



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 2017**

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# 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 certain functions relating to the constitution of governing bodies in maintained schools. There is some overlap with Departmental advice set out in the [Governance Handbook](#) (as amended from time to time).

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.

## Key changes in this update

- Additional material on the Governance Database – paragraph 35, page 12.
- New guidance on the power to remove elected and staff governors – Section C.5 – pages 23/24.

## Review date

This guidance will be kept under review and updated to reflect any changes to the law affecting the constitution of governing bodies and changes to education policy.

## What legislation does this guidance refer to?

This guidance refers to the following regulations, as amended by subsequent regulations from time to time:

- [The School Governance \(Constitution\) \(England\) Regulations 2012](#) (the “2012 Constitution Regulations”);
- [The School Governance \(Federations\) \(England\) Regulations 2012](#) (the “2012 Federation Regulations”); and

- [The School Governance \(Roles, Procedures and Allowances\) \(England\) Regulations 2013](#).

## Who is this guidance for?

This guidance is for:

- Governing bodies of all maintained schools (including those of 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. The skills they need are a matter for governing bodies to decide having regard to the Department's [Competency Framework for Governance](#).
- 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, governing bodies should help all prospective governors to understand the role of a governor and the governing bodies' code of conduct.
- E. Regulations specify that anyone appointing governors to the governing body must only appoint someone they believe has the skills to contribute to the effective governance and success of the school. Their decisions should be informed by interviews and references and made in light of the skills that governing bodies identify that they need.
- F. So as to ensure that governors continue to have the necessary skills to contribute to the effective governance and success of the schools, governing bodies should enable their governors to receive any appropriate training and development needed to address any skills gaps; and where appropriate liaise with local authorities in doing so<sup>1</sup>.

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<sup>1</sup> Section 22(b) of the Education Act 2002 provides that the local authority in England shall secure that there is made available to every governor, free of charge, such training as they consider necessary for the effective discharge of those functions.

- G. 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.
- H. 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 the governing body must operate, collectively, in the best interest of pupils, not as a collection of individuals lobbying for the interests of the constituency from which they were elected or appointed.
- I. 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 to understand their views and listen to their feedback.
- J. 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.
- K. Governing bodies that govern more than one school through a federation can have a more strategic perspective and create more robust accountability through the ability to compare and contrast across schools.
- L. Governing bodies should publish on their websites information about their governors, including relevant business and pecuniary interests.
- M. Further to section 538 of the Education Act 1996, governing bodies must provide certain information it holds to the Secretary of State for Education about their governors and governance arrangements through EduBase<sup>2</sup>.

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<sup>2</sup> Or the Get information About Schools (GIAS) system, which will replace EduBase in 2017.

# Guidance

## 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.<sup>3</sup> 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. This guidance includes content from the Governance Handbook, as amended from time to time.
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 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

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<sup>3</sup> By section 19(7) of the Education Act 2002 and regulation 27 of the 2012 Constitution Regulations.

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.

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. The governing body must operate, collectively, in the best interest of pupils, not as a collection of individuals lobbying on behalf of their constituencies<sup>4</sup>. The task of the governing body is to govern the school, 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 this is not the same thing as governance and is not achieved by having various categories of governor on the governing body. Through both appointments and informed elections the focus should be on constructing a governing body with the right skills. Community engagement, including with parents, should be seen as an important but distinct activity for which governing bodies will need to assure themselves that appropriate structures and arrangements are in place.
12. The governing body as a whole should take responsibility for understanding what parents think, while acknowledging that being parents themselves, parent governors have valuable knowledge and perspectives about the school to bring to bear in

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<sup>4</sup> 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 managed in accordance with the foundation's governing documents.

discussions and decisions and guarantee that there is always a link between governance and the parent community.

13. Governing bodies 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.
14. While governing bodies should use their code of conduct to commit current and prospective governors 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 require – or, if this is not possible, at least the capacity and willingness to develop them.
15. A skills audit, such as that produced by the [National Governance 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<sup>5</sup> 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.
16. 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. Once approved by the governing body, the code of conduct should apply to all governors. Explicit agreement to the code of conduct will mean there is a common reference point should any difficulties arise in the future.
17. 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 [Inspiring Governance](#) which is 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.

