STATUTORY INSTRUMENTS

# 2003 No. 1965

# EDUCATION, ENGLAND

## The Federation of Schools (Community Schools, Community Special Schools, Voluntary Controlled Schools and Maintained Nursery Schools) (England) Regulations 2003

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| *Made - - - -* | *5th August 2003* |
| *Laid before Parliament* | *11th August 2003* |
| *Coming into force - -* | *1st September 2003* |

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In exercise of the powers conferred on the Secretary of State by sections 19(2), (3) and (8), 20(2), (3) and (4), 23 to 25, 34(5), 35(4) and (5), 210(7) and 214 of the Education Act 2002(**a**) the Secretary of State for Education and Skills hereby makes the following Regulations:

# PART 1

## General Provisions

### Citation, commencement and application

**1.**—(1) These Regulations may be cited as the Federation of Schools (Community Schools, Community Special Schools, Voluntary Controlled Schools and Maintained Nursery Schools) (England) Regulations 2003 and shall come into force on 1st September 2003.

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

### Interpretation

**2.** —In these Regulations—

"the 1998 Act" means the School Standards and Framework Act 1998(**b**);

"the 2000 Act" means the Learning and Skills Act 2000(**c**);

"the 2002 Act" means the Education Act 2002;

"authority" means the local education authority by which a maintained school is, or a proposed school is to be, maintained;

"the Constitution Regulations" means the School Governance (Constitution) (England) Regulations 2003(**d**);

"day" means school day as defined by section 579 of the Education Act 1996;

"eligible school" means a community, community special or voluntary controlled school or a maintained nursery school;

"eligible governing body" means a governing body of an eligible school or a federation;

"the federation date" means the date on which governing bodies federate;

"governing body" means a governing body incorporated under section 36(1) of the 1998 Act , section 19(1) of the 2002 Act or these Regulations as appropriate;

"new school" has the same meaning as in the New Schools Regulations;

"the New Schools Regulations" means the Education (New Schools) (England) Regulations 2003(**e**);

"the Procedure Regulations" means the School Governance (Procedures) (England) Regulations 2003(**f**);

"the Staffing Regulations" means the School Staffing (England) Regulations 2003(**g**).

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(**a**) 2002 c.32; by virtue of the definition of "regulations" in section 212(1) of the Education Act 2002, these Regulations made by the Secretary of State apply only in relation to England.
(**b**) 1998 c.31.
(**c**) 2000 c.21.
(**d**) SI 2003/348 as amended by the School Governance (Constitution and Procedures) (England) (Amendment) Regulations 2003 (SI 2003/1916).
(**e**) SI 2003/1558.
(**f**) SI 2003/1377 as amended by the School Governance (Constitution and Procedures) (England) (Amendment) Regulations 2003 and by the School Staffing (England) Regulations 2003 (SI 2003/1963).
(**g**) SI 2003/1963.

# PART 2

## ESTABLISHING OR JOINING A FEDERATION

**Prescribed condition**

**3.** A federation shall not contain more than five schools.

**Prescribed cases**

**4.**—(1) Regulations 6 to 9 apply where at least two but no more than five eligible governing bodies propose to federate in accordance with section 24 of the 2002 Act.

(2) Regulations 10 and 11 apply where it is proposed to establish an eligible school and either—

(a) the temporary governing body wishes to federate with one or more eligible governing bodies, or

(b) the authority or, where the school is to be a voluntary controlled school, the promoters propose that the school be a federated school.

**Procedure for schools wishing to federate**

**5.** If, before 1st September 2003, any action was taken which (had it been taken on or after that day) would to any extent have satisfied the requirements of regulations 6 to 9, those requirements are to that extent to be treated as satisfied.

**6.**—(1) Where an eligible governing body are considering federation, they shall first consider a report on the proposal.

(2) The report shall be specified as an item on the agenda for the meeting of which notice has been given in accordance with regulation 11(4) of the Procedure Regulations.

**7.**—(1) Where an eligible governing body propose that they should federate with the governing body of a federation, they shall give notice of the proposal to the governing body of the federation.

(2) Upon receipt of the notice, the governing body of the federation shall consider whether they should—

(a) give preliminary consent to the school joining the federation ("preliminary consent"); or

(b) determine that the school should not join the federation.

**8.**—(1) Where an eligible governing body decide that they should federate with one or more other eligible governing bodies and, where necessary, preliminary consent has been given, they shall jointly with the other governing body or bodies publish proposals for federation.

(2) The proposals shall contain the following—

(a) the name or names of the governing body or bodies with which the governing body propose to federate and confirmation that that governing body, or those governing bodies, have resolved likewise to federate,

(b) the proposed size of the governing body of the federation,

(c) the proposed number of governors for each category of governor,

(d) the proposed arrangements for staffing the schools within the federation,

(e) the proposed federation date,

(f) the identity of the admission authority or authorities for the schools within the federation,

(g) the date, not less than 6 weeks after the publication of the proposals, by which written representations may be made to the governing body regarding the proposals and the address to which they should be sent, and

(h) such other matters as the governing bodies consider appropriate.

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

(a) the relevant authorities,

(b) the head teacher of each school,

(c) in the case of any school with a foundation—

(i) the foundation governors,

(ii) any trustees of a trust relating to the school, and

(iii) where the school is designated under section 69(3) of the 1998 Act as having a religious character, the appropriate diocesan authority in the case of a Church of England or Roman Catholic school, or the appropriate religious body in the case of all other such schools,

(d) all staff paid to work at any of the schools,

(e) every person known to them to be a parent of a registered pupil at any of the schools, and

(f) such other persons as the governing bodies consider appropriate.

