



Statutory Guidance on the School Governance (Procedures) (England) Regulations 2003

Overview

This guidance explains the new governing body procedures which become effective from September 2003. The Regulations give governing bodies more flexibility to determine their own procedures.

Action required

Governing bodies and their clerks must ensure that the procedures they adopt from September 2003 comply with the regulations.

For **further copies** of this publication please see details on back page.

Further information

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**Governing bodies,
Clerks to governing
bodies and LEAs**

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GUIDANCE ON GOVERNING BODY PROCEDURES FROM 1 SEPTEMBER 2003

INTRODUCTION - A FLEXIBLE FRAMEWORK FOR GOVERNING BODY PROCEDURES

Each school has its own unique challenges and so has each governing body. The Government is committed to enabling governing bodies to choose ways of working that suit them and the school best, so that they can carry out their functions most effectively and help their school to improve further. The Regulations on governing body procedures¹ give governing bodies more flexibility to determine their own procedures, whilst maintaining essential safeguards.

This document offers statutory guidance on the Regulations and gives advice on matters relating to governing body procedures. It is mainly aimed at clerks and chairs of governing bodies and at LEA officers. Individual governors might prefer to read the leaflet that sets out the main changes.

1 PART 1 OF THE REGULATIONS

The Regulations on governing body Procedures will come into force on 1 September 2003. From that date the relevant regulations of the School Government Regulations 1999 are revoked.

2 PART 2 OF THE REGULATIONS: APPOINTMENT, FUNCTIONS AND REMOVAL OF OFFICERS

The chair of the governing body

2.1 Role of chair². The chair has a key role on the governing body. It is the chair's responsibility to:

- a) ensure the business of the governing body is conducted properly, in accordance with legal requirements;
- b) ensure meetings are run effectively, focusing on priorities and making the best use of time available, and ensuring that all members have an equal opportunity to participate in discussion and decision-making;
- c) establish and foster an effective relationship with the headteacher based on trust and mutual respect for each other's roles. The chair has an important role in ensuring that the governing body acts as a sounding board to the headteacher and provides strategic direction.

Election of the chair and vice-chair (regulation 5 and paragraph (2) of the Schedule)

2.2 The governing body must elect a chair and a vice-chair. There are no regulations prescribing the election process as we believe governing bodies are best placed to decide how to organise this, but those standing for election should withdraw from the meeting when a vote is taken. Governors who are paid to work at the school, for instance the headteacher and staff governors, and pupils at the school cannot be elected as chair or vice-chair. The chair and vice-chair can resign at any time by writing to the clerk.

¹ School Governance (Procedures) (England) Regulations 2003 SI 2003/1377.

² The role of the chair is not prescribed in the Procedures Regulations.

Term of office of the chair and vice-chair (regulation 5)

2.3 The governing body decides on the chair and vice-chair's term of office before the election. The minimum term of office is one year and the maximum period is four years. If a governor is elected chair or vice-chair and their term of office as a governor is shorter than the term of office determined for the office of the (vice) chair, then the (vice) chair's term of office ends when the governor's term of office ends. *For example;* the governing body determined that the chair's term of office will be three years. The term of office of the governor elected chair, however, ends in two and a half years time, so the newly elected chair's term of office will also end in two and a half years time.

2.3.1 When the office of chair or vice-chair becomes vacant, the governing body must elect a new chair or vice-chair at the next meeting. If the chair is absent from a meeting, or if the office of chair is vacant, the vice-chair will act as chair for all purposes.

Delegation of functions to the chair and vice-chair in cases of urgency (regulation 6)

2.4 The chair or vice-chair has the power to carry out functions³ of the governing body if a delay in exercising a function is likely to be seriously detrimental to the interests of the school, a pupil at the school or their parents, or a person who works at the school.

Removal from office (regulation 7)

2.5 The governing body can remove the chair or vice-chair from office⁴. A motion to remove the chair or vice-chair must be an agenda item for a governing body meeting and the agenda must be circulated to governing body members seven days in advance of the meeting. The governor proposing the removal must state his/her reasons for doing so at the meeting. The chair or vice-chair must be given the opportunity to make a statement in response before he/she withdraws from the meeting and the governing body votes on the proposal to remove the chair or vice-chair from office.

