Department for Education

The constitution of governing bodies of maintained schools

Statutory guidance for governing bodies of maintained schools and local authorities in England

August 2015

Contents

Summary 3

About this guidance 3

Review date 3

What legislation does this guidance refer to? 3

Who is this guidance for? 3

Main points 4

Purpose and structure of this guidance 5

Priorities in deciding the constitution of the governing body 5

Priorities in deciding the membership of the governing body 6

The skills governing bodies need 8

Governor elections 8

Publication of Governor's Details and the Register of Interests 10

Annex A: The 2012 Constitution Regulations Explained 11

A. Categories of governor (part 2 and schedules 1-3 of the regulations) 11

B. Constitution of governing bodies (part 3 of the regulations) 14

C. Notification of appointments, term of office, removal and disqualification (part 4 of the regulations) 16

D. The instrument of government (Part 5 regulations 26 - 31) 20

E. Further sources of information 22

Annex B: A Summary of Maintained School Governing Body Constitution under the 2012 Constitution Regulations 23

Annex C: Model instrument of government 24

Instrument of government 24

Summary

About this guidance

This is statutory guidance from the Department for Education. This means that governing bodies (including governing bodies of federations) and local authorities must have regard to it when carrying out duties relating to the constitution of governing bodies in maintained schools.

This guidance is about the constitution of governing bodies and their size, membership and skills. It also explains the arrangements for the constitution of governing bodies of maintained schools constituted under the School Governance (Constitution) (England) Regulations 2012.

All governing bodies of maintained schools are required to be constituted under the School Governance (Constitution) (England) Regulations 2012 or the School Governance (Federations) (England) Regulations 2012, as appropriate, by 1 September 2015.

Review date

This guidance will next be reviewed in January 2016.

What legislation does this guidance refer to?

The School Governance (Constitution) (England) Regulations 2012 (the "2012 Constitution Regulations") and the School Governance (Federations) (England) Regulations 2012 (the "2012 Federation Regulations") as amended by the School Governance (Constitution and Federations) (England) (Amendment) Regulations 2014.

Who is this guidance for?

This guidance is for:

- School governors in all maintained schools (including those in federations) in England; and
- Local authorities in England.

It will also be of interest to school leaders and school staff in all maintained schools in England and governor support organisations

Main points

A. Governing bodies should be no bigger than necessary to secure the range of skills they need. Smaller governing bodies are likely to be more cohesive and dynamic.

B. A key consideration in the appointment and election of all new governors should be the skills and experience the governing body needs to be effective.

C. Governing bodies should use a skills audit to identify any specific gaps that need to be filled in the skills, knowledge and experience of existing governors.

D. Before being nominated for election or appointment, all prospective governors should be helped to understand the role of a governor and the governing bodies' code of conduct.

E. Anyone appointing governors to the governing body must appoint someone they believe has the skills to contribute to effective governance and the success of the school. Their decisions should be informed by interviews and references.

F. Governing bodies and local authorities should take steps to inform governor elections so that the electorate understands the extent to which nominated candidates possess the skills the governing body ideally requires.

G. Foundation governors have a particular purpose to safeguard the character of the school and ensure it is conducted in accordance with any founding documents, but otherwise every governor's role is to govern the school in the best interest of pupils, not to represent the interests of the constituency from which they were elected or appointed.

H. Meaningful and effective engagement with parents, staff and the wider community is vital. It is not the role of governing bodies to provide this through their membership. They need to assure themselves that specific arrangements are in place for this purpose.

I. Governing bodies should review their effectiveness regularly, including the extent to which their size and structure is fit for purpose and their members have the necessary skills.

J. Governing more than one school can generate a more strategic perspective and more robust accountability through the ability to compare and contrast across schools.

K. Governing bodies should publish on their websites information about their governors, including relevant business and pecuniary interests.

L. All governing bodies must be constituted under the 2012 Constitution Regulations or the 2012 Federation Regulations, as appropriate, by 1 September 2015.

Purpose and structure of this guidance

1. This is statutory guidance on the discharge of governing bodies and local authorities' functions under the 2012 Constitution Regulations (for federations the 2012 Federation Regulations), as amended. Governing bodies and local authorities are required to have regard to it.[1] The main purpose of this guidance is to highlight the direct impact that decisions about the constitution and membership of the governing body have on the governing body's ability to provide effective governance and contribute to the success of the school.
2. Annex A to this guidance explains the four aspects of the arrangements for the constitution of governing bodies set out in the 2012 Constitution Regulations:
    - the description of the different categories of governor
    - how governing bodies are to be constituted
    - terms of office, removal and disqualification of governors, and
    - how instruments of government are made and amended.
3. Annex B summarises the requirements of the 2012 Constitution Regulations in different types of school. A model instrument of government for governing bodies constituted under the 2012 Constitution Regulations is provided at Annex C.