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

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

(a) to proceed with the proposals for federation as published;

(b) to proceed with the proposals for federation with such modifications as the governing body consider appropriate; or

(c) not to proceed with the proposals for federation.

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

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

**New schools wishing to federate**

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

(2) Where a temporary governing body has been established, regulations 6 to 9 have effect as if references to an eligible governing body proposing to federate were references to a temporary governing body proposing to federate.

(3) Where a temporary governing body is yet to be established, regulations 6 to 9 have effect as if—

(a) references to the governing body proposing to federate were references to the authority or, where proposals are to establish a voluntary controlled school, the promoters proposing that a new school be a federated school;

(b) regulation 6(2) were omitted; and

(c) in regulation 8(2)(a) for "the governing body propose to federate" there were substituted "the authority or the promoters propose that the temporary governing body of the new school should federate".

**11.**—(1) Where it is proposed that two or more new schools should federate together, with or without one or more other eligible schools or other federation, the authority may make arrangements providing for the constitution of a single temporary governing body for those new schools.

(2) Where one or more of the new schools referred to in paragraph (1) is to be a voluntary controlled school, the authority shall consult the promoters—

(a) as to whether the power given to the authority in paragraph (1) should be exercised; and

(b) if the authority proposes to exercise it, as to the date on which the arrangements should be made.

(3) Parts 1 to 3 and 5 to 7 of the New School Regulations(**a**) shall apply to a temporary governing body constituted pursuant to this regulation.

(4) Schedule 1 shall apply to a temporary governing body constituted pursuant to this regulation.

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

**12.**—(1) On the federation date—

(a) the governing bodies of the federating schools or federations shall be dissolved;

(b) the governing body of the federation shall be incorporated;

(c) all land and property which, immediately before the federation date, was held by the governing body of a federating school or federation shall be transferred to, and by virtue of these Regulations vest in, the governing body of the federation; and

(d) all rights and liabilities subsisting immediately before the federation date which were acquired or incurred by the governing body of a federating school or federation shall be transferred to the governing body of the federation.

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

# PART 3

## CATEGORIES OF GOVERNOR

**Parent governors**

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

(a) a person who is elected in accordance with paragraphs 4 to 7 of Schedule 2 as a member of the governing body of a federation by parents of registered pupils at a federated school and is himself such a parent at the time when he is elected, or

(b) a person appointed as a parent governor in respect of a federated school in accordance with paragraphs 8 to 10 of Schedule 2.

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

(3) A person is not disqualified from election or appointment as a parent governor of a federation if he is—

(a) an elected member of the authority;

(b) paid to work at the federation or a federated school for more than 500 hours in any twelve month period commencing on 1st August and finishing on 31st July.

(4) A person is not disqualified from continuing to hold office as a parent governor when he ceases to be a parent of a registered pupil at a federated school or to fulfil any of the requirements set out in paragraphs 9 and 10 of Schedule 2 (as the case may be) unless he is otherwise disqualified under these Regulations.

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(**a**) As these Regulations only apply to community, community special, voluntary controlled and maintained nursery schools, those provisions within the New School Regulations which apply only to voluntary aided, foundation or foundation special schools cannot apply to temporary governing bodies constituted under regulation 11. By virtue of regulation 6(c) of the Interpretation Act 1978 (c.30) words in the singular include the plural and words in the plural include the singular.

(**b**) 1988 c.40.

**Staff governors**

**14.**—(1) In these Regulations "staff governor" means—

(a) the head teacher of a federation or of a federated school who is a staff governor by virtue of his office, unless he resigns in accordance with regulation 22(1) of the Constitution Regulations;

(b) a person who is elected in accordance with Schedule 3 as a member of the governing body of a federation by persons who are paid to work at the federation or at a federated school and is himself a person so working at the time when he is elected.

(2) At least one staff governor (in addition to the head teacher or head teachers) shall be a school teacher unless no school teacher stands for election.

(3) Where the federation's instrument of government(**a**) specifies that there shall be three or more staff governors, at least one staff governor shall be a person who is not a school teacher, unless no such person stands for election.

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

**LEA governors**

**15.**—(1) In these Regulations "LEA governor" means a governor appointed to be a member of the governing body of a federation by the authority that maintains the federated schools.

(2) Where the federation includes schools which are maintained by two or more local education authorities, those authorities shall agree amongst themselves who shall appoint such governors and, if more than one governor is to be appointed, in what proportion.

(3) A person is disqualified from appointment as an LEA governor if he is eligible to be a staff governor.

**Community governors**

**16.**—(1) In these Regulations "community governor" means a person who is appointed as such by the governing body of a federation and who is—

(a) a person who lives or works in the community served by the federation; or

(b) a person who, in the opinion of the governing body, is committed to the good government and success of the federation.

(2) If one or more of the federated schools is a community special school(**b**) the governing body of the federation shall appoint as one of the community governors a person nominated in accordance with Schedule 4 in respect of each such school.

(3) A person is disqualified from appointment as a community governor if he is—

(a) a registered pupil at one of the federated schools;

(b) eligible to be a staff governor; or

(c) an elected member of the authority.

**Foundation governors**

**17.**—(1) In these Regulations—

"foundation governor" means a person who is appointed to be a member of the governing body of a federation, otherwise than by the authority, and who—

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(**a**) As defined by section 20 of the 2002 Act.
(**b**) Within the meaning of section 20 of the 1998 Act.

