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STATUTORY INSTRUMENTS

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**2012 No. 1034**

**The School Governance (Constitution)  
(England) Regulations 2012**

**PART 1**

**Introduction**

**Citation, commencement and application**

1. These Regulations may be cited as the School Governance (Constitution) (England) Regulations 2012 and come into force on 1st September 2012.
2. These Regulations apply to a governing body if—
  - (a) the governing body are constituted under an instrument of government that takes effect on or after 1st September 2012; or
  - (b) where the governing body are constituted under an instrument of government that takes effect before 1st September 2012, the governing body or local authority decide under regulation 32(2) of the School Governance (Constitution) (England) Regulations 2007<sup>(1)</sup> (“the Constitution Regulations 2007”) that the instrument of government should be varied.
3. These Regulations apply only in relation to maintained schools in England<sup>(2)</sup>.

**Revocation of Constitution Regulations 2007, saving and transitional provisions**

- 4.—(1) The Constitution Regulations 2007 are revoked subject to paragraph (2).
- (2) The Constitution Regulations 2007 continue to apply to a governing body constituted under an instrument of government that takes effect before 1st September 2012 unless and until these Regulations apply to the governing body by virtue of regulation 2(b).
- (3) A decision by a governing body under regulation 32(2) of the Constitution Regulations 2007 is to be treated for the purposes of these Regulations as a decision of the governing body under regulation 30(2) of these Regulations.

**Interpretation**

- 5.—(1) In these Regulations—
  - “EA 1996” means the Education Act 1996<sup>(3)</sup>;
  - “SSFA 1998” means the School Standards and Framework Act 1998<sup>(4)</sup>;
  - “EA 2002” means the Education Act 2002;

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<sup>(1)</sup> [S.I. 2007/957](#), as amended by [S.I. 2009/1924](#), [S.I. 2010/1172](#) and [S.I. 2010/2582](#)

<sup>(2)</sup> By virtue of the definition of “regulations” in section 212(1) of EA 2002, these Regulations made by the Secretary of State apply only in relation to England.

<sup>(3)</sup> [1996 c.56](#).

<sup>(4)</sup> [1998 c.31](#).

“parent” includes any individual who has or has had parental responsibility for, or cares or has cared for, a child or young person under the age of 19;

“nominating body” means any person who nominated the governor in question; and

“qualifying foundation school” means a foundation or a foundation special school which has a foundation which meets any one or more of the conditions in section 23A(2),(3) and (4) of the SSFA 1998(5).

(2) Any reference in these Regulations to—

- (a) “a governor” is a reference to a member of a governing body of any school to which the provision applies;
- (b) “the local authority” is a reference to the local authority who maintain the school; and
- (c) “a foundation” or to “a school having a foundation” is to be read in accordance with section 21 of SSFA 1998.

## PART 2

### Categories of governor

#### Parent governor

6.—(1) In these Regulations “parent governor” means—

- (a) a person who—
  - (i) is elected in accordance with paragraphs 4 to 8 of Schedule 1 as a governor by parents of registered pupils(6) at the school, and
  - (ii) is such a parent at the time of election;
- (b) where the school is a maintained nursery school, a person who is elected in accordance with paragraphs 4 to 8 of Schedule 1 as a governor by—
  - (i) parents of registered pupils at the school, or
  - (ii) parents of children for whom educational or other provision is made on the premises of the school (including any such provision made by the governing body under section 27 of EA 2002),
 and is such a parent at the time of election; or
- (c) a person who is appointed as a parent governor in accordance with paragraphs 9 to 11 of Schedule 1.

#### Staff governor

7. In these Regulations “staff governor” means a person who—

- (a) is elected in accordance with Schedule 2 as a governor by persons who are employed by either the governing body or the local authority under a contract of employment providing for those persons to work at the school, and
- (b) is so employed at the time of election.

(5) Section 23A was inserted by section 33(1) of the Education and Inspections Act 2006 (c.40) and has been amended by S.I. 2010/1158 and S.I. 2011/1396.

(6) Within the meaning of section 434(5) of EA 1996.

