

20. New Schools and Temporary Governing Bodies

Where a decision has been taken to establish a new maintained school, there will be a requirement to establish:

- a shadow or temporary governing body in advance of the incorporation of the school; and
- a permanent governing body with effect from the date of establishment of the school.

Background

1. New schools may be established for various reasons, such as a result of the amalgamation of two or more existing schools or where a new school is needed to meet growing demand for places. In all cases the maintaining LA is responsible for making the arrangements for setting up a temporary governing body.

2. The New Maintained Schools (Wales) Regulations 2005 SI No 2912/2005 sets out the regulations for the government of new maintained schools in Wales.

3. The Regulations prescribe the timescale for the establishment of temporary or shadow governing bodies, the number and types of governors and how they are to be nominated and appointed.

Arrangements Made in Anticipation of Approval of Proposals

4. Regulation 5 of the New Maintained Schools (Wales) Regulations 2005 provides that, where any proposals to establish a new maintained school are published, the LA, may make arrangements under Section 34 of the Education Act 2002, to establish a temporary governing body in anticipation of approval.

VC 5. If the school to be established is to be a voluntary controlled school, the LA must consult the promoters as to:

- whether the power given to the LA to make arrangements in anticipation of approval should be exercised; and
- if the LA proposes to exercise it, as to the date on which the arrangements should be made.

VA F 6. If the school to be established is to be a voluntary aided or foundation school, the LA and the promoters must consider:

- whether the power given to the LA to make arrangements in anticipation of approval should be exercised; and

- where they agree that it should, on what date the arrangements should be made.

VA
VC
F

7. Where proposals to establish a foundation school or a voluntary school are published by promoters, the maintaining LA must not make arrangements relating to temporary foundation governors for the school without the agreement of the promoters.

8. In the event of any disagreement between the LA and the promoters regarding the arrangements in Paragraphs 4, 5 or 6, either party may refer the issue to the Welsh Ministers, who must give such direction as he/she thinks fit.

Experience Required of Temporary Governors

9. Any person responsible for the appointment of a temporary governor must take into consideration the desirability of that person being suitably qualified.

10. A person is considered as suitably qualified if he or she has served as a governor or temporary governor of any maintained school or, where existing schools are to close and pupils are to transfer to a new school, he or she has served as a governor or temporary governor of the school(s) which are to close.

Categories of Temporary Governor

11. The membership of a temporary governing body reflects that of a permanent governing body, as outlined in Chapter 3 of this guide entitled Governing Body Constitution or Regulations 13 to 20 of The Government of Maintained Schools (Wales) Regulations 2005. Where discretion is allowed as to the number of permanent governors of a particular category, for a temporary governing body it will be the lower number.

12. The following paragraphs explain the appointment/election processes for each category of temporary governor.

Temporary Parent Governors

13. A “temporary parent governor” is a person appointed to be a member of the temporary governing body of a new school as outlined in paragraph 14 onwards.

14. Appointments for temporary parent governors are agreed by the relevant person(s), as follows:

- the LA for a school that is to be a community, voluntary controlled, community special, foundation, or maintained nursery school where the proposals for its establishment were published by the LA;

- the promoters, for a school that is to be a voluntary aided school or a foundation school where the proposals for its establishment were published by the promoters.

15. Where one or more maintained schools are to be discontinued and a substantial number of the existing pupils are expected to transfer to a new school, the LA or the promoters may allow the governing body(ies) of the discontinued school(s) to appoint some or all of the temporary parent governors of the new school.

VC 16. In a voluntary controlled school the LA cannot appoint anyone as a temporary parent governor unless it has first consulted the promoters.

17. Any person appointed as a temporary parent governor must be the parent of a child who is or is likely to become a registered pupil at the school. Where it is not reasonably practicable to appoint such a person, the governing body may appoint a parent of a child of compulsory school age, or in the case of a new maintained nursery school, the parent of a child of or under compulsory school age.

S
FS 18. A person appointed as a temporary parent governor of a new community special or foundation special school (not established in a hospital) must be a parent of a child who is or is likely to become a registered pupil at the school. Where it is not reasonably practicable to do so, the governing body may appoint:

- the parent of a child of compulsory school age with special educational needs;
- the parent of a person of any age with special educational needs; or
- a parent of a child of compulsory school age may be appointed.

These alternatives must be considered in descending order.

19. No person may be appointed as a temporary parent governor if he or she is:

- an elected member of the LA;
- employed by the LA in connection with its functions as a LA; or
- paid, or likely to be 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.

20. A person may continue to hold office as a temporary parent governor when he or she ceases to fulfil any of the requirements set out in paragraph 17, unless they are otherwise disqualified under the regulations.

Temporary Staff Governors

21. A "temporary staff governor" is a person appointed to be a member of a temporary governing body of a new school. In accordance with the constitution of a particular governing body as set out in The Government of Maintained Schools (Wales) Regulations 2005 (see Chapter 3C Governing Body Constitution).

