 6 to the Act; and
 - (b) as from the implementation date the school (as a foundation school) will not be a member of such a group.
- (2) In such a case any land which, immediately before the implementation date, was held by the foundation body for the purposes of the schools in the group and used for the purposes of the voluntary controlled school or was held by the local authority for the purposes of that school shall on that date be transferred to, and by virtue of this paragraph vest in,—
- (a) the trustees of the school, to be held by them on trust for the purposes of the school; or
 - (b) if the school has no trustees, the governing body.”;
- (l) after paragraph 12 there were inserted—
- “**12A.**—(1) This paragraph applies where—
- (a) any proposals that a foundation, voluntary aided or voluntary controlled school which is a member of a group for which a foundation body acts should become a school of another category, being (as the case may be) a foundation, voluntary aided or voluntary controlled school, have been approved under paragraph 3 of the modified Schedule 6 to the Act; and
 - (b) as from the implementation date the school will be a member of a group for which another foundation body acts.
- (2) In such a case any land which, immediately before the implementation date, was held by the foundation body mentioned in sub-paragraph (1)(a) above for the purposes of the schools in the group and used for the purposes of the school shall on that date be transferred to, and by virtue of this paragraph vest in, the foundation body mentioned in sub-paragraph (1)(b) above”;
- (m) in paragraph 14 (3)—
- (i) for “trustees who hold” there were substituted “foundation body which holds”,
 - (ii) In sub-paragraph (a) for “trustees” there were substituted “foundation body”, and
 - (iii) in sub-paragraph (5)(a) for “trustees mentioned in that sub-paragraph” there were substituted “foundation body mentioned in that sub-paragraph, with the prior consent in writing of the governing body”;
- (n) in paragraph 15(1)(c) after “governing body” there were inserted “, foundation body”.

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SCHEDULE 2

Regulation 4(2)

Provisions of Schedule 6 to the Change of Category Regulations, applied by regulation 4(1), as modified by Schedule 1 TRANSFER OF LAND

PART I

Effects of transfers under this Schedule

1. Where any land is transferred to and vests in any body in accordance with this Schedule, any rights or liabilities—

- (a) enjoyed or incurred by the transferor in connection with the land, and
- (b) subsisting immediately before the implementation date,

shall also be transferred to, and by virtue of these Regulations, vest in, that body.

1A. Any reference in this Schedule, in relation to a school, to land being transferred to, and vesting in, a foundation body is a reference to its being transferred to, and vesting in, that body for the purposes of the schools comprising the group for which that body acts.

2. This Schedule is subject to section 198 of the Education Reform Act 1988(7) (which with Schedule 10 to that Act makes further provision in relation to transfers of property, rights and liabilities), and references in that Schedule as applied by virtue of this paragraph to the transfer date are to the implementation date in relation to the relevant change of category.

PART II

Rules relating to transfers

3.—(1) This paragraph applies where—

- (a) any proposals that a community school should become a foundation school have been approved under paragraph 3 of the modified Schedule 6 to the Act or a local education authority have determined under paragraph 4 to the modified Schedule 6 to the Act to implement any such proposals; and
- (b) as from the implementation date the school (as a foundation school) will be a member of a group for which a foundation body acts.

(2) In such a case, any land, other than land held on trust, which, immediately before the implementation date, was held or used by a local authority for the purposes of the community school shall on that date be transferred to, and by virtue of this paragraph vest in, the foundation body.

4.—(1) This paragraph applies where—

- (a) any proposals that a community school should become a voluntary aided school have been approved under paragraph 3 of the modified Schedule 6 to the Act; and
- (b) as from the implementation date the school (as a voluntary aided school) will be a member of a group for which a foundation body acts.

(7) 1988 c. 40. Section 198 and Schedule 10 are amended by section 137 of and Schedule 29 to the Act.

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(2) In such a case, any land other than playing fields or land held on trust which, immediately before the implementation date, was held or used by a local authority for the purposes of the community school shall on that date be transferred to, and by virtue of this paragraph vest in, the foundation body.

5.—(1) This paragraph applies where—

- (a) any proposals that a community school should become a voluntary controlled school have been approved under paragraph 3 of the modified Schedule 6 to the Act; and
- (b) as from the implementation date the school (as a voluntary controlled school) will be a member of a group for which a foundation body acts.