(a) where the federation includes a federated school which has a particular religious character(**a**), is appointed for the purpose of securing that that character is preserved and developed at that federated school;

(b) where the federation includes a federated school to which a trust relates, is appointed for the purpose of securing that the federated school is conducted in accordance with that trust; or

(c) where the federation includes a school which has neither a religious character nor a trust, is appointed as a foundation governor of the federation by a person previously named in the federated school's instrument of government as having the power to appoint foundation governors;

"ex officio foundation governor" means a foundation governor who is the holder of an office by virtue of which he is entitled to be a foundation governor;

"substitute governor"(**b**) means a foundation governor appointed to act in the place of an ex officio foundation governor who is unwilling or unable to act as a governor or has been removed from office under regulation 23(2) of the Constitution Regulations.

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

**Sponsor governors**

**18.** In these Regulations "sponsor governor" means a person nominated as a sponsor governor and appointed as such by the governing body of a federation in accordance with Schedule 5.

**Associate members**

**19.**—(1) In these Regulations "associate member" means a person appointed by the governing body of a federation as a member of any committee established by it but who is not a governor.

(2) An associate member shall hold office for a period of four years or such shorter period (not being less than one year) as may be determined by the governing body of a federation at the date of his appointment.

(3) Nothing in this regulation shall prevent an associate member from being reappointed at the expiration of his term of office.

(4) Any person who is disqualified from holding office as a governor of a school under Schedule 6 to the Constitution Regulations is likewise disqualified from appointment as, or from continuing as, an associate member of the governing body of a federation, save as provided in paragraph 1 of Schedule 6 to the Constitution Regulations.

# PART 4

## COMPOSITION OF GOVERNING BODIES OF A FEDERATION

**General principles**

**20.**—(1) Subject to paragraphs (2) and (3), the instrument of government(**c**) for a federation shall specify the size of the membership of the governing body of the federation, being no fewer than 9 or more than 20 governors.

(2) Where a federation contains 4 schools and each federated school has a head teacher, the size of the membership of the governing body may be 21 governors.

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(**a**) As designated by Order of the Secretary of State under section 69(3) of the 1998 Act.
(**b**) Referred to in regulation 21 of the Constitution Regulations as it applies to federations pursuant to regulation 24 of and Schedule 6 to these Regulations.
(**c**) Defined by section 20 of the 2002 Act.

(3) Where a federation contains 5 schools and each federated school has a head teacher, the size of the membership of the governing body may be 22 governors.

(4) In determining the size of the membership of the governing body, sponsor governors are not included.

(5) Subject to regulations 21 to 23, the instrument of government shall specify the numbers of governors from each of the following categories of governor to be elected or appointed—

(a) parent governors;

(b) staff governors;

(c) LEA governors;

(d) community governors;

(e) foundation governors;

(f) sponsor governors.

(6) Where application of this regulation and regulations 21 to 23 produces a number other than a whole number, the authority shall specify either the whole number next above or the whole number next below (at their choice) provided that the total number of governors may not exceed the limit set in this regulation.

(7) In calculating the number of staff governors required, the head teachers must be included whether or not the head teacher of the federation, or any head teacher of a federated school, has resigned his governorship.

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

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

(a) one third or more shall be parent governors, provided always that for each federated school at least one parent governor shall be elected by the parents of registered pupils at that school or appointed by the governing body of the federation to represent the interests of such parents;

(b) at least two but no more than one third shall be staff governors;

(c) one fifth shall be LEA governors;

(d) one fifth or more shall be community governors.

(2) The governing body of a federation may in addition appoint up to two sponsor governors.

**Federation comprising voluntary controlled schools**

**22.**—(1) The governing body of a federation containing voluntary controlled schools(**b**) only shall consist of the following—

(a) one third or more shall be parent governors, provided always that for each federated school at least one parent governor shall be elected by the parents of registered pupils at that school or appointed by the governing body of the federation to represent the interests of such parents;

(b) at least two but no more than one third shall be staff governors;

(c) at least one but no more than one fifth shall be LEA governors;

(d) one tenth or more shall be community governors;

(e) at least two but no more than one quarter shall be foundation governors.

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(**a**) Within the meaning of section 20 of the 1998 Act and section 39(1) of the 2002 Act.
(**b**) Within the meaning of section 20 of the 1998 Act.

(2) The governing body of a federation may in addition appoint up to two sponsor governors.

**Federation comprising more than one category of school**

**23.**—(1) The governing body of a federation which includes at least one voluntary controlled school and at least one community school, community special school or maintained nursery school shall consist of the following—

(a) one third or more shall be parent governors, provided always that for each federated school at least one parent governor shall be elected by the parents of registered pupils at that school or appointed by the governing body of the federation to represent the interests of such parents;

(b) at least two but no more than one third shall be staff governors;

(c) at least two but no more than one fifth shall be LEA governors;

(d) at least two shall be community governors;

(e) at least one shall be a foundation governor.

(2) The governing body of a federation may in addition appoint up to two sponsor governors.

# PART 5

## INSTRUMENTS OF GOVERNMENT, PROCEDURES AND STAFFING

**Qualifications, tenure of office and instruments of government**

**24.** Regulations 17 *(Notification of appointments)*, 18 *(Joint appointments)* and 20 to 32 of, and Schedule 6 *(Qualifications and disqualifications)* to, the Constitution Regulations shall apply to the governing body of a federation and its members subject to the modifications in Schedule 6.

**Procedures of governing bodies of federations**

**25.** The Procedure Regulations shall apply to the procedure of governing bodies of federations subject to the modifications in Schedule 7.

**Staffing of federations**

**26.** Parts 1, 2 and 4 of, and the Schedule to, the Staffing Regulations shall apply to the staffing of federations subject to the modifications in Schedule 8.