Priorities in deciding the constitution of the governing body

4. Governing bodies should be no bigger than they need to be to have all the skills necessary to carry out their functions. The size and structure of the governing body should be designed so that every member actively contributes relevant skills and experience.
5. Smaller governing bodies are more likely to be cohesive and dynamic, and able to act more decisively. This is particularly true when things go wrong, as illustrated by the contrast between the impact of small tightly focused Interim Executive Boards and the often large and unfocused governing bodies that many academy sponsors report they need to reform.
6. The need for governing bodies to establish committees, including for exclusions or disciplinary matters, does not in itself necessitate a large governing body. Committees of the governing body can be established specifically for these purposes to which new associate members may be appointed. In addition, under the School Governance (Collaboration) (England) Regulations 2003, the committee may be established as a joint committee with another governing body to enable it to include governors from another school.

[1] By section 19(7) of the Education Act 2002 and regulation 27 of the 2012 Constitution Regulations.

7. All governing bodies should review their effectiveness on a regular basis. This should include reflecting on the merits of their constitution and the additional benefits that may be gained from forming a federation to create a single governing body across more than one school in order to develop a more strategic perspective and create more robust accountability through the ability to compare and contrast across schools.

8. Governing bodies should re-evaluate their constitution if things are not going well – for example following an Ofsted inspection or in the light of an external review of governance. They should also consider the benefits of re-constitution as a positive and proactive move to ensure they are fit for purpose for the future, including in the context of a conversion to academy status.

Priorities in deciding the membership of the governing body

9. Each of the various categories of governor prescribed in the Regulations has its own eligibility criteria and means of appointment – this guidance does not add additional eligibility criteria, but sets out considerations to which those exercising their powers under the Regulations must have regard.

10. Once appointed or elected, all governors must operate in the best interest of pupils, not as representatives to lobby on behalf of their constituency[2]. Their task is to govern the school. This means focusing on the core functions of providing strategic leadership, holding the headteacher to account and making sure the school's money is well spent. This is a demanding task for which all governors need to have, or develop, relevant and appropriate skills.

11. Meaningful and effective engagement with parents, staff and the wider community is vital, but not guaranteed by the presence of the various categories of governor on the governing body. The membership of the governing body should focus on skills, with stakeholder engagement as an important but distinct activity for which governing bodies will need to assure themselves that appropriate structures and arrangements are in place. Governors themselves should seek to assist their school to build relationships with business and other employers in order to enhance the education and raise the aspirations of pupils.

12. While all current and prospective governors should commit to continuing professional development to develop their skills as governors, filling a vacancy on the governing body provides a specific opportunity to fill any skills gaps. The first priority for a governing body in filling a vacancy on the governing body should therefore be to do what is in their power to secure a new governor with the ability and experience they

[2] Notwithstanding the role of Foundation governors to preserve and develop the school's character (including religious character where it has one) and where the school has a foundation, ensure that the school is conducted in accordance with the foundation's governing documents.

require – or, if this is not possible, at least the capacity and willingness to develop them.

13. A skills audit, such as that produced by the National Governors' Association, should be used to identify the skills, knowledge and experience of current governors and any additional specific skills or experience that the governing body ideally requires. The outcome of the audit will help the governing body or other appointing persons[3] to formulate their opinion as to whether prospective governors have the skills to contribute to effective governance and the success of the school. To make an informed decision on the matter an interview or detailed discussion will need to take place with each prospective candidate, with references (oral or written) taken as necessary and appropriate. The skills audit will also help to inform governor elections as discussed below.

14. Governing bodies should make every effort to help all prospective governors understand clearly the role of a governor. For example, before they are nominated for appointment or election prospective governors may be invited to observe a governing body meeting and to meet the chair and other governors and the headteacher. A code of conduct should be maintained and communicated to all prospective governors to set clear expectations of the governors' role and behaviour. Explicit agreement to the code of conduct will mean there is a common reference point should any difficulties arise in the future.

15. Governing bodies and others responsible for nominating or appointing governors should make use of all available channels to identify suitable governors. This includes the services of SGOSS and Inspiring the Future which are funded by the Department to provide a free service to governing bodies, local authorities and diocese to help them find new governors with the skills they require.