(2) In such a case, any land other than playing fields or land held on trust which, immediately before the implementation date, was held or used by a local authority for the purposes of the community school shall on that date be transferred to, and by virtue of this paragraph vest in, the foundation body.

6.—(1) This paragraph applies where any proposals that a foundation school should become a community school have been approved under paragraph 3 of the modified Schedule 6 to the Act.

(2) In such a case—

- (a) any publicly funded land which, immediately before the implementation date, was held by the foundation body for the purposes of the schools in the group and used for the purposes of the foundation school shall on that date be transferred to, and by virtue of this paragraph vest in, the local education authority; and
- (b) any other land which, immediately before that date, was held by the foundation body for the purposes of the schools in the group and used for the purposes of the foundation school shall be transferred to and vest in the local education authority in accordance with a transfer agreement.

(3) In this paragraph “publicly funded land” means land which was acquired—

- (a) from a local authority under a transfer under section 201(1)(a) of the Education Act 1996⁽⁸⁾;
- (b) from the Funding Agency for Schools;
- (c) wholly by means of any maintenance, special purpose or capital grant (within the meaning of Chapter VI of Part III of the Education Act 1996);
- (d) wholly by means of any grant paid under regulation 2 of the Education (Schedule 32 to the School Standards and Framework Act 1998) (England) (No. 2) Regulations 1999⁽⁹⁾;
- (e) wholly by means of expenditure incurred for the purposes of the school and treated by the local education authority as expenditure of a capital nature;
- (f) under a transfer under this Schedule; or
- (g) wholly with the proceeds of disposal of any land acquired as mentioned in any of paragraphs (a) to (f).

(4) In this paragraph “transfer agreement” means an agreement—

- (a) made for the purposes of sub-paragraph (2)(b) between the local education authority and the foundation body mentioned in that sub-paragraph, with the prior consent in writing of the governing body, and

⁽⁸⁾ 1996 c. 56.

⁽⁹⁾ S.I. 1999/2271.

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- (b) providing for the land in question to be transferred to, and vest in, the authority on the implementation date, whether or not in consideration of the payment by the authority of such amount as may be agreed between the parties.

6A.—(1) This paragraph applies where—

- (a) any proposals that a foundation school which is not a member of a group for which a foundation body acts should become a voluntary aided or voluntary controlled school have been approved under paragraph 3 of the modified Schedule 6 to the Act; and
- (b) as from the implementation date the school (as a voluntary aided or controlled school) will be a member of such a group.

(2) In such a case any land, other than land held on trust, which, immediately before the implementation date, was held by the governing body for the purposes of the foundation school shall on that date be transferred to, and by virtue of this paragraph vest in, the foundation body.

6B.—(1) This paragraph applies where—

- (a) any proposals that a foundation school which is a member of a group for which a foundation body acts should become a voluntary aided or voluntary controlled school have been approved under paragraph 3 of the modified Schedule 6 to the Act; and
- (b) as from the implementation date the school (as a voluntary aided or voluntary controlled school) will not be a member of such a group.

(2) In such a case any land which, immediately before the implementation date, was held by the foundation body for the purposes of the schools in the group and used for the purposes of the foundation school shall on that date be transferred to, and by virtue of this paragraph vest in, the trustees of the school, to be held by them on trust for the purposes of the school.

7.—(1) This paragraph applies where any proposals that a voluntary aided school should become a community school have been approved under paragraph 3 of the modified Schedule 6 to the Act.

(2) In such a case—

- (a) any publicly funded land which, immediately before the implementation date, was held by the foundation body for the purposes of the schools in the group and used for the purposes of the voluntary aided school shall on that date be transferred to, and by virtue of this paragraph vest in, the local education authority; and
- (b) any other land which, immediately before that date, was held by the foundation body for the purposes of the schools in the group and used for the purposes of the voluntary aided school shall be transferred to and vest in the local education authority in accordance with a transfer agreement.

(3) In this paragraph “publicly funded land” means land which was acquired—

- (a) from a local authority under a transfer under section 201(1)(a) of the Education Act 1996;
- (b) from the Funding Agency for Schools;
- (c) wholly by means of any maintenance, special purpose or capital grant (within the meaning of Chapter VI of Part III of the Education Act 1996);
- (d) wholly by means of any grant paid under regulation 2 of the Education (Schedule 32 to the School Standards and Framework Act 1998) (England) (No. 2) Regulations 1999;
- (e) wholly by means of expenditure incurred for the purposes of the school and treated by the local education authority as expenditure of a capital nature;
- (f) under a transfer under this Schedule; or

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(g) wholly with the proceeds of disposal of any land acquired as mentioned in any of paragraphs (a) to (f).