The clerk to the governing body

Role of the clerk

2.6 The clerk needs to work effectively with the chair of governors, the other governors and the headteacher to support the governing body. The clerk should be able to advise the governing body on constitutional and procedural matters, duties and powers. The clerk is accountable to the governing body.

Appointment of the clerk to the governing body (regulation 8)

2.7 The governing body must appoint a clerk to the governing body. Governors, associate members and the headteacher of the school cannot be appointed as clerk to the governing body.

2.7.1 If the clerk does not attend a meeting, the governors present at the meeting can appoint a member of the governing body (but not the headteacher) to act as clerk for that meeting.

³ The following functions are excluded from this: matters related to the alteration and closure of schools; change of school category; approval of the budget; discipline policies; and admissions.

⁴ Unless the chair has been nominated by the Secretary of State for Education under section 18 on the repeal of specific grant making powers of the School Standards and Framework Act 1998.

Functions of the clerk (regulation 9)

- 2.8 It is the responsibility of the clerk of the governing body to⁵:
- a) convene meetings of the governing body;
 - b) attend meetings of the governing body and ensure minutes are taken;
 - c) maintain a register of members of the governing body and report vacancies to the governing body;
 - d) maintain a register of attendance and report this to the governing body;
 - e) give and receive notices in accordance with relevant regulations;
 - f) perform such other functions as may be determined by the governing body from time to time.

Removal of the clerk (regulation 8)

2.9 The governing body can remove their clerk from office by resolution at a governing body meeting. If a school does not have a delegated budget, the local education authority may dismiss the clerk and appoint a substitute, but the authority must consult the governing body before doing so.

PART 3 OF THE REGULATIONS: MEETINGS AND PROCEEDINGS OF GOVERNING BODIES

Right to attend governing body meetings (regulation 10)

3.1 Governors, associate members, the headteacher and the clerk have the right to attend governing body meetings. In addition the governing body can allow any other person to attend their meetings. Associate members may be excluded from any part of a meeting when the item of business concerns an individual member of staff or pupil.

Convening governing body meetings (regulation 11)

3.2 The governing body is best placed to decide how often and for how long they need to meet in order to perform their functions effectively. Each governing body must, however, hold at least three meetings per school year. Many governing bodies meet more often and this is for the governing body to decide.

3.2.1 Meetings are convened by the clerk who takes directions from the governing body and the chair. Any three members of the governing body can request a governing body meeting by giving written notice to the clerk that summarises the business to be conducted. The clerk must convene a meeting as soon as is practicable.

3.2.2 The clerk must give each governor, associate member and the headteacher (if not a governor) written notice of a meeting, a copy of the agenda and any papers to be considered at the meeting at least seven days before the meeting. If the chair considers that there are matters that demand urgent consideration he/she can determine a shorter period of notice, but the period of notice must be at least seven days if the removal of the chair, the suspension of any governor, or a proposal to close the school are to be considered.

⁵ The full job description for governing body clerks can be found in the training and recruitment section of GovernorNet: www.governornet.co.uk

Quorum for governing body meetings (regulation 12)

3.3 The quorum for any governing body meeting and vote must be one half (rounded up to a whole number) of the complete membership of the governing body; this includes any governor vacancies. *For example*; if the full membership is 15, then the quorum for a governing body meeting is eight governors, regardless of any vacancies.

Voting (regulation 12)

3.4 Every question to be decided at a governing body meeting must be determined by a majority of votes of those governors present and voting. If there is an equal number of votes, the chair (or the person acting as chair) - provided that they are a governor- has a second (or casting) vote.

3.4.1 Any decision to close the school will not have effect unless it is confirmed by a governing body meeting held not less than 28 days after the meeting at which the decision was made. The item has to be agenda item and seven days notice has to be given.

Minutes and papers (regulation 13)

3.5 The clerk must ensure that minutes are drawn up, approved by the governing body and are signed by the chair at the next meeting.

3.5.1 The governing body must make available for inspection to any interested person a copy of the agenda, signed minutes and reports or papers considered at the meeting as soon as is reasonably practicable. Information relating to a named person or any other matter that the governing body considers confidential does not have to be made available for inspection.

Restrictions on persons taking part in proceedings of governing body meetings and committees (regulation 14)

3.6 The general principles are that:

- where there is a conflict between the interests of any person and the interests of the governing body, that person should withdraw from the meeting and should not vote;
- in a situation where the principles of natural justice require a fair hearing and there is any reasonable doubt as to a person's ability to act impartially, he/she should also withdraw from the meeting and not vote.