# PART 6

## INFORMATION AND FUNDING

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

**27.**—(1) Immediately before the federation date, the governing body of a school which is to become a federated school shall prepare, for the purpose of assisting the governing body of the federation, a written report on the action which they have taken in the discharge of their functions relating to the school.

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

**Financing of Federations**

**28.** Except as provided by regulation 29, Chapter 4 of Part 2 of the 1998 Act (financing of maintained schools) applies to federated schools and their governing bodies as it applies to other maintained schools and their governing bodies.

**29.**—(1) In its application to a federated school in England, other than one for which a temporary governing body is established pursuant to regulation 34 or 39, section 50 of the 1998 Act (effect of financial delegation) shall have effect subject to the following modifications.

(2) In subsection (1), for "maintained" there shall be substituted "federated".

(3) In subsection (2) for "any amounts are made available by the authority to the governing body" there shall be substituted "any amounts in respect of a federated school are made available by the authority to the governing body of a federation".

(4) In subsection (3)—

(a) for "the governing body may spend any such amounts" there shall be substituted "the governing body of a federation may spend any amounts made available under subsection (2), or previously made available to the governing bodies of the federated schools before federation", and

(b) for paragraph (a) there shall be substituted—

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

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

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

(5) In subsection (4) for "In subsection (3) "purposes of the school" does not include" there shall be substituted "In subsection (3)(a), (ab) and (ac) any reference to the purposes of a federated school or a federation does not include".

(6) In subsection (6), for "the head teacher" there shall be substituted "the head teacher of the federation or to the head teachers of federated schools".

(7) In subsection (7), for "school" there shall be substituted "federation".

# PART 7

## FEDERATED SCHOOLS LEAVING FEDERATIONS

**Procedure for a school to leave a federation**

**30.**—(1) This regulation applies where a governing body of a federation receive a written request for a federated school to leave the federation.

(2) The request must be signed by—

(a) two or more governors;

(b) one fifth of the parents of registered pupils at the federated school;

(c) two fifths of staff who are paid to work at the federated school;

(d) the authority;

(e) the trustees of the federated school; or

(f) a body entitled to appoint foundation governors onto the governing body of a federation.

(3) The governing body of the federation shall give notice of the request to—

(a) all relevant authorities,

(b) the head teacher of the federation and each head teacher of a federated school,

(c) where the federated school in respect of which the request has been made is a voluntary controlled school with a religious foundation, any trustees of a trust relating to the federated school and, in the case of a Church of England or Roman Catholic school, the

appropriate diocesan authority, or the appropriate religious body in the case of all other such schools,

(d) all staff paid to work at the federated school,

(e) every person known by them to be a parent of a registered pupil at the federated school in respect of which the request has been made, and

(f) such other persons as the governing body of a federation consider appropriate.

(4) Notice under paragraph (3)(a) and (b) must be given within the period of 5 days beginning with the date on which the request was received.

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

(6) Not less than 14 days after the governing body of a federation have given notice of the request in accordance with paragraph (3), the governing body shall consider the request and all responses received from the persons to whom notification of the request was sent and shall decide whether—

(a) the federated school should leave the federation and, if so, on what date the school should do so ("the de-federation date");

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

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

(7) Such a decision shall not have effect unless the matter is specified as an item of business on the agenda for the meeting of which notice has been given in accordance with regulation 11(4) of the Procedure Regulations.

(8) The governing body of a federation shall give notice in writing of their decision under paragraph (6) within 5 days to those persons referred to in paragraph (3).

**Referral to the Secretary of State**

**31.**—(1) Not more than 15 days after the day on which a notice of the governing body of the federation's decision under regulation 30(6)(c) was given, any of the persons referred to in regulation 30(3) may refer the matter to the Secretary of State and, if they do so, shall inform the governing body of the federation.

(2) On a reference under this regulation the Secretary of State shall determine that—

(a) the federated school shall leave the federation; or

(b) the federated school shall not leave the federation.

(3) Upon receiving the Secretary of State's determination the governing body of a federation shall within 5 school days inform those referred to in regulation 30(3) of the Secretary of State's determination and its effect.

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

**32.**—(1) Upon notification that either—

(a) a governing body of a federation have resolved that a federated school should leave the federation, or

(b) the Secretary of State has determined that a federated school should leave a federation,

the authority shall take the actions listed in paragraph (2).

(2) The authority shall—

(a) establish a temporary governing body in respect of that school in accordance with Parts 3 and 4 of the New Schools Regulations;

(b) issue a new instrument of government for the de-federated school in accordance with Part 5 of the Constitution Regulations(**a**); and

(c) review the instrument of government of the federation in accordance with regulation 31 of the Constitution Regulations.

**Availability of amounts representing budget share**

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

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

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

**Transfer of property**

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

(a) all land or property, which, immediately before the de-federation date, was held by the governing body of the federation for the purposes of the de-federated school shall be transferred to, and by virtue of these Regulations vest in, the governing body incorporated under regulation 34; and

(b) all rights and liabilities subsisting immediately before the de-federation date which were acquired or incurred by the governing body of the federation for the purposes of the de-federated school shall be transferred to the governing body incorporated under regulation 34.

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

# PART 8

## DISSOLUTION OF FEDERATIONS

**Dissolution of federations**

**36.**—(1) Where—

(a) a governing body of a federation decide that the federation should be dissolved,

(b) a governing body of a federation decide that one of only two federated schools should leave a federation, or

(c) the Secretary of State determines that one of only two federated schools should leave a federation,

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

(2) The persons to be notified are—

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(**a**) As modified by Schedule 6 to these Regulations.
(**b**) As modified by regulation 29 of these Regulations.