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<sup>5</sup> '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



18. 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. Where governors are elected, this also helps to ensure that a diverse range of perspectives, including those of parents, are brought to the table to enable robust decision-making.
19. We recognise that there are people who have the skills and 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 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**

20. It is advised governing bodies be mindful that in exercising all their functions, they act with integrity, objectivity and honesty and in the best interests of the school; and be open about the decisions they make and the actions they take, and are prepared to explain their decisions and actions to interested parties. It is advised that governing bodies make everyone involved in governance aware of, and secure their agreement to 'The 7 principles of public life', as set out by Lord Nolan. These principles apply to anyone, locally and nationally, who is elected or appointed as a public office-holder. They are selflessness, integrity, objectivity, accountability, openness, honesty and leadership.
21. The relationship between the governing body and the headteacher is of critical importance. It is advised the governing body makes its members aware of joint guidance agreed between the National Governance Association, National Association of Head Teachers, Association of School and College Leaders and the Local Government Association: [What governing boards should expect from school leaders and what school leaders should expect from governing boards](#).
22. The 2012 Constitution Regulations, as amended, create an explicit requirement that all appointed governors have the skills required to contribute to the effective governance and success of the school. The specific skills that governing bodies need

to meet their particular challenges will vary. Regulations specify that governing bodies and other appointing persons determine, in their own opinion, 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. Skills may also be taken to include the knowledge and perspectives that will contribute to good decision making.

23. Governing bodies should identify the skills they need, advising other appointing bodies accordingly, having regard to the Department's [Competency Framework for governance](#) that sets out the skills, behaviours and knowledge needed for effective governance.
24. 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.
25. 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.
26. Having identified the skills and experience it needs, the governing body should address any gaps through recruitment, appropriate induction and, over time, other training or other development activities to continue to ensure the effective governance and success of the school. In considering their governors' training and development needs governing bodies should have a particular focus on enabling all governors to understand their role and analyse and interpret the data on the educational and financial performance of the school. [The Governance Handbook](#) contains a range of material to help governors understand their role.
27. Governing bodies should enable governors to access training and development that is appropriate to the individual based on their current skills and experience, liaising, where appropriate, with the local authority. Having liaised with the local authority governing bodies should, where necessary set aside a budget for this purpose.

## **Governor elections**

28. 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 and development 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 appropriate training and development; 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.

29. 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 and development 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.

30. 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.

31. While not chosen directly by the governing body for their skills to contribute to effective governance, by enabling access to appropriate induction and ongoing training and development opportunities governing bodies should not expect elected governors to be any less effective than governors of other categories.

## **Publication of governors' details and the register of interests**

32. 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<sup>6</sup>. 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.

33. 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.

34. 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.

35. Further to section 538 of the Education Act 1996, governing bodies are now required to provide the Secretary of State with whatever information she requires for the purpose of the exercise of her functions in relation to education. This means that governing bodies must provide to the Secretary of State for Education certain details they hold, as volunteered by their governors, through EduBase<sup>7</sup> and keep the information up to date. Governing bodies are advised to make it clear that section 538 of the Education Act 1996 does not require governors to supply information to the governing body. It is also advised that governors are informed that information is collected on a voluntary basis but that the governing body is required to share what it holds with the Secretary of State for Education. The data provided will enable schools and the department to identify, more quickly and accurately, individuals who are

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<sup>6</sup> Readily accessible means that the information should be on a webpage without the need to download or open a separate document.

<sup>7</sup> Or replacement GIAS system.

involved in governance, and who govern in more than one context. The information requested says nothing in itself about a person's suitability to govern. However, it is essential information for the department to be able to uniquely identify an individual and in a small number of cases conduct checks to confirm their suitability for this important and influential role. The information to be provided is set out in a [message to all schools](#) published on 1 July 2016 on GOV.UK.<sup>8</sup>

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<sup>8</sup> As amended, updated or changed from time to time.

# 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 Annex.

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

Parent governors are elected by other parents at the school. Subject to disqualifications set out below, any parent which includes a person with parental responsibility, 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.