### **Local authority governor**

8. In these Regulations “local authority governor” means a person who—
- (a) is nominated by the local authority; and
  - (b) is appointed as a governor by the governing body having, in the opinion of the governing body, met any eligibility criteria that they have set.

### **Foundation governor**

9. In these Regulations—
- (a) “foundation governor” means a person who—
    - (i) is appointed as a governor by any person other than the local authority,
    - (ii) is appointed for the purpose of securing that the character of the school including, where the school has a particular religious character<sup>(7)</sup> such religious character, is preserved and developed,
    - (iii) where the school has a foundation, is appointed for the purpose of securing that the school is conducted in accordance with the foundation’s governing documents, including, where appropriate, any trust deed relating to the school, and
    - (iv) would, in the opinion of the person entitled to appoint the foundation governor, be capable of achieving the purposes for which they would be appointed as a foundation governor;
  - (b) “ex officio foundation governor” means a person who is a foundation governor by virtue of an office held by the person;
  - (c) “substitute governor” 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 21(1).

### **Partnership governor**

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

(2) Where the school has a religious character, “partnership governor” means a person who is appointed for the purpose of securing that such religious character is preserved and developed.

### **Co-opted governor**

11. In these Regulations “co-opted governor” means a person who is appointed as a governor by the governing body and who, in the opinion of the governing body, has the skills required to contribute to the effective governance and success of the school.

### **Associate members**

12. In these Regulations “associate member” means a person who is appointed by the governing body as a member of any committee established by them but who is not a governor.

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(7) As designated by order of the Secretary of State under section 69(3) of SSFA 1998.

## PART 3

### Constitution of governing bodies

#### Requirements for all maintained schools

**13.**—(1) The governing body of every maintained school must be constituted in accordance with this regulation.

(2) The total membership of the governing body of a maintained school must be no fewer than seven governors.

(3) The governing body of a maintained school must include the following—

- (a) at least two parent governors;
- (b) the head teacher unless the head teacher resigns the office of governor in accordance with regulation 19;
- (c) one staff governor; and
- (d) one local authority governor.

(4) The governing body may in addition appoint such number of co-opted governors as they consider necessary provided that the requirements in regulation 14 are met in respect of governing bodies of foundation and voluntary schools.

(5) The total number of co-opted governors who are also eligible to be elected as staff governors under Schedule 2, when counted with the staff governor and the head teacher, must not exceed one third of the total membership of the governing body.

#### Additional requirements for foundation and voluntary schools

**14.**—(1) The governing body of a foundation school or a foundation special school<sup>(8)</sup> which, in either case, does not have a foundation, must also include at least two (but no more than one quarter of the total) partnership governors.

(2) The governing body of a foundation school or a foundation special school which, in either case, has a foundation but which is not a qualifying foundation school, must also include at least two (but no more than 45 per cent of the total) foundation governors.

(3) The governing body of a qualifying foundation school must also include such number of foundation governors as to outnumber all the other governors by up to two.

(4) The governing body of a voluntary aided school<sup>(9)</sup> must also include such number of foundation governors as to outnumber all the other governors by two.

(5) The governing body of a voluntary controlled school<sup>(10)</sup> must also include at least two (but no more than one quarter of the total) foundation governors.

(6) In calculating the number of governors required in order to comply with this regulation, the number is to be rounded up or down to the nearest whole number.

#### Surplus governors

**15.**—(1) Where—

- (a) a maintained school has more governors of a particular category than are provided for by the instrument of government for the school, and

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<sup>(8)</sup> Within the meaning of section 20 of and Schedule 2 to SSFA 1998.

<sup>(9)</sup> Within the meaning of section 20 of and Schedule 2 to SSFA 1998.

<sup>(10)</sup> Within the meaning of section 20 of and Schedule 2 to SSFA 1998.

- (b) the excess is not eliminated by the required number of governors resigning,
- (c) such number of that category as is required to eliminate the excess must cease to hold office in accordance with paragraphs (2) and (3).

