



Draft School Governance (Constitution) (England) Regulations 2003

Executive summary

Overview

The draft School Governance (Constitution) (England) Regulations 2003 set out a new framework for the constitution of school governing bodies. All governing bodies will have to choose and adopt a new model for the size and membership of their governing body by 31 August 2006. The size of the governing body ranges from a minimum of 9 to a maximum of 20. Within this range each governing body can adopt the model of their choice, provided it complies with the guiding principles. These principles prescribe which categories of governor must be represented on the governing body and what the level of representation is for each of the categories.

Action required:

the closing date of this consultation is 29 November 2002.

Further information

Judith Van Bladel
School Governance Unit
Area 3P, Sanctuary Buildings
Department for Education and Skills
Great Smith Street
London SW1P 3BT

Tel. 0207 925 5592

e-mail address: judith.van-bladel@dfes.gsi.gov.uk

This document is also available at
www.dfes.gov.uk/governor/consult.cfm

For further hard copies, please see details on back page.

Governors

Audience: LEAs, Governor Organisations, Diocesan authorities and other organisations

Status: Draft regulations

Date of issue: August 2002

Reference number:
DfES/0643/2002

Related documents: Draft statutory guidance

Superseded documents:

STATUTORY INSTRUMENTS

2003 No.

EDUCATION, ENGLAND

School Governance (Constitution)(England) Regulations 2003

Made[] January 2003

Laid before Parliament[] January 2003

Coming into force1st March 2003

ARRANGEMENT OF REGULATIONS

PART 1 INTRODUCTION

page
5

1. Citation and commencement.
2. Interpretation – General.

PART 2 CATEGORIES OF GOVERNOR

6

3. Parent governors.
- 4-5. Staff governors.
6. LEA Governors.
7. Community Governors.
- 8-9. Foundation Governors.
10. Partnership Governors.
11. Sponsor Governors.
12. Associate Members.

PART 3 COMPOSITION OF GOVERNING BODIES

9

- 13-17. General principles.
- 18. Community Schools and community special schools.
- 19. Foundation schools and foundation special schools.
- 20. Voluntary controlled schools.
- 21. Voluntary aided schools.
- 22. Notification of vacancies and appointments.
- 23. Joint appointments.

PART 4 QUALIFICATIONS AND TENURE OF OFFICE

12

- 24. Qualifications and disqualifications.
- 25. Term of office.
- 26. Resignation.
- 27. Removal of LEA and foundation governors.
- 28. Removal of community governors and sponsor governors.
- 29. Removal of parent governors.
- 30. Procedure for removal of governors by the governing body.

PART 5 INSTRUMENT OF GOVERNMENT

15

- 31. Interpretation of "appropriate diocesan authority".
- 32. Duty to have regard to guidance.
- 33. Contents and forms of instrument of government.
- 34. Procedure for making instrument.
- 35. Review of instruments of government.
- 36. Other requirements relating to instruments of government.
- 37. Duty to secure making of instrument of government.

Schedule 1	Election and appointment of parent governors.	19
Schedule 2	Election of staff governors.	21
Schedule 3	Appointment of community governors at community special schools and foundation special schools.	21
Schedule 4	Appointment of partnership governors.	22
Schedule 5	Appointment of sponsor governors.	23
Schedule 6	Qualifications and disqualifications.	23

In exercise of the powers conferred on the Secretary of State by section 20 (2) and (3), section 21 (2) and (3) and 208 (7) of the Education Act 2002 **(a)** the Secretary of State for Education and Skills hereby makes the following Regulations **(b)**:

(a) 2002 c. []

(b) By virtue of section 208(1) of the 2002 Act the powers conferred by these provisions are exercisable by the Secretary of State only in relation to England.

PART 1 INTRODUCTION

Citation and commencement

1. (1) These Regulations may be cited as the School Governance (Constitution) (England) Regulations 2003.

(2) These Regulations shall come into force on 1st March 2003.

Interpretation

2. (1) In these Regulations:
"the 1996 Act" means the Education Act 1996 **(c)**

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

"the 2002 Act" means the Education Act 2002;

"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 18;

(2) Any reference in these Regulations to the governing body or to the governing body of a school is a reference to the governing body of any school to which the provision applies, and any reference to a governor is a reference to a member of such a governing body.

(c) 1996 c.56.