3.6.1 Examples of cases where a fair hearing must be given include decisions relating to staff or pupil discipline, or admission of pupils. The restrictions on persons taking part in proceedings do not stop a governing body or committee from allowing someone who can offer relevant evidence to a case in question from giving that evidence.

3.6.2 If there is any dispute as to whether a person must withdraw from a meeting under the regulations on governing body Procedures, the other governors present at the meeting must decide on this.

More specific provisions relating to restrictions on taking part in proceedings are set out in the Schedule to the Regulations.

Suspension of governors (regulation 15)

3.7 In certain prescribed circumstances the governing body can decide to suspend a governor for a period up to six months. The governing body can only suspend a governor if one or more of the following grounds apply:

- a) the governor is paid to work at the school and is the subject of disciplinary proceedings in relation to his employment; or
- b) the governor is the subject of any court or tribunal proceedings, the outcome of which may be that he is disqualified from continuing to hold office as a governor under schedule 6 of the Constitution Regulations; or
- c) the governor has acted in a way that is inconsistent with the school's ethos or with the religious character and has brought or is likely to bring the school or the governing body or his office of governor into disrepute; or
- d) the governor is in breach of his duty of confidentiality to the school or to the staff or to the pupils.

3.7.1 A governing body can vote to suspend a governor on any of the above grounds, but does not have to do so. We recommend that the governing body should only vote to suspend a governor as a last resort and should first seek to resolve any difficulties or disputes in more constructive ways.

3.7.2 Any motion to suspend must be specified as an agenda item of a meeting for which at least seven days notice must be given. Before the governing body votes to suspend a governor, the governor proposing the suspension must give their reasons for proposing the suspension. The governor who is proposed for suspension must be given the opportunity to make a statement in response before he/she withdraws from the meeting and a vote is taken.

3.7.3 A governor who has been suspended must be given notice of any meetings and must be sent agendas, reports and papers for any meetings during their suspension.

3.7.4 A governor who has been suspended cannot be disqualified from holding office for failure to attend meetings under paragraph 7 of schedule 5 of the Constitution Regulations.

Delegation of functions (regulations 16 to 18)

3.8 A governing body can delegate any of its statutory functions to a committee, a governor or to the headteacher, subject to prescribed restrictions. The governing body must review the delegation of functions annually. Each governing body will remain accountable for any decisions taken, including those relating to functions delegated to a committee or individual.

3.8.1 The following functions can be delegated to a committee, but cannot be delegated to an individual:

- i) functions relating to the alteration, closure or change of category of maintained schools;
- ii) functions relating to the approval of the first formal budget plan of the financial year;
- iii) functions relating to school discipline policies;
- iv) functions relating to the exclusions of pupils (except in an emergency when the chair has the power to exercise these functions);
- vi) functions relating to admissions.

3.8.2 The governing body cannot delegate any functions relating to: the constitution of the governing body (unless otherwise provided by the Constitution Regulations); the appointment or removal of the chair and vice-chair; the appointment of the clerk; the suspension of governors; the delegation of functions; and the establishment of committees.

3.8.3 Any individual or committee to whom a decision has been delegated must report to the governing body in respect of any action taken or decision made. The governing body can still perform functions it has delegated; this enables the governing body to take decisions on matters that are discussed at meetings on functions that have been delegated. For instance, the governing body can decide to move ('vire') money from one budget heading to another in light of changing circumstances, even if the function of approving and monitoring the budget has been delegated to a committee.

PART 4 OF THE REGULATIONS: COMMITTEES OF GOVERNING BODIES

Application of this part of the Regulations to staffing functions (regulation 19)

4.1 These Regulations do not apply to committees established by the governing body to deal with most staffing functions that affect individual members of staff, rather than the school staff as a whole. The delegation by a governing body of its functions relating to the appointment and dismissal of staff, and staff grievance, capability, conduct, discipline and suspension matters will be covered by the School Staffing Regulations 2003 which will come into force at the same time as these Regulations. Separate guidance will be available on the Staffing Regulations that will also cover handling staff grievances and disciplinary matters.

Establishment of committees (regulation 20)

4.2 The governing body must determine the membership and proceedings of any committee. The governing body must also review the establishment, terms of reference, constitution and membership of any committee annually. The membership of any committee may include associate members, provided that a majority of members of the committee are governors. Each committee must have a chair, who is either appointed by the governing body or elected by the committee. The governing body may remove the chair of a committee from office at any time.