(4) In this paragraph “transfer agreement” means an agreement—

(a) made for the purposes of sub-paragraph 2(b) between the local education authority and the foundation body mentioned in that sub-paragraph, with the prior consent in writing of the governing body, and

(b) providing for the land in question to be transferred to, and vest in, the authority on the implementation date, whether or not in consideration of the payment by the authority of such amount as may be agreed between the parties.

8.—(1) This paragraph applies where—

(a) any proposals that a voluntary aided school which is not a member of a group for which a foundation body acts should become a foundation school have been approved under paragraph 3 of the modified Schedule 6 to the Act; and

(b) as from the implementation date the school (as a foundation school) will be a member of such a group.

(2) In such a case any land, other than land held on trust, which, immediately before the implementation date, was held by the governing body or the local education authority for the purposes of the voluntary aided school shall on that date be transferred to, and by virtue of this paragraph vest in, the foundation body.

8A.—(1) This paragraph applies where—

(a) any proposals that a voluntary aided school which is a member of a group for which a foundation body acts should become a foundation school have been approved under paragraph 3 of the modified Schedule 6 to the Act; and

(b) as from the implementation date the school (as a foundation school) will not be a member of such a group.

(2) In such a case any land which, immediately before the implementation date, was held by the foundation body for the purposes of the schools in the group and used for the purposes of the voluntary aided school or was held or used by the local education authority for the purposes of that school shall on that date be transferred to, and by virtue of this paragraph vest in,—

(a) the trustees of the school, to be held by them on trust for the purpose of the school; or

(b) if the school has no trustees, the governing body.

8B.—(1) This paragraph applies where—

(a) any proposals that a voluntary aided school or a voluntary controlled school which is not a member of a group for which a foundation body acts should become (as the case may be) a voluntary controlled or a voluntary aided school have been approved under paragraph 3 of the modified Schedule 6 to the Act; and

(b) as from the implementation date the school will be a member of such a group.

(2) In such a case any land, other than land held on trust, which, immediately before the implementation date, was held by the governing body for the purposes of the school shall on that date be transferred to, and by virtue of this paragraph vest in, the foundation body.

8C.—(1) This paragraph applies where—

(a) any proposals that a voluntary aided or a voluntary controlled school which is a member of a group for which a foundation body acts should become (as the case may be) a voluntary

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controlled school or a voluntary aided school have been approved under paragraph 3 of the modified Schedule 6 to the Act; and

(b) as from the implementation date the school will not be a member of such a group.

(2) In such a case any land which, immediately before the implementation date, was held by the foundation body for the purposes of the schools in the group and used for the purposes of the school shall on that date be transferred to, and by virtue of this paragraph vest in, the trustees of the school to be held by them on trust for the purposes of the school.

9.—(1) This paragraph applies where any proposals that a voluntary controlled school should become a community school have been approved under paragraph 3 of the modified Schedule 6 to the Act.

(2) In such a case—

(a) any publicly funded land which, immediately before the implementation date, was held by the foundation body for the purposes of the schools in the group and used for the purposes of the voluntary controlled school shall on that date be transferred to, and by virtue of this paragraph vest in, the local education authority; and

(b) any other land which, immediately before that date, was held by the foundation body for the purposes of the schools in the group and used for the purposes of the voluntary controlled school shall be transferred to and vest in the local education authority in accordance with a transfer agreement.

(3) In this paragraph “publicly funded land” means land which was acquired—

(a) from a local authority under a transfer under section 201(1)(a) of the Education Act 1996;

(b) from the Funding Agency for Schools;

(c) wholly by means of any maintenance, special purpose or capital grant (within the meaning of Chapter VI of Part III of the Education Act 1996);

(d) wholly by means of any grant paid under regulation 2 of the Education (Schedule 32 to the School Standards and Framework Act 1998) (England) (No. 2) Regulations 1999;

(e) wholly by means of expenditure incurred for the purposes of the school and treated by the local education authority as expenditure of a capital nature;

(f) under a transfer under this Schedule; or

(g) wholly with the proceeds of disposal of any land acquired as mentioned in any of paragraphs (a) to (f).