16. While it is essential to build a strong and cohesive non-executive team, the most robust governing bodies welcome and thrive on having a sufficiently diverse range of viewpoints, such that open debate leads to good decisions in the interests of the whole school community. Notwithstanding the role of foundation governors in a faith-designated school, governing bodies should be alert to the risk of becoming dominated by one particular mind-set or strand of opinion, whether related to faith or otherwise. Having some members who have no close ties with the school can help ensure that the governing body has sufficient internal challenge to how they carry out their strategic functions.

17. We recognise that there are people who have the skill and the time to serve effectively on a number of governing bodies, and we do not want to restrict their ability to do so. However, where a prospective governor is already a governor of another school, the chair of governors should speak to the chair of the other governing body to discuss both the skills of the individual and, where appropriate, their capacity to

[3] 'Person' is the term used in the regulations, in practice this will usually be an organisation such as a Diocese, Parochial Church Council or Foundation Trust

serve effectively on an additional governing body. It is likely that only in exceptional circumstances will it be practical and beneficial for an individual to serve on more than two governing bodies – but this is rightly a matter for the appointing body to decide.

The skills governing bodies need

18. The Regulations, as amended, create an explicit requirement that all appointed governors have the skills required to contribute to effective governance and the success of the school. The specific skills that governing bodies need to meet their particular challenges will vary. It is therefore for governing bodies and other appointing persons to determine in their own opinion, having regard to this guidance, what these skills are and be satisfied that the governors they appoint have them. They may interpret the word skills to include personal attributes, qualities and capabilities, such as the ability and willingness to learn and develop new skills.
19. Experience has shown that all governors need a strong commitment to the role and to improving outcomes for children, the inquisitiveness to question and analyse, and the willingness to learn. They need good inter-personal skills, appropriate levels of literacy in English (unless a governing body is prepared to make special arrangements), and sufficient numeracy skills to understand basic data. Foundation governors need the skills to understand the ethos of the school and its implications for the way it is governed.
20. Experience also shows that effective governing bodies seek to secure or develop within their membership as a whole expertise and experience in analysing performance data, in budgeting and driving financial efficiency, and in performance management and employment issues, including grievances. They seek to recruit and/or develop governors with the skills to work constructively in committees, chair meetings and to lead the governing body.
21. It is governing bodies' responsibility to identify and secure the induction and other ongoing training and development governors need. Governing bodies should set aside a budget for this purpose.

Governor elections

22. Governing bodies and local authorities should make every effort to conduct informed parent and staff governor elections in which the expectations and credentials of prospective candidates are made clear. The best governing bodies set out clearly in published recruitment literature:
    - the core functions of the governing body and the role of a governor, and the induction and other training that will be available to new governors to help them fulfil it;

- the expectations they have of governors for example in relation to the term of office, the frequency of meetings, membership of committees and the willingness to undertake training; and
- any specific skills or experience that would be desirable in a new governor, such as the willingness to learn or skills that would help the governing body improve its effectiveness and address any specific challenges it may be facing.

23. Well run elections use secure and reliable voting systems and offer candidates the opportunity to publish a statement of sufficient length to set out:
    - evidence of the extent to which they possess the skills and experience the governing body desires;
    - their commitment to undertake training to acquire or develop the skills to be an effective governor;
    - if seeking re-election, details of their contribution to the work of the governing body during their previous term of office; and
    - how they plan to contribute to the future work of the governing body.
24. The purpose of governing bodies providing and publishing information about the role of a governor and the skills they ideally require is not to create additional eligibility criteria for potential candidates – which they do not have the power to do. It is for the electorate to elect their choice of candidate(s). The purpose of publishing the information is to simply inform the electorate of the governing bodies' expectations, circumstances and ideal requirements.

Publication of Governor's Details and the Register of Interests

25. Governors hold an important public office and their identity should be known to their school and wider communities. In the interests of transparency, a governing body should publish on its website up-to-date details of its governance arrangements in a readily accessible form[4]. This should include:

    - the structure and remit of the governing body and any committees, and the full names of the chair of each;
    - for each governor who has served at any point over the past 12 months:
        - their full names, date of appointment, term of office, date they stepped down (where applicable), who appointed them (in accordance with the governing body's instrument of government),
        - relevant business and pecuniary interests (as recorded in the register of interests) including:
            - governance roles in other educational institutions;
            - any material interests arising from relationships between governors or relationships between governors and school staff (including spouses, partners and close relatives); and
        - their attendance record at governing body and committee meetings over the last academic year.

26. Governing bodies should also publish this information for associate members, making clear whether they have voting rights on any of the committees to which they have been appointed.