22. Appointments for temporary staff governors are agreed by the relevant person(s), as follows:

- the LA for a school that is to be a community, voluntary controlled, community special, foundation, or maintained nursery school where the proposals for its establishment were published by the LA;
- the promoters, for a school that is to be a voluntary aided school or a foundation school where the proposals for its establishment were published by the promoters.

23. The LA or the promoters must determine whether a temporary staff governor should be included on the temporary governing body, and must appoint a person to the position.

24. The person appointed must, at the time of their appointment, be employed to work at a maintained school other than as a teacher; and will be disqualified from continuing to hold office if they cease to be employed.

Temporary Teacher Governors

25. A "temporary teacher governor" is a person appointed in accordance with the following paragraph, to be a member of a temporary governing body of a new school. The person appointed must, at the time of their appointment, be employed as a teacher at a maintained school; and will be disqualified from continuing to hold office if they cease to be employed.

26. Appointments for teacher governors are agreed by the relevant person(s), as follows:

- a. the temporary governing body, for a school that is to be a community, voluntary controlled, community special, foundation or maintained school where the proposals for its establishment were published by the LA;
- b. the LA, following nominations by the promoters, for a school that is to be a voluntary aided school or a foundation school where the proposals for its establishment were published by the promoters.

VA
F

27. Where one or more maintained schools are to close and the pupils from the school(s) are expected to transfer to a new school the LA in the case of paragraph 26(a), or the promoters in the case of paragraph 26(b), may provide for the governing body(ies) of the closing school(s) to appoint some or all of the teacher governors for the new school.

VC 28. In a voluntary controlled school the LA cannot appoint anyone as a temporary teacher governor unless it has first consulted the promoters.

Temporary LEA Governors

29. A temporary LEA governor is a person appointed by the LA.

30. A person cannot be appointed as a temporary LEA governor if they are eligible to be a temporary teacher or staff governor of a school.

Temporary Community Governors

31. A temporary community governor is a person appointed to the governing body by the other governors.

32. Those appointed will be people who live or work in the community to be served by the school and who, in the opinion of the governing body, are committed to the good governance and success of the new school.

33. A person is disqualified from appointment as a temporary community governor if they are or are likely to be:

- a registered pupil of the new school;
- eligible to be a temporary staff or teacher governor; or
- an elected member of the LA.

Additional Temporary Community Governors

VA
VC
F 34. For a community, voluntary, foundation primary or maintained nursery school to be established in an area for which there are one or more community councils, the temporary governing body must include an additional temporary community governor place.

35. If the new school is to serve an area for which there are two or more community councils, the governing body may invite nominations to the place from one or more of the councils.

36. The restrictions outlined in Paragraph 33 do not apply for additional temporary community governors.

Temporary Foundation Governors

VA
VC
F
FS

37. Temporary foundation governors are appointed at voluntary aided, voluntary controlled and foundation schools only. For the purposes of calculating the number of temporary foundation governors required at a voluntary aided school, it must be assumed that a head teacher has been appointed and is a member of the temporary governing body.

38. The arrangements must state who will appoint the temporary foundation governors – this cannot be the LA - and must have the promoter's agreement.

39. Where the new school will have a particular religious character, the temporary foundation governors are appointed for the purpose of securing that the character is established and developed. Where the new school will have a trust deed, they are appointed for the purpose of securing that the new school is established and conducted in accordance with that trust deed.

40. An ex-officio temporary foundation governor is a person who is the holder of an office which entitles them to serve as a governor. Upon ceasing to hold the specified office, the ex-officio governor will cease as a temporary governor.

Temporary Partnership Governors

F
FS

41. Temporary partnership governors are appointed only to a foundation or a foundation special school where there is no foundation. The appointments are made by the LA.

42. In the event of a new foundation school by promoters without a foundation, the person appointed by the LA must have been nominated by the promoters.

43. The person who nominates or appoints a temporary partnership governor must be satisfied that the person to be appointed appears to be from the community the school serves or is committed to its good governance and success.

44. A person is disqualified from appointment as a temporary partnership governor if they are:

- the parent of a child who is or is likely to become a pupil of the school or new school;
- eligible to be a temporary staff or teacher governor of the new school;
- likely to become a pupil of the new school;
- an elected member of the LA; or
- employed by the LA in connection with its functions as a LA.

Temporary Representative Governors

S 45. In the case of a community special school the LA must appoint a temporary representative governor to take the place of one of the community governors.

46. For such a school established in a hospital, the LA must designate either one or more of the local health boards acting jointly or the National Health Service Trust as the appropriate body and invite that body to nominate a person to that place.

47. For such a school not established in a hospital, the LA must designate one or more voluntary organisations associated with the school to nominate a person to that place.

Temporary Sponsor Governors

48. Where a new school has one or more sponsors, the temporary governing body may appoint one or two governors nominated by those sponsors as temporary sponsor governors.

49. A sponsor may include someone who has given substantial financial assistance (including benefits 'in kind') other than under a statutory obligation or any other person, not otherwise represented on the governing body, who provides or has provided substantial services.