(4) In this paragraph “transfer agreement” means an agreement—

(a) made for the purposes of sub-paragraph (2)(b) between the local education authority and the foundation body mentioned in that sub-paragraph, with the prior consent in writing of the governing body, and

(b) providing for the land in question to be transferred to, and vest in, the authority on the implementation date, whether or not in consideration of the payment by the authority of such amount as may be agreed between the parties.

10.—(1) This paragraph applies where—

(a) any proposals that a voluntary controlled school which is not a member of a group for which a foundation body acts should become a foundation school have been approved under paragraph 3 of the modified Schedule 6 to the Act; and

(b) as from the implementation date the school (as a foundation school) will be a member of such a group.

(2) In such a case, any land, other than land held on trust, which, immediately before the implementation date, was held by the governing body or the local education authority for the purposes of the voluntary controlled school shall on that date be transferred to, and by virtue of this paragraph vest in, the foundation body.

10A.—(1) This paragraph applies where—

- (a) any proposals that a voluntary controlled school which is a member of a group for which a foundation body acts should become a foundation school have been approved under paragraph 3 of the modified Schedule 6 to the Act; and
- (b) as from the implementation date the school (as a foundation school) will not be a member of such a group.

(2) In such a case any land which, immediately before the implementation date, was held by the foundation body for the purposes of the schools in the group and used for the purposes of the voluntary controlled school or was held by the local authority for the purposes of that school shall on that date be transferred to, and by virtue of this paragraph vest in,—

- (a) the trustees of the school, to be held by them on trust for the purposes of the school; or
- (b) if the school has no trustees, the governing body.

11.—(1) This paragraph applies where any proposals that a community special school should become a foundation special school have been approved under paragraph 3 of the modified Schedule 6 to the Act or a local education authority have determined under paragraph 4 of the modified Schedule 6 to the Act to implement any such proposals.

(2) In such a case, any land which, immediately before the implementation date, was held or used by a local authority for the purposes of the community special school shall on that date be transferred to, and by virtue of this paragraph vest in,—

- (a) the trustees of the school, to be held by them on trust for the purposes of the school; or
- (b) if the school has no trustees, the governing body.

12.—(1) This paragraph applies where any proposals that a foundation special school should become a community special school have been approved under paragraph 3 of the modified Schedule 6 to the Act.

(2) In such a case—

- (a) any publicly funded land which, immediately before the implementation date, was held by the trustees of the school or the governing body for the purposes of the foundation special school shall on that date be transferred to, and by virtue of this paragraph vest in, the local education authority; and
- (b) any other land which, immediately before that date, was held by the trustees of the school or the governing body for the purposes of the foundation special school shall be transferred to and vest in the local education authority in accordance with a transfer agreement.

(3) In this paragraph “publicly funded land” means land which was acquired—

- (a) from a local authority under a transfer under section 201(1)(a) of the Education Act 1996;
- (b) from the Funding Agency for Schools;
- (c) wholly be means of any maintenance, special purpose or capital grant (within the meaning of Chapter VI of Part III of the Education Act 1996);
- (d) wholly by means of any grant paid under regulation 2 of the Education (Schedule 32 to the School Standards and Framework Act 1998) (England) (No. 2) Regulations 1999;

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- (e) wholly by means of expenditure incurred for the purposes of the school and treated by the local education authority as expenditure of a capital nature;
 - (f) under a transfer under this Schedule; or
 - (g) wholly with the proceeds of disposal of any land acquired as mentioned in any of paragraphs (a) to (f).
- (4) In this paragraph “transfer agreement” means an agreement—
- (a) made for the purposes of sub-paragraph (2)(b) between the local education authority and the trustees mentioned in that sub-paragraph or (as the case may be) the governing body, and
 - (b) providing for the land in question to be transferred to, and vest in, the authority on the implementation date, whether or not in consideration of the payment by the authority of such amount as may be agreed between the parties.

12A.—(1) This paragraph applies where—

- (a) any proposals that a foundation, voluntary aided or voluntary controlled school which is a member of a group for which a foundation body acts should become a school of another category, being (as the case may be) a foundation, voluntary aided or voluntary controlled school, have been approved under paragraph 3 of the modified Schedule 6 to the Act; and
- (b) as from the implementation date the school will be a member of a group for which another foundation body acts.