(2) Governors must cease to hold office on the basis of juniority, the governor whose period of continuous service (whether as a governor of one or more than one category) is the shortest being the first who must cease to hold office.

(3) Where governors have held office for an equal length of time, the selection of those who must cease to hold office must be done by drawing lots.

(4) Any procedure set out in the instrument of government for the removal of excess foundation governors does not apply in the circumstances set out in paragraph (1).

## PART 4

### Notification of appointments, term of office, removal and disqualification

#### Notification of appointments

16. Where any person makes an appointment or nominates a person to be appointed to the governing body, that person must give written notice of the appointment or the nomination to the clerk to the governing body specifying the name and usual place of residence of the person appointed or nominated.

#### Qualifications and disqualifications

17. Schedule 4 sets out the circumstances in which a person is qualified for or disqualified from holding or continuing in office as a governor.

#### Term of office

18.—(1) Subject to paragraphs (2) to (5), a governor holds office for a fixed period of four years from the date of that governor's election or appointment.

(2) A person who is a governor by virtue of being head teacher of the school or who is an ex officio foundation governor may not hold office for longer than the position from which the governorship derives is held by that person.

(3) Any additional governor or additional foundation governor appointed under Part 4 of the Education and Inspections Act 2006(11) may hold office for such period up to a maximum of four years as is determined at the time of appointment by the person making the appointment .

(4) The instrument of government may specify a shorter term of office for a particular category of governor, not being less than one year.

(5) A substitute governor holds office until the earlier of the following—

- (a) the expiry of four years from the date when the appointment of the substitute governor takes effect;
- (b) the date when the original governor (“O”), not having been removed from office under regulation 21, gives written notice to the clerk to the governing body to the effect that O is able and willing to act as a foundation governor; or
- (c) the date when a person other than the original governor takes the office by virtue of which the ex officio foundation governorship exists.

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(11) 2006 c.40.

- (6) This regulation does not prevent a governor from—
- (a) being elected or appointed for a further term, save as otherwise provided in these Regulations;
  - (b) resigning from the office of governor in accordance with regulation 19(1);
  - (c) being removed from office under regulations 20 to 25; or
  - (d) being disqualified, by virtue of any provision of these Regulations, from holding or continuing to hold office.

(7) An associate member may 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 at the date of the appointment.

(8) Nothing in this regulation prevents an associate member from being reappointed at the expiry of the associate member's term of office.

(9) In this regulation "the original governor" means the ex officio foundation governor in whose place the substitute governor is appointed to act.

### **Resignation**

**19.**—(1) A governor may at any time resign from the office of governor by giving written notice to the clerk to the governing body.

(2) The head teacher's resignation may be withdrawn at any time by the head teacher giving written notice to the clerk to the governing body.

### **Removal of foundation governors**

**20.**—(1) Any foundation governor other than an ex officio foundation governor may be removed from office by the person who appointed the foundation governor.

(2) The person referred to in paragraph (1) must give written notice of the removal from office to the clerk to the governing body and to the foundation governor who is being removed.

### **Removal of ex officio foundation governors**

**21.**—(1) The governing body may, in accordance with the procedure set out in regulation 25, remove any ex officio foundation governor at the request of the person named in the instrument of government as the person entitled to make such a request.

(2) A person requesting the removal of an ex officio foundation governor must give written reasons for the request to the clerk to the governing body and the governor in question.

### **Removal of local authority governors**

**22.**—(1) Any local authority governor may be removed from office by the local authority who nominated the local authority governor under regulation 8(a).

(2) The local authority must give written notice of the removal from office to the clerk to the governing body and to the local authority governor who is being removed.

### **Removal of co-opted governors and partnership governors**

**23.**—(1) Any co-opted governor or partnership governor may be removed from office by the governing body in accordance with the procedure set out in regulation 25(2)(b).

(2) A partnership governor may also be removed from office by the governing body at the request of the nominating body in accordance with regulation 25(2)(a).

(3) A nominating body requesting the removal of a partnership governor must give written reasons for the request to the clerk to the governing body and the governor in question.