27. Governing bodies should make it clear in their code of conduct that this information will be published on their governors and any associate members. Any governor failing to provide information to enable the governing body to fulfil their responsibilities may be in breach of the code of conduct and as a result be bringing the governing body into disrepute. In such cases the governing body should consider suspending the governor.

[4] Readily accessible means that the information should be on a webpage without the need to download or open a separate document.

Annex A: The 2012 Constitution Regulations Explained

A. Categories of governor (part 2 and schedules 1-3 of the regulations)

This section relates to the appointment/ election of the various categories of governor, and summarises the provision made in the Regulations for each. The categories applicable to each type of school are summarised at Annex B. Information about disqualification is in section C of this guidance.

A.1 Parent governors (regulation 6 and Schedule 1)

Parent governors are elected by other parents at the school. Any parent, or carer, of a registered pupil at the school at the time of election is eligible to stand for election as a parent governor. Parent governors may continue to hold office until the end of their term of office even if their child leaves the school.

Schools must make every reasonable effort to fill parent governor vacancies through elections. However, the Regulations make provision for the governing body to appoint parent governors where:

- not enough parents stand for election,
- at least 50% of the registered pupils at the school are boarders and it is not reasonably practicable to elect, or
- in the case of community special or foundation schools established in a hospital, the governing body judges that an election is impractical.

The method of appointment is set out in paragraphs 10 and 11 of Schedule 1 to the Regulations.

Governing bodies may only appoint as a parent governor a parent who has, in their opinion, the skills to contribute to effective governance and the success of the school.

Elected parent governors cannot be removed from office – even if it becomes apparent that they are unable to develop the skills to contribute to effective governance or behave in a manner befitting the role. Every effort should therefore be made upfront to avoid potential difficulties later by informing prospective candidates of the nature of the role and securing their agreement to a clear set of expectations for behaviour and conduct – as set out in a code of conduct. The 2012 Roles, Procedures and Allowances regulations set out the basis on which governing bodies may suspend governors, including parent governors.

A.2 Staff governors (regulation 7 and Schedule 2)

Teaching and support staff who, at the time of election, are employed by either the governing body or the local authority to work at the school under a contract of employment, are eligible to be staff governors.

Staff governors are elected by the school staff. They cease to hold office when they cease to work at the school.

It is important that prospective staff governors understand the nature of the role of a governor – and specifically that their role will not be to represent staff, nor to stand alongside the headteacher in being held to account by the governing body, but to operate as part of the governing body to provide strategic leadership and to hold the headteacher to account.

As with elected parent governors, staff governors cannot be removed from office. Clear expectations of role and conduct should therefore be communicated and agreed upfront.

If no candidates are forthcoming, the position on the governing body remains vacant and an election should be held as soon as an eligible candidate is identified.

A.3 The headteacher

The headteacher is a member of the governing body by virtue of their office.

The headteacher may at any time resign as a governor, and withdraw their resignation, in both cases by notifying the clerk in writing.

A.4 Local authority governors (regulation 8)

Local authority governors are nominated by the local authority but appointed by the governing body. The local authority can nominate any eligible person as a local authority governor, but it is for the governing body to decide whether their nominee has the skills to contribute to the effective governance and success of the school and meets any other eligibility criteria they have set. Local authorities should therefore make every effort to understand the governing body's requirements and identify and nominate suitable candidates.

An individual eligible to be a staff governor at the school may not be appointed as a local authority governor.

A.5 Foundation governors (regulation 9)

Foundation governors are either appointed or take the role by virtue of an office that they hold.

Where appointed, the appointment is made by the person identified in the instrument of government (usually the school's founding body, church or other organisation). A foundation governor is someone who, in the opinion of the person entitled to appoint them, has the skills to contribute to the effective governance and success of the school, and who is appointed for the purpose of securing:

- in all cases, that the school's character (including religious character where it has one) is preserved and developed; and
- that the school is conducted in accordance with the foundation's governing documents.

In appointing a foundation governor, the person entitled to make the appointment should seek to understand and take into account the skills and experience the governing body identifies that they need.

If an ex-officio foundation governor is unwilling or unable to act as a governor or has been removed from office under regulation 21(1) then a substitute governor can be appointed.

A.6 Partnership governors (regulation 10 and Schedule 3)

Partnership governors are appointed by the governing body. Individuals are only eligible to be nominated as a partnership governor if the person nominating them believes that they have the skills needed to contribute to the effective governance and success of the school. Likewise the governing body may only appoint a person as a partnership governor if they believe that they have the skills needed to contribute to the effective governance and success of the school.