(2) In such a case any land which, immediately before the implementation date, was held by the foundation body mentioned in sub-paragraph (1)(a) above for the purposes of the schools in the group and used for the purposes of the school shall on that date be transferred to, and by virtue of this paragraph vest in, the foundation body mentioned in sub-paragraph (1)(b) above.

PART III

Outstanding transfers

- 13.** Where immediately before the implementation date in relation to any change of category—
- (a) any land vested in a local authority is by virtue of any statutory provision required to be transferred to the governing body or any trustees of a school, but
 - (b) the land has not yet been so transferred,

Part II of this Schedule shall apply to the school as if it had been so transferred by that time.

PART IV

Transfer of rights to use land

14.—(1) Where paragraph 3, 4, 5 or 11 applies to a school and any land held by a person or body other than a local authority was, immediately before the implementation date, used for the purposes of the school, any rights or liabilities—

- (a) enjoyed or incurred by the local authority in connection with the use of the land, and
- (b) subsisting immediately before the implementation date,

shall on that date be transferred to, and by virtue of these Regulations vest in, the trustees of the school or, if there are no trustees, the governing body.

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(2) Where paragraph 6, 7, 9 or 12 applies to a school and any land held by a person or body other than the governing body of the school was, immediately before the implementation date, used for the purposes of the school, any rights and liabilities—

- (a) enjoyed or incurred by the governing body in connection with the use of the land, and
- (b) subsisting immediately before the implementation date,

shall on that date be transferred to, and by virtue of these Regulations vest in, the local education authority.

(3) Where paragraph 6, 7, 9 or 12 applies to a school and any land held by a person or body other than any foundation body which holds any land for the purposes of the school was, immediately before the implementation date, used for the purposes of the school, any rights or liabilities—

- (a) enjoyed or incurred by any such foundation body in connection with the use of the land, and
- (b) subsisting immediately before the implementation date,

shall on that date be transferred to, and vest in, the local education authority in accordance with a transfer agreement.

(4) Nothing in this paragraph applies in relation to land to which any of paragraphs 3 to 12 apply.

(5) In this paragraph—

“transfer agreement” means an agreement—

- (a) made for the purposes of sub-paragraph (3) between the local education authority and the foundation body mentioned in that sub-paragraph, with the prior consent in writing of the governing body, and
- (b) providing for the rights or liabilities in question to be transferred to, and vest in, the authority on the implementation date, whether or not in consideration of the payment by the authority of such amount as may be agreed between the parties.

PART V

Land excluded from transfers and restrictions on disposal of land when proposals are pending

15.—(1) Nothing in Part II of this Schedule has the effect of transferring to, or vesting in, any body—

- (a) any land, rights or liabilities excluded under sub-paragraph (2) or (3),
- (b) any rights or liabilities under a contract of employment,
- (c) any liability of a local authority, governing body, foundation body or trustees in respect of the principal of, or any interest on, any loan, or
- (d) any liability in tort.

(2) If before the implementation date in relation to any change of category—

- (a) the prospective transferee and transferor have agreed in writing that any land should be excluded from the operation of Part II of this Schedule, and
- (b) the Secretary of State has given his written approval of the agreement,

the land (and any rights or liabilities relating to it) shall be so excluded.

(3) If in default of agreement under sub-paragraph (2)—

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- (a) the prospective transferee or transferor have applied to the Secretary of State to exclude any land from the operation of Part II of this Schedule, and
 - (b) the Secretary of State has by order directed its exclusion,
- the land (and any rights or liabilities relating to it) shall be so excluded.

(4) An agreement under sub-paragraph (2) may provide for the land to be used or held for the purposes of the school (as a school of a new category) on such terms as may be specified in or determined in accordance with the agreement, and directions under sub-paragraph (3)—

- (a) may confer any rights or impose any liabilities that could have been conferred or imposed by such an agreement, and
- (b) shall have effect as if contained in such an agreement.

(5) In this paragraph—

“new category” means one of the categories set out in section 20(1) of the Act;

“the prospective transferee”, in relation to any land, means the body to whom, apart from sub-paragraph (2) or (3), the land would fall to be transferred under Part II of this Schedule; and “the prospective transferor” shall be construed accordingly.