### **Removal of appointed parent governors**

**24.** Any parent governor appointed by the governing body under paragraphs 9 to 11 of Schedule 1 may be removed by the governing body in accordance with the procedure set out in regulation 25.

### **Procedure for removal of governors by the governing body**

**25.—(1)** This regulation applies in relation to the removal of a governor from office in accordance with regulations 21(1), 23 or 24.

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

- (a) in relation to the removal of a governor under regulation 21(1) and 23(2), the governing body has considered the reasons for removal and the governor whom it is proposed to remove has been given an opportunity to make a statement in response;
- (b) in relation to the removal of a governor (“P”) who is a co-opted governor or partnership governor under regulation 23(1) or a parent governor under regulation 24, the governor proposing P’s removal has at that meeting given reasons for doing so and P has been given an opportunity to make a statement in response;
- (c) it is confirmed by a resolution passed at a second meeting of the governing body held not less than fourteen days after the first meeting; and
- (d) the matter of the governor’s removal from office is specified as an item on the agenda for each of those meetings.

## **PART 5**

### **Instruments of government**

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

**26.** In this Part—

“appropriate diocesan authority” has the meaning given by section 142(1) and (4) of SSFA 1998; and

“appropriate religious body”, in relation to a school designated under section 69(3) of SSFA 1998 as having a religious character that is not a Church of England school or a Roman Catholic Church school, means the body or person, if any, that represents the specified religion or religious denomination and that is prescribed by regulations made under section 88F(3)(e) of SSFA 1998.

#### **Duty to have regard to guidance**

**27.** In respect of the making of instruments of government, and the review and variation of such instruments, governing bodies and local authorities must have regard to any guidance given from time to time by the Secretary of State.

#### **Contents and form of instrument of government**

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

- (a) the name of the school;
- (b) the category of school<sup>(12)</sup> to which the school belongs, and—
  - (i) whether the school has a foundation, and
  - (ii) whether the school is a qualifying foundation school;
- (c) the name of the governing body of the school;
- (d) the manner in which the governing body is to be constituted in accordance with Part 3 of these Regulations, specifying—
  - (i) the number of governors in each category of governor, and
  - (ii) the total membership of the governing body;
- (e) where the term of office for a category of governor is to be less than four years, the length of that term of office;
- (f) where the school has foundation governors—
  - (i) the name of any person who is entitled to appoint such governors and, if there is more than one such person, the basis upon which such appointments are made,
  - (ii) details of any foundation governorship to be held ex officio, and
  - (iii) the name of any person who is entitled to request the removal of any ex officio foundation governor and to appoint any substitute governor;
- (g) where the school is a foundation or a voluntary school designated under section 69(3) of SSFA 1998 as having a religious character, a description of the religious ethos of the school; and
- (h) the date on which the instrument of government takes effect.

(2) The manner in which the governing body is to be constituted, as set out in accordance with sub-paragraph (1)(d), must accord with the provisions of these Regulations as they apply to a school of the category to which the school belongs and, where appropriate, the nature of the school as specified in accordance with sub-paragraph (1)(b).

(3) Where the school has a foundation, the instrument of government must (subject to any statutory provision) comply with the foundation's governing documents, including any trust deed relating to the school.

### **Procedure for making the instrument**

**29.**—(1) The governing body must prepare a draft of the instrument of government and submit it to the local authority.

(2) Where the school has foundation governors, the governing body must not submit the draft to the local authority unless it has been approved by—

- (a) the foundation governors;
- (b) the trustees of any foundation relating to the school;
- (c) in the case of a Church of England school or Roman Catholic Church school, the appropriate diocesan authority; and
- (d) in the case of any other school designated under section 69(3) of SSFA 1998 as having a religious character, the appropriate religious body.

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

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(12) Within the meaning of section 20(1) of SSFA 1998.



- (a) they are content that the draft so complies, or
- (b) there is agreement between the local authority, the governing body and (if the school has foundation governors) the persons listed in paragraph (2) that the draft should be revised to any extent, and the local authority are content that the revised draft complies with all applicable legislative provisions,

they must make the instrument of government in the form of the draft or (as the case may be) in the form of the revised draft.