The number of partnership governors required on the governing body is set out in the instrument of government.

The governing body must first try to appoint partnership governors from those nominated:

- where the school has a religious character: by the "appropriate diocesan authority" in the case of a Church of England or Roman Catholic school, and
- by the "appropriate religious body" in any other case; and,
- where the school does not have a religious character, by the parents of registered pupils at the school and such others in the community as they consider appropriate (for example, staff, community organisations and other local bodies).

Where the governing body cannot fill all the vacant posts from among the nominees, either because there were not enough or because they rejected some of the nominees as ineligible, then the governing body can fill those posts from among persons nominated by governors.

Where the governing body makes an appointment having rejected nominees as ineligible then they must put their decision and reasons not to appoint in writing to:

- the local authority
- the person or body who nominated the rejected individual, and
- the person rejected.

A.7 Co-opted governors (regulation 11)

Co-opted governors are appointed by the governing body. They are people who in the opinion of the governing body have the skills required to contribute to the effective governance and success of the school.

A.8 Associate members (regulation 12)

Associate members are appointed by the governing body to serve on one or more governing body committee. They may also attend full governing body meetings. They are not governors and therefore do not have a vote in governing body decisions, but may be given a vote on decision made by committees to which they are appointed.

Associated members should be appointed because of the specific expertise and experience they can contribute to the effective governance and success of the school. The definition of associate member is wide. Subject to the disqualifications set out in the Regulations, the governing body may appoint a pupil, school staff member, or any other person as an associate member so that they can contribute their specific expertise. This can help to address specific gaps identified in the skills of governing body members, and/or help the governing body respond to particular challenges that they may be facing.

B. Constitution of governing bodies (part 3 of the regulations)

This section explains how the governing body of every maintained school must be constituted. The table at Annex B summarises the constitution of governing bodies by type of school.

B.1 Requirements for all maintained schools (regulation 13)

The governing body must not be smaller than seven members[5], and must include:

- at least two parent governors;
- the headteacher unless the headteacher resigns as a governor;
- one, and only one, staff governor;

[5] Subject to the requirements regarding foundation governors in qualifying foundation schools and voluntary aided schools

- one, and only one, local authority governor; and

The governing body may appoint as many additional co-opted governors as they consider necessary. However, the number of co-opted governors who are eligible to be elected or appointed as staff governors under Schedule 2 must not, when counted with the one staff governor and the headteacher, exceed one-third of the total membership of the governing body.

There is no upper limit but governing bodies should have regard to this statutory guidance in deciding their size.

B.2 Additional requirements for foundation and voluntary schools (regulation 14)

In addition to the requirements imposed by regulation 13 and considered in the preceding section, foundation and voluntary schools are required to have partnership or foundation governors as follows:

- foundation and foundation special schools without a foundation must have at least two partnership governors;
- foundation and foundation special schools that have a foundation but are not a qualifying foundation school must have at least two foundation governors;
- qualifying foundation schools must have up to two more foundation governors than all other governors;
- voluntary aided schools must have two more foundation governors than all other governors; and
- voluntary controlled schools must have at least two foundation governors.

B.3 Surplus governors (regulation 15)

A school may have more governors in a particular category than is provided for in its instrument of government. This situation could arise if a governing body has decided to reconstitute and reduce in size but sufficient resignations are not forthcoming for the remaining members to fit within the new structure.

Governing bodies, and chairs of governors in particular, should make every effort to achieve any restructuring or downsizing amicably through sensitive and honest negotiation about which governors are best placed to contribute to effective governance and the success of the school. This may be an uncomfortable process and should be handled sensitively and with care. If necessary, the governing body should put in place a fair and transparent process to define the skills it requires and conduct a skills audit of its members.

Where negotiations and the result of a skills audit do not result in sufficient resignations and there remains a surplus of governors:

- Any surplus in the number of foundation governors must be resolved by the person responsible for appointing foundation governors. They should decide who should continue to hold office on the basis of which foundation governors are best skilled to contribute to the effective governance and success of the school, and to secure the purposes for which they were appointed as a foundation governor.
- Any surplus in any other category of governor must be resolved by a separate vote of the governing body on each category in which there is a surplus. This vote must be specified as an item on the agenda issued seven days in advance of the meeting. Governors are not permitted to vote on their own category. The chair has a casting vote if necessary. Governors declared surplus do not cease to hold office until votes are cast on all categories in which there is a surplus.

C. Notification of appointments, term of office, removal and disqualification (part 4 of the regulations)

C.1 Notification of appointments (regulation 16)

The person making an appointment or nominating a person to be appointed to the governing body must give written notice to the clerk of the name and usual place of residence of the person nominated or appointed.