(a) all relevant authorities;

(b) the head teacher of the federation and each head teacher of a federated school;

(c) every member of staff paid to work at the federation or a federated school;

(d) every person known by the governing body to be a parent of a registered pupil at a federated school;

(e) where a federated school is a voluntary controlled school with a religious foundation, the foundation governors, any trustees of a trust relating to the federated school and, in the case of a Church of England or Roman Catholic school, the appropriate diocesan authority, or the appropriate religious body in the case of all other such schools; and

(f) such other persons as the governing body of the federation consider appropriate.

**37.** Upon receipt of the notice issued under regulation 36, the relevant authority or authorities shall—

(a) establish a temporary governing body in respect of each school in accordance with Parts 3 and 4 of the New Schools Regulations; and

(b) issue a new instrument of government for each school in accordance with Part 5 of the Constitution Regulations.

**Availability of amounts representing budget share**

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

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

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

**Transfer of property**

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

(a) all land or property, which, immediately before the date of dissolution, was held by the governing body of the federation for the purposes of each de-federated school shall be transferred to, and by virtue of these Regulations vest in, the new governing body of each de-federated school incorporated under regulation 39, and

(b) all rights and liabilities subsisting immediately before the date of dissolution which were acquired or incurred by the governing body of the federation for the purposes of each de-federated school shall be transferred to the new governing body of each de-federated school incorporated under regulation 39.

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

*Stephen Twigg*
Parliamentary Under-Secretary of State
Department for Education and Skills

5th August 2003

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(**a**) As modified by regulation 29 of these Regulations.

# SCHEDULE 1

Regulation 11

## Temporary governing bodies of new schools intending to federate

### General principles

**1.** The size of the membership of the temporary governing body, being no fewer than 9 or more than 22 temporary governors, shall be determined by the authority.

**2.** In determining the size of the temporary governing body, the authority must not include any temporary sponsor governors.

**3.** Where application of paragraphs 4 to 7 produces a number other than a whole number, the authority shall specify either the whole number next above or the whole number next below (at their choice) provided that the total number of governors may not exceed the limit set in paragraph 1.

**4.** In calculating the number of temporary staff governors required, the head teacher of the federation and the head teacher or head teacher designate of each school shall be included whether or not he has resigned his governorship.

### New community schools, community special schools and maintained nursery schools

**5.** A temporary governing body constituted for two or more proposed community schools, proposed community special schools or proposed maintained nursery schools only, shall be composed as follows—

(a) one third or more shall be temporary parent governors, provided always that for each proposed school at least one temporary parent governor shall be appointed to represent the interests of the parents of children who are or are likely to become registered pupils at that school;

(b) at least two but no more than one third shall be temporary staff governors;

(c) one fifth shall be temporary LEA governors; and

(d) one fifth or more shall be temporary community governors.

### New voluntary controlled schools

**6.** A temporary governing body constituted for two or more proposed voluntary controlled schools only, shall be composed as follows—

(a) one third or more shall be temporary parent governors, provided always that for each proposed school at least one temporary parent governor shall be appointed to represent the interests of the parents of children who are or are likely to become registered pupils at that school;

(b) at least two but no more than one third shall be temporary staff governors;

(c) at least one but no more than one fifth shall be temporary LEA governors;

(d) one tenth or more shall be temporary community governors; and

(e) at least two but no more than one quarter shall be temporary foundation governors.

### New schools of more than one category

**7.** A temporary governing body constituted for at least one proposed community school, proposed community special school or proposed maintained nursery school and at least one proposed voluntary controlled school shall be composed as follows—

(a) one third or more shall be temporary parent governors, provided always that for each proposed school at least one temporary parent governor shall be appointed to represent

the interests of the parents of children who are or are likely to become registered pupils at that school;

(b) at least two but no more than one third shall be temporary staff governors;

(c) at least one but no more than one fifth shall be temporary LEA governors;

(d) at least two shall be temporary community governors; and

(e) at least one shall be a temporary foundation governor.

**Temporary sponsor governors**

**8.** A temporary governing body constituted in accordance with paragraphs 5 to 7 may, in addition, appoint up to two temporary sponsor governors.

# SCHEDULE 2

Regulation 13

## Election and appointment of parent governors

**1.** In this Schedule, where reference is made to the authority and the federation includes schools maintained by more than one authority, the reference shall be taken as a reference to each authority.

**2.** The authority may delegate to the head teacher of the federation or, where applicable, the head teacher of the federated school in question, any of their functions under this Schedule.

**3.** Subject to paragraphs 2 and 4 to 7 the authority shall make all the necessary arrangements for the election of parent governors.

**4.** The power conferred by paragraph 3 does not include power to impose any requirements as to the minimum number of votes required to be cast for a candidate to be elected.

**5.** Any election which is contested shall be held by ballot.

**6.**—(1)The arrangements made under paragraph 3 shall provide for every person who is entitled to vote to have an opportunity to do so by post.

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

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

**7.** Where a vacancy for a parent governor arises, the authority shall take such steps as are reasonably practicable to secure that every person who is known to them to be a parent of a registered pupil at the school is—

(a) informed of the vacancy and that it is required to be filled by election;

(b) informed that he is entitled to stand as a candidate and vote in the election; and

(c) given the opportunity to do so.

**8.** The number of parent governors required shall be made up of parent governors appointed by the governing body if one or more vacancies of parent governors arises and either—

(a) the number of parents standing for election is less than the number of vacancies;

(b) at least 50 per cent of the registered pupils at the school are boarders and it would, in the opinion of the authority, be impractical for there to be an election of parent governors; or

(c) in the case of a school which is a community special school established in a hospital, it would, in the opinion of the authority, be impractical for there to be an election of parent governors.