(4) If neither of sub-paragraphs (a) or (b) of paragraph (3) applies in the case of a school which does not have foundation governors, the local authority must—

- (a) inform the governing body of the reasons why they are not content with the draft instrument of government, and
- (b) give the governing body a reasonable opportunity to reach agreement with them on revising the draft,

and must make the instrument of government either in the form of a revised draft agreed between them and the governing body or (in the absence of such agreement) in such form as they think fit having regard, in particular, to the category of school to which the school belongs and, where the school has a foundation, to the school's relationship with its foundation as specified in accordance with regulation 28(1)(b).

### **Review of instrument of government**

**30.**—(1) The governing body or the local authority may review the instrument of government at any time after it is made.

(2) Where, on any review, the governing body or the local authority decide that the instrument of government should be varied, the governing body or (as the case may be) the local authority must notify the other of their proposed variation together with their reasons for proposing such a variation.

(3) Where the governing body have received notification under paragraph (2), they must inform the local authority as to whether or not they are content with the proposed variation and, if not content, their reasons.

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

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

unless the persons listed in regulation 29(2) have approved the proposed variation.

(5) If—

- (a) the recipient of a notification under paragraph (2) agrees with the proposed variation, or
- (b) there is agreement between the local authority, the governing body and (if the school has foundation governors) the other persons listed in regulation 29(2) that some other variation should be made instead,

the local authority must vary the instrument of government accordingly.

(6) If neither sub-paragraph (a) nor (b) of paragraph (5) applies in the case of a school which does not have foundation governors, the local authority must—

- (a) inform the governing body of the reasons why they are not content with the governing body's proposed variation, or as the case may be, why they wish to proceed with their own variation, and

- (b) give the governing body a reasonable opportunity to reach agreement with them with regard to the variation, and

the local authority must vary the instrument of government either in the manner agreed between them and the governing body or (in the absence of such agreement) in such manner as they think fit, having regard, in particular, to the category of school to which the school belongs and, where appropriate, to the school's relationship with its foundation as specified in accordance with regulation 28(1)(b).

(7) The requirement under regulation 29(3) for the local authority to consider compliance with all applicable statutory provisions applies in relation to a proposed variation of an instrument of government as it applies in relation to a draft of such an instrument.

(8) Where the instrument of government is varied under this regulation the instrument must set out the date on which the variation takes effect

### **Copies of instruments of government**

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

- (a) the school's instrument of government as varied if relevant;
  - (b) where any variation is made to the school's instrument of government, a copy of the instrument of government incorporating all variations (other than variations which have ceased to have effect).
- (2) The persons who are to be provided with the information referred to in paragraph (1) are—
- (a) every governor and associate member of the governing body of the school;
  - (b) the head teacher;
  - (c) where the school has a foundation, the trustees of the foundation;
  - (d) in the case of a Church of England school or a Roman Catholic Church school, the appropriate diocesan authority; and
  - (e) in the case of any other school designated under section 69(3) of SSFA 1998 as having a religious character, the appropriate religious body.

## **PART 6**

### **Amendments to the School Governance (New Schools) (England) Regulations 2007**

#### **Amendments to the School Governance (New Schools) (England) Regulations 2007**

**32.**—(1) The School Governance (New Schools) (England) Regulations 2007<sup>(13)</sup> are amended as follows.

(2) In regulation 3(1), for “the School Governance (Constitution) (England) Regulations 2007” substitute “the School Governance (Constitution) (England) Regulations 2012”.

(3) In regulation 52(1), for “29 to 31” substitute “27 to 29”.

(4) In regulation 54(3)(a), for “regulation 5” substitute “regulation 7”.

(5) In regulation 54(3)(b), for “regulation 9 of and Schedule 4” substitute “regulation 10 of and Schedule 3”.

<sup>(13)</sup> S.I. 2007/958, as amended by S.I. 2007/3464, S.I. 2009/1924, S.I. 2010/1172 and S.I. 2010/2582.

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