Local authorities or governing bodies must make all necessary arrangements to fill parent governor vacancies through elections. However, the 2012 Constitution 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 for there to be an election, or
- in the case of community special or foundation special schools established in a hospital, the governing body or local authority (as appropriate) judges that an election is impractical.

The method of appointment is set out in paragraphs 10 and 11 of Schedule 1 to the 2012 Constitution Regulations and includes, in order of preference, the categories of parent from which a parent governor is to be appointed.

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.

Appointed and, in exceptional circumstances, elected parent governors can be removed from office<sup>9</sup> by the governing body, . In the case of elected parent governors there is to be regard to the guidance set out in section C.4 .

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<sup>9</sup> Regulation 24 and new regulation 24A of 2012 Constitution Regulations. The latter was inserted by regulation 2(3) of the School Governance (Constitution and Federations) (England) (Amendment) Regulations 2017

## **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 this same category of school staff. They cease to hold office when they cease to be employed 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. It is advised that clear expectations of role and conduct are communicated and agreed upfront.

As with elected parent governors, staff governors can be removed from office, further guidance is set out in section C.4

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 person who is eligible to be a local authority governor, but it is for the governing body to decide whether their nominee has the skills required 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 and 28)**

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 an organisation other than a local authority). 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 would be capable of achieving the purpose for which he/she is appointed which is securing:

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

To inform appointing bodies' decisions, governing bodies should make them aware of the skills and experience the governing body identifies that they need.

An ex-officio foundation governor may – at the request of the person so entitled in the Instrument of Government – be removed from office by the governing body (see C.5 below for procedure). If an ex-officio foundation governor is removed from office as above or is unwilling or unable to act as a governor, a substitute governor may be appointed in the same way as an ordinary foundation governor would be.

## **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 served by the school 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<sup>10</sup>. They are not governors and therefore do not have a vote in governing body decisions, but may be given a vote on decisions made by committees to which they are appointed<sup>11</sup>.

Associate members should be appointed because of the specific expertise and experience they can contribute to the effective governance and success of the school. Subject to the disqualifications set out in the 2012 Constitution 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.

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<sup>10</sup> Regulation 12 of The School Governance (Roles, Procedures and Allowances) (England) Regulations 2013

<sup>11</sup> Regulation 24 of The School Governance (Roles, Procedures and Allowances) (England) Regulations 2013

## **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<sup>12</sup>, and must include:

- at least two parent governors;
- the headteacher unless the headteacher resigns as a governor;
- one, and only one, staff governor;
- 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 (but no more than one quarter of the total) partnership governors;
- foundation and foundation special schools that have a foundation but are not a qualifying foundation school must have at least two (but no more than 45% of the total) foundation governors;
- qualifying foundation schools and voluntary aided schools must have such number of foundation governors as to outnumber all other governors by up to two in qualifying foundation schools and by two in voluntary aided schools; and

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<sup>12</sup> Subject to the requirements regarding foundation governors in qualifying foundation schools and voluntary aided schools

- voluntary controlled schools must have at least two (but no more than a quarter of the total) 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 placed to contribute to the effective governance and success of the school, and to serve 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 of the appointment to the clerk specifying the name and usual place of residence of the person nominated or appointed.

## **C.2 Criminal Records Certificates (regulation 16A)**

Governing bodies must apply for an enhanced criminal records certificate for any governor who does not already hold one. They must do this by 1 September 2016 where a governor was elected before 1 April 2016 and within 21 days of appointment or election if a governor is elected or appointed after 1 April 2016.

## **C.3 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 local authority; 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 as a governor of a school if, in summary, that person:

- is the subject of a bankruptcy restrictions order; an interim bankruptcy restrictions 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 the Companies (Northern Ireland) Order 2002; 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 trustee for a charity by an order made by the Charity Commission or Commissioners or High Court on grounds of any misconduct or mismanagement in the administration of the charity, or under section 34 of the Charities and Trustee Investment (Scotland) Act 2005 from being concerned in the management or control of any body.
- has been removed from office as an elected governor within the last five years.
- is included in the list of people 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 142 of the Education Act 2002 or 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