The Head teacher as a Temporary Governor

50. Where two or more schools are to be discontinued and the registered pupils at those schools are to transfer to a new school, the head teachers of the discontinued schools are entitled to attend any meetings of the temporary governing body until such time as the head teacher for the new school is appointed.

Joint Appointments

51. Where there is disagreement between persons acting jointly in the appointment of temporary governors, the appointment will be made by, or in accordance with, a direction of the Welsh Ministers.

Resignation and Removal of Temporary Governors

52. Any member of a temporary governing body may resign at any time by giving notice to the Clerk.

53. An ex-officio governor may resign from a temporary governorship. This would not affect any successor in the office to which the ex-officio governorship relates, being appointed as a temporary governor.

54. Any temporary governor of a new school may be removed by the person(s) who appointed them.

55. The temporary governing body can remove their own appointees – that is temporary community governors, temporary sponsor governors and temporary teacher governors (where appointed by the temporary governing body of a new school not being established following the closure of other schools). To do so, they must pass a resolution at a meeting, in line with the procedures outlined in Regulation 24 of The New Maintained School (Wales) Regulations 2005.

56. In cases other than the above, the appointing body may remove a temporary governor appointed by them, to do so they must give written notice to the clerk, the governing body and the governor to be removed.

Qualifications and Disqualifications

57. The regulations relating to the qualification and disqualification for temporary governors are the same as those for permanent governors, as detailed in Chapter 3 of this Guide and Schedule 5 of The Government of Maintained Schools (Wales) Regulations 2005.

58. The regulation which restricts governors from holding not more than two positions at any one time does not apply in the case of temporary governorships.

Expenses

59. The LA is under the same duty to pay the expenses incurred by the temporary governing body as they would be if the proposals had been implemented by the governing body of the school.

Provision of Information

60. The LA must ensure that the members of the temporary governing body are provided, free of charge, with such information as the authority considers necessary to enable the governing body to discharge its functions effectively.

Conduct of the School Before the Opening Date

61. Part 6 of The New Maintained School (Wales) Regulations 2005 places matters relating to the conduct of the school which require to be determined before the date of opening, under the direction of the temporary governing body.

Conduct of the School After the Opening Date

62. During the period from the school opening date to the time when the permanent governing body for the school is constituted under the instrument of government, the general powers and duties of a permanent governing body in Schedule 1 of the Education Act 2002, apply to the temporary governing body.

Officers of the Temporary Governing Body – Chairperson, Vice Chairperson and Clerk

63. The first clerk to the temporary governing body will be appointed by:

VA
F

- the LA for a school that is to be a community, voluntary controlled, community special, or foundation school where the proposals for its establishment were published by the LA; or
- the promoters, for a school that is to be a voluntary aided school or a foundation school where the proposals for its establishment were published by the promoters.

64. The first meeting of a temporary governing body is to be called by the clerk. Where the clerk fails to call a meeting within a period considered by the LA to be reasonable, the LA must call it.

65. The temporary governing body must elect a chairperson and vice chair at that first meeting.

Meetings and Proceedings of the Governing Body

66. The regulations relating to meetings and proceedings of temporary governing bodies are as those for permanent governing bodies outlined in Chapter 4 of this guide and Part 8 of the Government Regulations.

Committees of Temporary Governing Bodies

67. The regulations relating to committees of temporary governing bodies are as those for permanent governing bodies outlined in Chapter 4 of this guide and Part 9 of the Government Regulations.

Restrictions on Persons Taking Part

68. The regulations relating to the restrictions on persons taking part in meetings of a temporary governing body, or its committees, are as those for permanent governing bodies outlined in Chapter 4 of this guide and Part 10 of the Government Regulations.

Transition from a Temporary Governing Body to a Governing Body

69. The LA must ensure that an instrument of government is made before the school opening date.

70. The LA determines the date when the governing body in waiting will be constituted under the instrument of government.

71. This is the incorporation date, which must be as soon as reasonably practicable after the opening date but no later than the last day of the first term the new school is open.

72. The LA must secure that appointments or elections of governors required by the instrument of government take place in accordance with that instrument before the incorporation date and take effect from that date.

73. Election and appointment of governors to the governing body of the new school will be operated in line with the procedures outlined in Chapter 3 and Part 2 of the Government Regulations.

Property Rights and Liabilities

74. On the incorporation date, all land and property vested in the temporary governing body, together with all its rights and liabilities, including liabilities under a contract of employment, are transferred to the permanent governing body.

Information for Successors

75. The temporary governing body is required to prepare a report to be presented to the permanent governing body, outlining the action taken in the discharge of its functions.

76. All minutes and papers relating to the temporary governing body, including the above report, must be made available to the new governing body.

The Law

The School Standards and Framework Act 1998

The Education Act 2002

The New Maintained Schools (Wales) Regulations 2005 SI No 2912/2005

The Government of Maintained Schools (Wales) Regulations 2005