C.2 Qualifications and disqualifications (regulation 17 and Schedule 4 to the Regulations)

Grounds for disqualification fall into three broad categories:

- general grounds;
- grounds that apply to particular categories of governor; and
- grounds that arise because of particular failings or actions on the part of the governor.

All the grounds for disqualification apply also to associate members except that associate members can be registered pupils at the school and can be under 18.

General grounds

Registered pupils cannot be governors.

A governor must be aged 18 or over at the time of election or appointment.

A person cannot hold more than one governor post at the same school at the same time.

Grounds that apply to particular categories of governor

A person is disqualified from being a parent governor if they are an elected member of the LA or paid to work at the school for more than 500 hours (i.e. for more than one-third of the hours of a full-time equivalent) in any consecutive twelve month period (at the time of election or appointment).

A person is disqualified from being a local authority governor if they are eligible to be a staff governor at the school.

A person is disqualified from being a partnership governor if they are:

- a parent of a registered pupil at the school;
- eligible to be a staff governor at the school;
- an elected member of the LA; or
- employed by the local authority in connection with its education functions.

Grounds that arise because of particular failings or actions on the part of the governor

A person is disqualified from being a governor of a particular school if they have failed to attend the meetings of the governing body of that school for a continuous period of six months, beginning with the date of the first meeting they failed to attend, without the consent of the governing body. This does not apply to the headteacher or to foundation governors appointed by virtue of their office.

A foundation, local authority, co-opted or partnership governor at the school who is disqualified for failing to attend meetings is only disqualified from being a governor of any category at the school during the twelve month period starting on the date on which they were disqualified.

A person is disqualified from holding or continuing to hold office if that person:

- is the subject of a bankruptcy restrictions order or an interim order, debt relief restrictions order, an interim debt relief restrictions order or their estate has been sequestrated and the sequestration has not been discharged, annulled or reduced is subject to a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986, a disqualification order under Part 2 of the Companies (Northern Ireland) Order 1989, a disqualification undertaking accepted under the Company Directors Disqualification (Northern Ireland) Order 2002, or an order made under section 429(2)(b) of the Insolvency Act 1986 (failure to pay under county court administration order)
- has been removed from the office of charity trustee or trustee for a charity by the Charity Commission or Commissioners or High Court on grounds of any misconduct or mismanagement, or under section 34 of the Charities and Trustee

Investment (Scotland) Act 2005 from being concerned in the management or control of any body

- is included in the list of teachers or workers considered by the Secretary of State as unsuitable to work with children or young people
- is barred from any regulated activity relating to children
- is subject to a direction of the Secretary of State under section 128 of the Education and Skills Act 2008
- is disqualified from working with children or from registering for child-minding or providing day care
- is disqualified from being an independent school proprietor, teacher or employee by the Secretary of State
- has been sentenced to three months or more in prison (without the option of a fine) in the five years before becoming a governor or since becoming a governor
- has received a prison sentence of two years or more in the 20 years before becoming a governor
- has at any time received a prison sentence of five years or more
- has been fined for causing a nuisance or disturbance on school premises during the five years prior to or since appointment or election as a governor
- refuses a request for the clerk to apply to the Disclosure and Barring Service for a criminal records check.

Anyone proposed or serving as a governor who is disqualified for one of these reasons must notify the clerk to the governing body.

C.3 Term of office (regulation 18)

The term of office for all categories of governor is a fixed period of four years, but:

- the instrument of government may specify a shorter term of office (being at least a year) for a particular category of governor;
- the instrument of government may specify that the term of office for an individual governor within a category of governor may be between one year and the maximum term the governing body has set for that category, as determined by the appointing body at the time of appointment;
- a headteacher or an ex officio foundation governor stops being a governor when the position which entitles them to be a governor comes to an end;

- an additional governor appointed under Part 4 of the Education and Inspections Act 2006 holds office for such period as the appointer determines up to a maximum of four years; and
- a substitute governor's term of office is dependent on the return or replacement of the original governor.

A governor may be elected or appointed for a further term.

Associate members are appointed for a period of between one and four years, as determined by the governing body on appointment, and may be reappointed.

Any governor may at any time resign by giving written notice to the clerk.

C.4 Removal of governors (regulations 20 - 24)

Foundation governors may be removed from office by the person who appointed them. The appointer must give written notice of the removal to the clerk to the governing body and to the governor concerned.

The governing body may remove any ex-officio foundation governor if requested by the person named in the instrument of government as the person entitled to make such a request. That person must give the clerk and the governor concerned written reasons for the request.