- subject to certain exceptions for overseas offences that do not correlate with a UK offence, has been sentenced to three months or more in prison (without the option of a fine) in the five years ending with the date preceding the date of appointment/election as a governor or since becoming a governor
- subject to certain exceptions for overseas offences that do not correlate with a UK offence, has received a prison sentence of two and a half years or more in the 20 years ending with the date preceding the date of appointment/election as a governor
- subject to certain exceptions for overseas offences that do not correlate with a UK offence, has at any time received a prison sentence of five years or more
- has been convicted and fined for causing a nuisance or disturbance on school or educational premises during the five years ending with the date immediately preceding appointment/election or since appointment or election as a governor
- refuses a request by the clerk to make an application to the Disclosure And Barring Service for a criminal records certificate.

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

#### **C.4 Term of office and resignation (regulation 18 and 19)**

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 and four years;
- 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 or additional foundation governor appointed under Part 4 of the Education and Inspections Act 2006 holds office for such period as the appointer determines (at the time of appointment) up to a maximum of four years; and
- a substitute governor's term of office may end earlier than four years, 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.5 Removal of governors (regulations 20 - 24A)

Foundation governors may be removed from office by the person who appointed them. The appointing body must give written notice of the removal to the clerk to the governing body and to the governor concerned. Governing bodies may suspend<sup>13</sup> but not remove any foundation governor. Where a governing body has any concerns over the effectiveness or behaviour of a governor appointed by another body, they should bring their concerns to the attention of that body. It would then be for the appointing body to consider whether the information brought to light is sufficient to change their opinion of whether the individual concerned has the skills to contribute to effective governance, which was the basis of their original appointment decision, and if not to remove the individual and appoint someone else who does.

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 (for details see C.6 below). 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.6). A partnership governor may also be removed by the governing body at the request of the nominating body (for details see section C.6 below).

The governing body may also remove an appointed or an elected, parent or staff governor.

It is advised that every effort be made to avoid potential difficulties later by informing prospective election candidates, or appointees, of the nature of the role. It is advised that their agreement is secured to a clear set of expectations for behaviour and conduct – as set out in a code of conduct. A code of conduct is expected to detail (within the parameters of relevant regulations and this guidance) the circumstances in which the governing body may suspend or remove a governor. Good training, a thorough induction and effective chairing are also vital in helping to prevent situations occurring in the first place. It is advised that induction includes a clear setting out of the expectations of the governor role.

Governing bodies are expected only to exercise the power to remove an elected governor in exceptional circumstances where the actions or behaviour of the elected governor warrants removal rather than suspension. The power should not be used simply

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<sup>13</sup> Regulation 17 of the School Governance (Roles, Procedures and Allowances) (England) Regulations 2013

to remove dissenting or challenging voices. Good governance involves asking courageous questions and offering appropriate professional challenge. A diverse range of viewpoints contributes to healthy debate and good decision making; and avoids governing boards becoming inappropriately dominated by a single narrow perspective.

The five year disqualification term for removal reflects the expectation that the power to remove an elected governor will only be used in exceptional and serious circumstances (and such seriousness will depend on the facts of the case). Examples which could give rise to removal are where:

- (a) there have been repeated grounds for suspension<sup>14</sup>;
- (b) there has been serious misconduct. Governing bodies should decide what constitutes serious misconduct based on the facts of the case. However, it is expected that any actions that compromise the Nolan principles, if sufficiently serious, would be considered in scope of this reason for removal.
- (c) a governor displays repeated and serious incompetence; for example where an elected governor is unwilling or unable, despite all appropriate support, to develop the skills to contribute to effective governance; or where attendance is so irregular that the governor is unable to make any meaningful contribution to the work of the board.
- (d) the governor has engaged in conduct aimed at undermining fundamental British values of democracy, the rule of law, individual liberty, mutual respect, and tolerance of those with different faiths and beliefs; and/or;
- (e) the actions of the governor are significantly detrimental to the effective operation of the governing body, distracting it from its core strategic functions; and/or the actions of a governor interferes with the operational efficiency of the school thereby wasting a significant amount of headteacher and /or senior leadership time.