The clerk to the governing body

Appointment and removal of the clerk to committees (regulation 21)

4.3 The governing body must appoint a clerk to each committee. 'Committee' in the Procedures Regulations means a committee with delegated functions. It does not include other groups, such as working groups set up for a specific purpose.

4.3.1 The headteacher of the school cannot be appointed as clerk to a committee. The governing body can appoint a governor to clerk one or more committees, but we recommend that the governing body appoints and pays a clerk that is qualified (or receiving training), as a professional clerking service helps governing bodies to be more effective.

4.3.2 If the clerk does not attend a committee meeting, the governors present at the meeting can appoint a member of the committee (but not the headteacher) to act as clerk for that meeting.

4.3.3 The governing body can remove a clerk to a committee from office at any time.

Functions of the clerk (regulation 21)

- 4.4 It is the responsibility of the clerk to a committee to⁶:
- a) Convene meetings of the committee;
 - b) Attend meetings of the committee and ensure minutes are taken;
 - c) Perform such other functions with respect to the committee as may be determined by the governing body from time to time.

Right of persons to attend meetings of committees (regulation 23)

4.5 Members of committees, the headteacher (if not a member of the committee) and the clerk to the committee have the right to attend committee meetings. In addition the governing body or the committee can allow any other person to attend their meetings. Associate members may be excluded from any part of a committee meeting when the item of business concerns an individual member of staff or pupil.

Meetings of committees (regulation 24)

4.6 Committee meetings are convened by the clerk to the committee who takes directions from the governing body and the chair of the committee.

Notice of committee meetings (regulation 24)

4.7 The clerk must give each governor and associate member who is a member of the committee, and the headteacher (if not a governor) written notice of a meeting, a copy of the agenda and any papers to be considered at the meeting at least seven days before the meeting. If the chair of the committee considers that there are matters that demand urgent consideration he/she can determine a shorter period of notice.

Quorum (regulation 20)

4.8 The quorum for any committee meeting and for any vote must be three governors who are members of the committee, or more, as determined by the committee.

Voting (regulation 24)

4.9 Every question to be decided at a committee meeting must be determined by a majority of votes of those governors and associate members present and voting. If there is an equal number of votes, the chair (or the person acting as chair) - provided that they are a governor - has a second (or casting) vote. The committee can only vote if the majority of the committee members present are governors.

Associate members (regulation 22)

4.10 The governing body can give limited voting rights to associate members on committees at the time of appointment. Associate members cannot be given voting rights if they have not reached the age of 18 at the time of their appointment.

4.10.1 Associate members may not vote on any decision concerning admissions, pupil discipline, election or appointment of governors, or the budget and financial commitments of the governing body.

⁶ The full job description for governing body clerks can be found in the training and recruitment section of GovernorNet: www.governornet.co.uk

Minutes of committee meetings (regulation 24)

4.11 Minutes must be drawn up by the clerk and signed by the chair, after approval at the next meeting of the committee. The committee must make available for inspection to any interested person a copy of the agenda, signed minutes and reports or papers considered at the meeting as soon as is reasonably practicable. Information relating to a named person or any other matter that the committee considers confidential does not have to be made available for inspection.

5 SCHEDULE TO THE REGULATIONS: RESTRICTIONS ON PERSONS TAKING PART IN PROCEEDINGS OF THE GOVERNING BODY OR ITS COMMITTEES

5.1 Governors should withdraw from any meeting in which they have a direct or indirect pecuniary interest. The clerk can continue to act as clerk unless his own appointment, pay or disciplinary action against him is under consideration.

5.1.1 Specific provision is made in the regulations in relation to certain issues, namely:

- i) a person paid to work at the school is not regarded as having a pecuniary interest if his interest is no greater than that of other persons paid to work at the school;
- ii) a person must withdraw and not vote on his own appointment, re-appointment, suspension or removal as a governor or member of a committee, or as clerk, chair or vice-chair;
- iii) a person paid to work at the school, other than the headteacher, must withdraw and cannot vote in relation to the pay or performance appraisal of any particular person working at the school. This does not affect general discussions about general policy; and
- iv) the headteacher must withdraw and cannot vote in relation to their own pay or performance appraisal.

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