**9.**—(1) Except where paragraph 10 applies, in appointing a parent governor to represent a federated school, the governing body of a federation shall appoint—

(a) a parent of a registered pupil at the school;

(b) a parent of a registered pupil at another school within the federation;

(c) a parent of a former registered pupil at the school;

(d) a parent of a former registered pupil at a school within the federation; or

(e) a parent of a child.

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

**10.**—(1) Where the school is a community special school, in appointing a parent governor the governing body of a federation shall appoint—

(a) a parent of a registered pupil at the school; or

(b) a parent of a former pupil at the school; or

(c) a parent of a child with special educational needs for which the school is approved; or

(d) a parent with experience of a child with special educational needs.

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

# SCHEDULE 3

Regulation 14

## Election of staff governors

**1.** The authority may delegate to the head teacher of the federation or, where appropriate, the head teacher of the school in question, any of its functions under this Schedule.

**2.** Subject to paragraphs 3 and 4, the authority shall make all the necessary arrangements for the election of staff governors.

**3.** The power conferred by paragraph 2—

(a) includes the power to make provision as to qualifying dates, but

(b) does not include power to impose any requirements as to the minimum number of votes required to be cast for a candidate to be elected.

**4.** Any election which is contested shall be held by ballot.

# SCHEDULE 4

Regulation 16

## Appointment of community governors in federations which include community special schools

**1.** Subject to paragraphs 2 and 3, the governing body of a federation which includes a community special school shall appoint community governors in accordance with regulation 16(1).

**2.**—(1) In relation to a community special school established in a hospital, the authority shall designate either—

(a) one or more primary care trusts; or

(b) the National Health Service Trust,

with which the school is most closely connected as the appropriate body.

(2) The governing body of a federation shall invite the appropriate body to nominate (and if more than one, jointly) a person to be appointed as one of the community governors in accordance with regulation 16(2).

(3) For the purposes of this Schedule—

"National Health Service Trust" means a body established by the Secretary of State under section 5 of the National Health Service or Community Care Act 1990(**a**);

"primary care trust" means a body established under section 16A of the National Health Service Act 1977(**b**).

**3.** The governing body of a federation which includes a community special school not established in a hospital shall appoint as one of their community governors—

(a) if a voluntary organisation is designated by the authority, in relation to the school, as the appropriate voluntary organisation concerned with matters in respect of which the school is specially organised, a person (if any) nominated by that organisation; or

(b) if two or more voluntary organisations are so designated, a person (if any) nominated by those organisations acting jointly.

# SCHEDULE 5

Regulation 18

## Appointment of sponsor governors

**1.** In this Schedule, "sponsor" in relation to a federation means—

(a) a person who gives or has given substantial financial assistance (which for these purposes includes benefits in kind) to the federation or to a federated school other than pursuant to statutory obligation; or

(b) any other person (not being otherwise represented on the governing body of a federation) who provides or has provided substantial services to the federation or to a federated school.

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

**3.** The governing body of a federation shall seek nominations for such appointments from the federation's or federated school's sponsor or (as the case may be) from one or more of the federation's or federated school's sponsors.

# SCHEDULE 6

Regulation 24

## Modification of the Constitution Regulations

**1.** In regulation 21(2) for "head teacher of the school" there shall be substituted "head teacher of the federation or a federated school".

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(**a**) 1990 c.19 as amended by the Health Act 1999 (c.8).
(**b**) 1977 c.49 as amended by the Health Act 1999.

**2.** In regulation 25 for "paragraphs 9 to 11 of Schedule 1" there shall be substituted "paragraphs 8 to 10 of Schedule 2 to the Federation of Schools (Community Schools, Community Special Schools, Voluntary Controlled Schools and Maintained Nursery Schools) (England) Regulations 2003".

**3.** In regulation 27 for "school" there shall be substituted "federated school".

**4.** In regulation 29—

(a) in paragraph (1) for "maintained school" there shall be substituted "federation";

(b) in paragraph (1)(a) for "school" there shall be substituted "federation",

(c) for paragraph (1)(b) there shall be substituted the following paragraph—

"(b) the names and categories of the federated schools within the federation;";

(d) paragraph (1)(c) shall be omitted;

(e) in paragraph (1)(d) for "Part 3" there shall be substituted "Part 4 of the Federation of Schools (Community Schools, Community Special Schools, Voluntary Controlled Schools and Maintained Nursery Schools) (England) Regulations 2003";

(f) in paragraph (1)(d)(ii) the words "and additional foundation governors appointed in accordance with regulation 16(2)(b)" shall be omitted;

(g) in paragraph (1)(g) for "Schedule 5" there shall be substituted "regulation 18 of and Schedule 5 to the Federation of Schools (Community Schools, Community Special Schools, Voluntary Controlled Schools and Maintained Nursery Schools) (England) Regulations 2003";

(h) in paragraph (1)(h) for "Schedule 3" there shall be substituted "regulation 16 of and Schedule 4 to the Federation of Schools (Community Schools, Community Special Schools, Voluntary Controlled Schools and Maintained Nursery Schools) (England) Regulations 2003";

(i) in paragraphs (1)(i) and (3) for " the school" there shall be substituted "a federated school";

(j) in paragraph (1)(j) for "the school is a foundation or a voluntary school" there shall be substituted "a federated school is a voluntary controlled school"; and

(k) in paragraph (2) for "these Regulations as they apply to a school of the category to which the schools belong" there shall be substituted "regulations 21 to 23 of the Federation of Schools (Community Schools, Community Special Schools, Voluntary Controlled Schools and Maintained Nursery Schools) (England) Regulations 2003".