Local authority governors may be removed from office by the local authority that nominated them. The local authority must give written notice of the removal to the clerk to the governing body and to the governor concerned.

The governing body may remove co-opted governors and partnership governors (for details see section C.5).

The governing body may also remove an appointed, but not an elected, parent governor. (A parent governor is considered to be elected if they stood for election for parent governorship; whether or not a ballot took place is irrelevant for this purpose).

The governing body may not remove any staff governor.

C.5 Procedure for removal of governors by the governing body (regulation 25)

Removal by a governing body of a co-opted governor, partnership governor, ex officio foundation governor or appointed parent governor is effected by resolution of the governing body but only if:

- the removal is confirmed by a resolution passed at a second meeting of the governing body not less than 14 days after the first meeting;

- the removal of the governor has been specified as an item on the agenda of both meetings; and
- the following additional conditions are satisfied.

Where the governor concerned is an ex-officio foundation governor, or is a partnership governor whose removal has been requested by the nominating body, the additional condition is that the governing body considers the reasons for removal and gives the governor concerned the chance to respond.

Where the governor concerned is a co-opted governor, a partnership governor or an appointed parent governor, the governor proposing the removal must at the meeting give reasons for the proposal and the governor concerned must have the chance to respond.

D. The instrument of government (Part 5 regulations 26 - 31)

Section 20 of the Education Act 2002 requires all maintained schools to have an instrument of government which records the constitution of the governing body and other matters relating to the school. Part 5 of the Regulations makes provision regarding the contents and form of the instrument and the procedure for making and reviewing it.

D.1 Contents and form (regulation 28)

A model instrument of government is shown at Annex C. All instruments of government must include:

- the name and category of school
- the name of the governing body
- the categories of governor
- the number of governors in each category
- the total number of governors
- the term of office of any category of governor, if less than four years
- the date the instrument of government takes effect.

There are specific additional requirements for certain categories of school, which are highlighted in Annex C. Where a school has a foundation, the instrument of government must comply with the foundation's governing documents.

D.2 Making the instrument of government (regulation 29)

The governing body prepares the draft instrument of government and submits it to the local authority to consider whether it complies with the relevant legal requirements.

Where a school has foundation governors, the governing body must not submit the draft unless it has been approved by the foundation governors; the trustees of any foundation relating to the school; the appropriate diocesan authority; and in the case of any other school designated as having a religious character, the appropriate religious body.

If the local authority is not content with the draft instrument of government it must tell the governing body and give reasons. If it is not possible for the local authority and governing body to agree on a revised draft the local authority will produce a final draft for the school as they think fit, having regard to the category of school to which the school belongs, and make the instrument of government.

D.3 Reviewing and varying the instrument of government (regulation 30)

The governing body or local authority can review and vary the instrument of government at any time after it is made. In this event:

- in the case of a school with foundation governors, the governing body must not submit a revised draft unless it has been approved by the foundation governors; the trustees of any foundation relating to the school; the appropriate diocesan authority; and in the case of any other school designated as having a religious character, the appropriate religious body
- each party should let the other know what item in the instrument of government they wish to vary and give reasons
- the other party should respond, with any objections and give reasons
- if there is disagreement, some other variation can be proposed by either party
- if the local authority is not content with the governing body's revised proposal, it should inform the governing body giving reasons, or propose their own variation giving reasons, and in each case give the governing body reasonable opportunity to reach an agreed revised draft between them
- once an agreement has been reached, the local authority can vary the instrument of government
- in the absence of an agreement, the local authority will vary the instrument of government as it thinks fit
- the varied instrument of government should record the date the variation takes effect.

D.4 Copies of the instrument of government (regulation 31)

The local authority must supply a copy of the instrument of government, or a consolidated version where there has been a variation, to each member of the governing body (and the headteacher if they are not a governor).