16.—(1) For the purposes of Part V of this Schedule the procedure for becoming a school of another category is pending in relation to a school when it has been initiated by the governing body in relation to the school on any occasion and not terminated (as initiated on that occasion).

(2) For those purposes, that procedure is to be regarded as initiated in relation to a school on any occasion on receipt by the local education authority of notice of a meeting of the governing body at which a motion for a resolution to consult about proposals to change category is to be considered.

(3) For those purposes, that procedure, as initiated on any occasion, is to be regarded as terminated—

- (a) if the meeting is not held;
- (b) if the meeting is held but the motion is not moved or, though the motion is moved, the resolution is not passed;
- (c) if consultation is not initiated in accordance with section 28(5) of the Act as modified by these Regulations;
- (d) if the proposals in respect of which consultation was initiated are not published;
- (e) if the said proposals are rejected by the relevant school organisation committee or the adjudicator or withdrawn; or
- (f) on the date of implementation of such proposals.

17.—(1) During any period when the procedure for becoming a school of another category is pending in relation to a school, a local authority shall not—

- (a) dispose of any land used wholly or partly for the purposes of the school, or
- (b) enter into a contract to dispose of any such land,

except with the consent of the Secretary of State.

(2) Sub-paragraph (1) does not apply in relation to a disposal which is made in pursuance of a contract entered into, or an option granted, before the procedure for becoming a school of another category was initiated in relation to the school.

(3) Where proposals for becoming a school of another category are approved, the procedure for becoming a school of another category is not to be treated as terminated for the purposes of this paragraph in relation to any land, where agreement is required to be reached under paragraph 2(1)

of Schedule 10 to the Education Reform Act 1988 (identification of property, etc.) on any matter relating to that land, until the date on which that matter is finally determined.

(4) A disposal or contract shall not be invalid or void by reason only that it has been made or entered into in contravention of this paragraph and a person acquiring land, or entering into a contract to acquire land, from a local authority shall not be concerned to enquire whether any consent required by this paragraph has been given.

(5) This paragraph has effect notwithstanding anything in section 123 of the Local Government Act 1972⁽¹⁰⁾ (general power to dispose of land) or in any other enactment; and the consent required by this paragraph shall be in addition to any consent required by subsection (2) of that section or by any other enactment.

(6) In this paragraph—

- (a) references to disposing of land include granting or disposing of any interest in land, and
- (b) references to entering into a contract to dispose of land include granting an option to acquire land or such an interest.

18.—(1) During any period when the procedure for becoming a school of another category is pending in relation to a school, a local authority shall not, in relation to any land of the authority used or held for the purposes of the school, take without the consent of the Secretary of State any action by which the land ceases to any extent to be so used or held.

(2) If in the case of any school—

- (a) proposals that a school become a school of another category are approved, and
- (b) a local authority have, in relation to any land, taken any action in contravention of subparagraph (1),

the provisions relating to the transfer of property shall have effect as if, immediately before the implementation date in relation to the change of category, the property were used or held by the authority for the purposes for which it was used or held when the procedure for becoming a school of another category was initiated.

(3) In this paragraph—

- (a) “the provisions relating to the transfer of property” means this Schedule and section 198 of, and Schedule 10 to, the Education Reform Act 1988, and
- (b) the references to taking action include appropriating property for any purpose.

SCHEDULE 3

Regulation 5(3)

Instrument of government

The instrument of government for adoption by the foundation body shall state—

- (a) the name of the foundation body;
- (b) the names of the schools in the group;
- (c) the composition of the foundation body consisting of—
 - (i) one governor member appointed by each school in the group, and
 - (ii) a number of community members equal to one less than the total number of governor members;

⁽¹⁰⁾ 1972 c. 70.

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- (d) provisions as to meetings (the first meeting shall be held within 12 months from the formation date and with no more than 13 months between each meeting); and
- (e) any particular character, mission or ethos for the group accepted by its members.

SCHEDULE 4

Regulation 12

Disqualification for holding office

Mental disorder

1. A person shall be disqualified for holding, or for continuing to hold, office as a member of a foundation body at any time when he is liable to be detained under the Mental Health Act 1983⁽¹¹⁾.