**5.** For regulation 30, there shall be substituted—

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

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

(3) Where the federation will contain a voluntary controlled school, the governing bodies of the proposed federation shall not submit the draft to the authority unless it has been approved in respect of each such school by—

(a) that school's foundation governors;

(b) any trustees of a trust relating to such a school;

(c) in the case of a Church of England or Roman Catholic school, the appropriate diocesan authority; and

(d) in the case of any other school designated under section 69(3) of the 1998 Act as having a religious character, the appropriate religious body.

(4) If—

(a) the authority are content that the draft complies with all the applicable statutory provisions, or

(b) there is agreement between the authority, the governing bodies and (in the case of a voluntary controlled school) the persons mentioned in paragraph (3) that the draft should be revised to any extent, and the revised draft complies with all the applicable statutory provisions,

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

(5) If, in the case of a proposed federation which is to include a voluntary controlled school, there is at any time disagreement as to the content of the draft among the persons mentioned in paragraph (3), any of those persons may refer the draft to the Secretary of State who shall give such direction as he thinks fit having regard, in particular, to the category of schools which are proposed to be included within the federation.".

**6.** In regulation 31—

(a) in paragraphs (4) to (7)—

(i) for "school" there shall be substituted "federation"; and

(ii) for "regulation 30(2)" there shall be substituted "regulation 30(3)";

(b) in paragraphs (6) and (7) the words "having regard, in particular, to the category of school to which the school belongs" shall be omitted; and

(c) in paragraph (9) for "regulation 30(3) there shall be substituted "regulation 30(4)".

**7.** In regulation 32—

(a) in paragraph (1) for "school" there shall be inserted "federation";

(b) in paragraph (2) after sub-paragraph (a) there shall be inserted—

"(aa) the Secretary of State."; and

(c) in paragraph (2)(c) for "the school" there shall be substituted "a federated school".

**8.** In Schedule 6—

(a) in paragraph 1(2) for "regulation 11" there shall be substituted "regulation 19 of the Federation of Schools (Community Schools, Community Special Schools, Voluntary Controlled Schools and Maintained Nursery Schools) (England) Regulations 2003";

(b) in paragraph 5(3) the words ", partnership governor" shall be omitted.

# SCHEDULE 7

Regulation 25

## Modification of the Procedure Regulations

**1.** In regulation 3(1) for "regulation 11 of the Constitution Regulations" there shall be substituted "regulation 19 of the Federation of Schools (Community Schools, Community Special Schools, Voluntary Controlled Schools and Maintained Nursery Schools) (England) Regulations 2003".

**2.**In regulation 5 for paragraph (3) there shall be substituted the following paragraph—

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

**3.** In regulations 5(5)(b), 13(3)(a), 15(1)(a), 15(1)(d) and 24(9)(a) and paragraphs 1(2) and 3(1) and (2) of the Schedule(**a**) for "school" there shall be substituted "federation or a federated school".

**4.** In regulation 6 for paragraph (2) there shall be substituted the following paragraph—

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

(a) the federation or a federated school;

(b) any pupil at a federated school, or his parent; or

(c) a person who works at the federation or at a federated school.".

**5.** In regulations 8(3)(c), 10(1)(b), 18(1)(b), 21(1), 23(1)(b) and 24(2) and in paragraph 3(2) of the Schedule, for "head teacher of a school" there shall be substituted "head teacher of the federation or of a federated school".

**6.** In regulation 8(6) for "If at any time the school does not have delegated budget" there shall be substituted "If at any time no federated school has a delegated budget".

**7.** In regulations 11(5)(c), 12(4), 13(3)(b), 17(3) and 24(9)(b) for "the school" there shall be substituted "a federated school".

**8.**In regulations 12(5), 14(1)(b), 14(2) and 14(4) to (6) for "school" there shall be substituted "federation".

**9.** In regulations 11(4)(b), 14(1)(a)(**b**), 16(1)(c) and 21(2) for "the head teacher" there shall be substituted "the head teacher of the federation or a federated school".

**10.** In regulation 15(1) for sub-paragraph (c) there shall be substituted the following sub-paragraph—

"(c) that the governor has acted in a way that is inconsistent with the ethos of the federation and has brought or is likely to bring the federation or the governing body or his office into disrepute; or"

**11.**In regulation 19 for "school staff" there shall be substituted "staff of a federation or federated school".

# SCHEDULE 8

Regulation 26

## Modification of the Staffing Regulations

**1.** In regulation 10 there shall be inserted "and federations or federated schools(**c**)" after "maintained nursery schools".

**2.** In regulations 4(2)(a) and (c), 4(3), 4(4) and 13(1)(a) for "head teacher" there shall be substituted "head teacher of the federation or a federated school".

**3.** In regulation 5—

(a) for "head teacher of a school" there shall be substituted "head teacher of a federation or of a federated school"; and

(b) after "sending a copy to the" there shall be inserted "relevant".

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(**a**) As substituted by regulation 4 of the School Governance (Constitution and Procedures) (England) (Amendment) Regulations 2003.

(**b**) As substituted by regulation 3 of the School Governance (Constitution and Procedures) (England) (Amendment) Regulations 2003.

(**c**) Federated in accordance with the Federation of Schools (Community Schools, Community Special Schools, Voluntary Controlled Schools and Maintained Nursery Schools) (England) Regulations 2003.