## **C.6 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, appointed parent governor or elected parent or staff 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

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<sup>14</sup> The School Governance (Roles, Procedures and Allowances) (England) Regulations 2013 <sup>14</sup> set out the grounds on which governing bodies can suspend governors including where the governor has acted in a way that is inconsistent with the ethos, or with the religious character of the school, and has brought or is likely to bring the school or the governing body or the office of governor into disrepute



- 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 make a statement in response.

Where the governor concerned is a co-opted governor, a partnership governor, elected parent or staff 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 make a statement in response.

Governing bodies are expected to provide an appeals procedure to enable any removed governor to test the reasonableness of the governing body's decision to remove them. It is advised that an independent panel conducts the appeal, which could include a governor from another school, and/or a suitable official from the local authority, or a suitable diocesan representative.

It is advised that any governor subject to removal is provided with written details of the case against them ahead of any meeting, and it is advised this includes details of how their case is being handled, and the timeframes involved. They must then be given sufficient time and support 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 determines the constitution of the governing body and other matters relating to the school. Part 5 of the 2012 Constitution 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, for a school that does not have foundation governors, the local authority is not content that the draft instrument of government it must inform the governing body of the reasons and provide the governing body a reasonable opportunity to reach agreement. 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 governing body should respond as to whether it is content and if not provide reasons for objections
- if there is disagreement, some other variation can be proposed by either party
- if the local authority, of a school that does not have foundation governors, is not content with the governing body's 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 must vary the instrument of government
- in the absence of an agreement, for schools without foundation governors, the local authority will vary the instrument of government as it thinks fit, having regard to the particular category of school.
- 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, free of charge, a copy of the instrument of government, or a consolidated version where there has been a variation, to each member and associate member of the governing body (and the headteacher if they are not a governor) as well as, where relevant, the trustees of any foundation, the appropriate diocesan authority and appropriate religious body

### **E. Further sources of information**

#### **Associated resources (external links)**

- [The School Governance \(Constitution\) \(England\) Regulations 2012](#)
- [The School Governance \(Federations\) \(England\) 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 – Departmental 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 <sup>15</sup>                                           | N/A                                                                                   | N/A                                        | At least 2       | Headteacher + 1                         | 1                         | As determined by the GB and no more than 1/3 of total membership where they are also eligible to be elected as staff governors when counted with the staff governor and headteacher. |
| Foundation or foundation special with no foundation <sup>16</sup> | N/A                                                                                   | At least 2 but no more than ¼ of the total |                  |                                         |                           |                                                                                                                                                                                      |
| Foundation or foundation special with a foundation                | At least 2 but no more than 45% of the total                                          | N/A                                        |                  |                                         |                           |                                                                                                                                                                                      |
| Qualifying Foundation                                             | Overall control of GB.<br>A majority of up to 2 over all other categories of governor | N/A                                        |                  |                                         |                           |                                                                                                                                                                                      |
| Voluntary controlled                                              | At least 2 but no more than ¼ of total                                                | N/A                                        |                  |                                         |                           |                                                                                                                                                                                      |
| Voluntary aided                                                   | Overall control of GB.<br>Majority of 2 over all other categories of governor         | N/A                                        |                  |                                         |                           |                                                                                                                                                                                      |

<sup>15</sup> Including community special schools and maintained nursery schools

<sup>16</sup> 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<sup>17</sup> :
  - 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 governors. If this is more than one person set out the basis on which appointments are made. (VA, VC, QF, F)

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<sup>17</sup> For paragraph 4, the required numbers of governors by category are provided at Annex A and B to this guidance

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 foundation]* the fact, and details, of any trust deed relating to the school. **(VA, VC, QF, F)**
12. *[If the school has a religious character]* a description of the religious 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 .....
15. Where the instrument of government has been varied, the date on which the variation takes effect.

A copy of the consolidated instrument must be supplied free of charge to every member and associate member of the governor body (and the headteacher if not a governor), as well as, where relevant, the trustees of any foundation, the appropriate diocesan authority and appropriate religious body.

#### **1. Key:**

2. VA - Voluntary Aided
3. VC - Voluntary Controlled
4. QF - Qualifying foundation
5. F - Foundation

Clauses 1 to 5, 13, 14 and 15 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  
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