Bankruptcy

2. A person shall be disqualified for holding, or for continuing to hold, office as a member of a foundation body if—

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

Disqualification of company directors

3. A person shall be disqualified for holding, or for continuing to hold, office as a member of a foundation body at any time when he is subject to a disqualification order under the Company Directors Disqualification Act 1986⁽¹²⁾ or to an order made under section 429(2)(b) of the Insolvency Act 1986⁽¹³⁾ (failure to pay under county court administration order).

Disqualification of charity trustees

4. A person shall be disqualified for holding, or for continuing to hold, office as a member of a foundation body if—

- (a) he has been removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commissioners or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity for which he was responsible or to which he was privy, or which he by his conduct contributed to or facilitated; or
- (b) he has been removed, under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990⁽¹⁴⁾ (powers of Court of Session to deal with management of charities), from being concerned in the management or control of any body.

⁽¹¹⁾ 1983 c. 20.

⁽¹²⁾ 1986 c. 46.

⁽¹³⁾ 1986 c. 45.

⁽¹⁴⁾ 1990 c. 40.

Persons whose employment is prohibited or restricted

5.—(1) A person shall be disqualified for holding, or for continuing to hold, office as a member of a foundation body at any time when he is included in the list of teachers and workers with children or young persons whose employment is prohibited or restricted.

(2) In sub-paragraph (1), “the list” means the list kept for the purposes of regulations made under section 218(6) of the Education Reform Act 1988⁽¹⁵⁾

Persons disqualified for being proprietors of independent schools

6. A person shall be disqualified for holding, or for continuing to hold, office as a member of a foundation body at any time when he is, by virtue of an order made under section 470 or 471 of the Education Act 1996, disqualified for being the proprietor of any independent school or for being a teacher or other employee in any school.

Criminal convictions

7.—(1) Subject to sub-paragraph (5) below, a person shall be disqualified for holding, or for continuing to hold, office as a member of a foundation body where any of sub-paragraphs (2) to (4) or (6) below apply to him.

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

- (a) within the period of five years ending with the date immediately preceding the date on which his appointment would otherwise have taken effect; or
- (b) since his appointment,

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

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

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

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

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

- (a) within the period of five years ending with the date immediately preceding the date on which his appointment would otherwise have taken effect; or
- (b) since his appointment,

he has been convicted under section 547 of the Education Act 1996 (nuisance and disturbance on education premises) of an offence which took place on the premises of a school maintained by a local education authority or a grant maintained school and has been sentenced to a fine.

⁽¹⁵⁾ Section 218 of the 1988 Act has been amended by paragraph 17 of Schedule 30 to the 1998 Act.

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

Failure to attend meetings

8.—(1) A member of a foundation body who, without the consent of the foundation body concerned, has failed to attend two consecutive meetings thereof, shall, from the day after the second meeting, be disqualified for continuing to hold office as a member of that foundation body.

(2) Where a member of a foundation body has sent an apology to the clerk before a meeting which he does not propose to attend, the minutes of the meeting shall record the foundation body's consent or otherwise to his absence and a copy of the minutes shall be sent to the member concerned at his normal place of residence.

(3) A member of a foundation body who has been disqualified under sub-paragraph (1) shall not be qualified for nomination or appointment as a member of that foundation body during the twelve months immediately following his disqualification under sub-paragraph (1).

Notice to clerk

9. Where, by virtue of any of paragraphs 1 to 7 of this Schedule, a member becomes disqualified for holding, or for continuing to hold, office as a member, he shall give written notice of that fact to the clerk.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for and in connection with the establishment, membership, functions and winding up of foundation bodies and the steps to be taken in connection with schools joining or leaving a group of schools for which a foundation body acts.

A foundation body is a body corporate established under section 21 of the School Standards and Framework Act 1998 to perform in relation to three or more schools ("the group") each of which is either a foundation or a voluntary school, the following functions, namely—

- (a) to hold property for those schools for the purposes of the schools;
- (b) to appoint foundation governors for those schools; and
- (c) to promote co-operation between schools in the group.

Regulation 4 provides that the Education (Change of Category of Maintained Schools) (England) Regulations 2000 shall apply, with the modifications set out in Schedule 1, where a school proposes to enter or leave a group under a different category from its existing category. Schedule 2 shows the effect of these modifications on Schedule 6 to the Change of Category Regulations.

Regulation 29 revokes the Foundation Body Regulations 1999 in relation to England.