**4.** In regulation 16 for paragraph (1) there shall be substituted the following paragraph—

"**16**.(1) Subject to regulation 18, where, in the opinion of the governing body of the federation or (as the case may be) the head teacher, his suspension is required—

(a) both the governing body of the federation and the head teacher of the federation or a federated school shall have the power to suspend any person employed to work at the federation; and

(b) both the governing body of the federation and the head teacher of the federation or a federated school shall have the power to suspend any person employed to work at that federated school.".

**5.** In regulation 17 and paragraphs 2(2), 2(3) and 2(6)(a) and (b) of the Schedule for "the school" there shall be substituted "the federation or a federated school".

**6.** In regulation 18(1) and (3) for "work at a school" there shall be substituted "work at the federation or a federated school".

**7.** In regulations 28(2), 29, 30(3) and 31(1) and paragraph 2(5) of the Schedule for "relevant school" there shall be substituted "relevant federated school or federation".

**8.**In regulation 28(2) for "school or schools" there shall be substituted "federated school or federation".

**9.**In regulations 30 and 31 for sub-paragraphs (a), (b) and (c) of paragraph (1) there shall be substituted the following sub-paragraphs—

"(a) the head teacher of one or more of the collaborating federated schools or federations;

(b) one or more governors from any of the collaborating governing bodies; or

(c) one or more head teachers with one or more governors from any of the collaborating federated schools or federations."

## EXPLANATORY NOTE

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

These Regulations apply to federations consisting of community schools, community special schools, voluntary controlled schools or maintained nursery schools in England.

**Part 1** provides for the Regulations to come into force on 1 September 2003 and contains interpretative provisions.

**Part 2** sets out the circumstances in which a federation can be established or a school can join an existing federation. At least two but no more than five schools can federate in accordance with section 24 of the Education Act 2002.

Regulation 5 enables action taken before 1 September 2003 to take effect as prescribed procedure.

Regulations 6 to 11 set out the procedure for schools to federate including circumstances where a federation wishes to join another federation to form a new federation and where a new school wishes to join a federation. Regulation 11 and Schedule 1 enable new schools which propose to be federated schools to have a single temporary governing body.

Regulation 12 provides that on the federation date the governing bodies of the individual schools dissolve and the governing body of the federation is incorporated. All relevant land, property, rights and liabilities are transferred to the governing body of the federation.

**Part 3** describes the various types of governor. Regulation 13 and Schedule 2 deal with parent governors and set out the basis on which they are elected or appointed.

Regulation 14 deals with staff governors. This category includes both teaching and non-teaching staff and the head teacher of each federated school or of the federation. The head teacher of the federation and the head teacher of each school within the federation is a staff governor by virtue of his position but may resign his governorship (or withdraw his resignation) at any time. Schedule 3 deals with the election process for other staff governors.

Regulation 15 deals with the appointment of LEA governors.

Regulation 16 sets out who is eligible for appointment as a community governor. Schedule 4 sets out provisions as to the appointment of community governors in special schools.

Regulation 17 deals with the appointment of foundation governors, including ex officio foundation governors and substitute governors. Regulation 18 and Schedule 5 make provision for the nomination and appointment of sponsor governors. The appointment of sponsor governors is optional.

Regulation 19 provides for the appointment of persons who are not governors (known as associate members) to committees of the governing body of a federation.

**Part 4** sets out the general principles by which the size and composition of governing bodies of federations are to be determined. Regulations 21 to 23 set out the specific requirements for the constitution of the governing bodies of federations, dependent upon the type of schools which make up a federation.

**Part 5** applies provisions within other sets of Regulations to the governing bodies of federations, and to governors, where certain modifications are required as set out in Schedules 6 to 8. Provisions relating to the exercise of the power to nominate and appoint a governor and relating to qualifications and terms of office apply, together with provisions dealing with the procedure for making, reviewing and varying a federation's instrument of government and the contents of that instrument of government. The instrument of government of a federation must conform to the School Governance (Constitution) (England) Regulations 2003.

**Part 6** deals with information and funding matters. Regulation 27 provides for the governing bodies of each school which will be part of a federation to provide specified information to assist the governing body of the federation.

Regulation 28 applies Chapter IV of Part II of the School Standards and Framework Act 1998 to federations subject to regulation 29, which modifies section 50 of the 1998 Act as it applies to federated schools and the governing bodies of federations. The modified section 50 applies until a temporary governing body is established when a school proposes to leave a federation or when a federation is dissolved.

**Part 7** sets out the procedure required for a federated school to leave a federation. Regulation 31 provides for the matter to be referred to and determined by the Secretary of State.

Regulation 32 provides that where a school is to leave a federation, the local education authority must establish a temporary governing body and issue an instrument of government in respect of that school and review the instrument of government of the federation. Under regulation 33, the temporary governing body of the school leaving the federation may spend its budget share made available by the local education authority.

Regulation 34 provides for the incorporation of the governing body of the school leaving the federation on the de-federation date and regulation 35 deals with the transfer of land, property, rights and liabilities to the governing body of the school leaving the federation.

**Part 8** sets out the procedure for the dissolution of a federation. The local education authority must establish a temporary governing body for each school within the federation and issue an instrument of government in relation to each school.

Regulation 38 enables the temporary governing body of each school to spend the budget share made available to it by the local education authority.

Regulation 39 provides for the incorporation (on the date of dissolution) of the governing bodies of each school previously within the dissolved federation and regulation 40 deals with the transfer of land, property, rights and liabilities to the governing body of each of those schools.

£4.00

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under the authority and superintendence of Carol Tullo, Controller of Her Majesty's
Stationery Office and Queen's Printer of Acts of Parliament.
E1152 8/2003 131152 19585

ISBN 0-11-047271-3

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