E. Further sources of information

Associated resources (external links)

- The School Governance (Constitution) (England) Regulations 2012
- The School Governance (Federation) (England) Regulations 2012
- The Education Act 2002
- The School Governance (Roles, Procedures and Allowances) (England) Regulations 2013
- The School Governance (Roles, Procedures and Allowances) (England) Regulations 2013 – Deprtmental advice

Annex B: A Summary of Maintained School Governing Body Constitution under the 2012 Constitution Regulations

School Type	Foundation/trust governors	Partnership governors	Parent governors	Staff governors (including headteacher)	Local authority governors	Co-opted Governors
Community[6]	N/A	N/A	At least 2	Headteacher + 1	1	As determined by the GB and no more than 1/3 where they are also eligible to be elected as staff governors when counted with the staff governor and headteacher.
Foundation with no foundation[7]	N/A	At least 2 but no more than ¼				
Foundation with a foundation that appoints a minority of the GB	At least 2 but no more than 45%	N/A				
Qualifying Foundation	Overall control of GB. A majority of up to 2 over all other categories of governor	N/A				
Voluntary controlled	At least 2 but no more than ¼	N/A				
Voluntary aided	Overall control of GB. Majority of 2 over all other categories of governor	N/A				

[6] Including community special schools and maintained nursery schools
[7] Including foundation special schools

Annex C: Model instrument of government

Instrument of government

1. The name of the school is…….

2. The school is a [*insert category*] school.

   Also [*If applicable*] whether the school has a foundation, and whether the school is a qualifying foundation school. (**VA, VC, QF, F**)

3. The name of the governing body is "The governing body of……..." *[insert the name of the school as set out in paragraph 1. above]*.

4. The governing body shall consist of[8] :

   a. X parent governors

   b. One LA governor

   c. One staff governor

   d. One headteacher

   e. (if applicable) X foundation governors [*at least two (but no more than 45%)*] *or* X partnership governors if the foundation school has no foundation [*at least two (but no more than 1/4)*] **(F),** *or*

   e. X foundation governors [*must outnumber the other governors by up to two*] **(QF)**, *or*

   e. X foundation governors [*must outnumber the other governors by two*] **(VA),** *or*

   e. X foundation governors [*at least two (but no more than 1/4)*] **(VC)**

   f. [*If applicable*] X co-opted governors.

5. Total number of governors [……*including additional foundation governors where appropriate*].

6. [*Applicable if the term of office of one or more categories of governor is shorter than four years*] **The term of office of [*category of governor*] is *[insert period between one and four years*].**

7. [*Applicable if the governing body has determined to permit appointing bodies to decide the term of office for an individual governor within a particular category of governors*] **The term of office for [insert category of governor] shall be between one year and [insert maximum for that category] years as determined by the appointing body at the time of appointment and notified to the clerk.**

8. Set out the name of any foundation body or person entitled to appoint foundation

[8] For paragraph 4, the required numbers of governors by category are provided at Annex A and B to this guidance

governors. If this is more than one person set out the basis on which appointments are made. **(VA, VC, QF, F)**

9. *[where applicable]* **(VA, VC, QF, F)**

(a) the holder of the following office shall be a foundation governor ex officio: [name of office]

(b) The foundation body or person named in paragraph 8 shall be entitled to appoint a foundation governor to act in the place of the ex officio foundation governor whose governorship derives from the office named in (a) above, in the event that that ex officio foundation governor is unable or unwilling to act as a foundation governor, or has been removed from office under regulation 21(1) of the Regulations.

10. *[Repeat 9(a) and (b) as necessary where there is more than one ex officio foundation governorship].* **(VA, VC, QF, F)**

Set out the name of any person entitled to request the removal of any ex officio foundation governor and to appoint any substitute governor.

11. *[Where the school has a trust]* the fact that a trust exists. **(VA, VC, QF, F)**

12. [*If the school has a religious character*] a description of the ethos of the school. **(VA, VC, QF, F)**

13. This instrument of government comes into effect on [….]

14. This instrument was made by order of …….. Local Authority on ……

A copy of the instrument must be supplied to every member of the governor body (and the headteacher if not a governor), any trustees and to the appropriate religious body.

Key:
VA - Voluntary Aided
VC - Voluntary Controlled
QF - Qualifying foundation
F - Foundation

Clauses 1 to 5, 13 and 14 apply to all schools
Clause 6 applies to schools with governor terms of office of shorter than 4 years
Clause 7 applies to schools where a governor's term of office may be decided by an appointing body
Clause 8 applies to schools with foundation governors
Clauses 9 and 10 apply to schools with ex-officio foundation governors
Clause 11 applies to schools with a trust
Clause 12 applies to schools with a religious character

Department for Education

© Crown copyright 2015

This publication (not including logos) is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

To view this licence:
visit www.nationalarchives.gov.uk/doc/open-government-licence/version/3
email psi@nationalarchives.gsi.gov.uk
write to Information Policy Team, The National Archives, Kew, London, TW9 4DU

About this publication:
enquiries www.education.gov.uk/contactus
download www.gov.uk/government/publications

Reference: DFE-00406-2014



Follow us on Twitter:
@educationgovuk



Like us on Facebook:
facebook.com/educationgovuk