(d) 1998 c.31

PART 2 CATEGORIES OF GOVERNOR

Parent governors

3. In these Regulations "parent governor" shall mean

- (a) A person who is elected in accordance with Schedule 1(4) to (9) as a member of the school's governing body by parents of registered pupils at the school and is himself such a parent at the time when he is elected, or
- (b) A person appointed as a parent governor in accordance with Schedule 1 (9) to (11).

and who is not disqualified from appointment as a parent governor under Schedule 6 (17).

Staff governors

4. (1) In these Regulations "staff governor" means a person who is elected in accordance with Schedule 2 as a member of the school's governing body by persons who are paid to work at the school and is himself a person so paid at the time when he is elected.

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

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

(4) In this regulation "school teacher" shall be interpreted in accordance with section 122 of the 2002 Act.

5. The head teacher shall be a staff governor by virtue of his office unless he resigns the position in accordance with regulation 26 (1). The head teacher may withdraw his resignation at any time.

LEA Governors

6. In these Regulations "LEA governor" means a governor appointed to be a member of the school's governing body by the local education authority that maintains the school.

Community Governors

7. (1) In these Regulations "community governor" means a person who is appointed as such by the governing body and who is

- (a) A person who lives or works in the community served by the school; or
- (b) A person who is committed to the good government and success of the school.

and who is not disqualified from appointment as a community governor under Schedule 6(16).

(e) defined by section 21 of the 2002 Act ibid

(2) In the case of a community special school or a foundation special school **(f)** the governing body shall appoint as one of the community governors a person nominated in accordance with Schedule 3.

Foundation Governors

8. In these Regulations:

(1) "foundation governor" means a person who is appointed to be a member of the school's governing body, otherwise than by the local education authority and who

(a) where the school has a particular religious character **(g)**, is appointed for the purpose of securing that the character is preserved and developed, and

(b) where the school has a trust deed, is appointed for the purpose of securing that the school is conducted in accordance with that deed; or

where the school has neither a religious character nor a trust deed, is appointed as a foundation governor of the school.

(2) "Ex officio foundation governor" means a foundation governor who is the holder of an office by virtue of which he is entitled to be a foundation governor.

(3) "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 27 (2)

9. One fifth or more of the persons appointed to the governing body of a voluntary aided school as foundation governors shall be persons who are eligible for election or appointment as parent governors.

Partnership Governors

10. In these Regulations "partnership governor" means a person nominated as a partnership governor and appointed as such in accordance with Schedule 4 and who is not disqualified from appointment as a partnership governor under Schedule 6 (19).

Sponsor Governors

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

Associate Members

12. (1) In these Regulations "associate member" means a person appointed by the governing body as a member of one or more of its committees but who is not a member of the governing body for the purposes of section 20 of the 2002 Act **(h)**.

(f) within the meaning of section 20 and Schedule 2 of the 1998 Act *ibid*.

(g) designated by Order of the Secretary of State under section 69 (3) of the 1998 Act *ibid*.

(h) 2002 c.[]

(2) An associate member shall hold office for a period of 4 years or such shorter period (not being less than 1 year) as may be determined by the governing body at the date of his appointment. Nothing in this regulation shall prevent an associate member from being reappointed at the expiration of his term of office.

(3) Associate members shall not be counted in any quorum and shall not form the majority of members on any committee to which they are appointed.

(4) (a) Subject to sub paragraph (b) and to Schedule 6 (2), associate members shall have such voting rights in the committees to which they are appointed as shall be determined by the governing body at the date of their appointment.

(b) Associate members may not vote on any resolution concerning –

- (i) staff appointments, pay, discipline, performance management, grievance or dismissal;
- (ii) admissions;
- (iii) pupil discipline;
- (iv) election or appointment of governors;
- (v) the budget and financial commitments of the governing body.

(5) An associate member may be removed from office by the governing body at any time.

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

PART 3

COMPOSITION OF GOVERNING BODIES

General Principles

13. The instrument of government **(i)** of a school shall specify the size of the membership of the governing body, being no fewer than 9 or more than 20 governors.

14. In determining the size of its membership, the governing body shall not include any sponsor governors or additional foundation governors appointed in accordance with regulation 21(2).

15. Subject to regulations 16 to 21, the instrument of government shall specify the numbers of governors from each of the following categories of governor to be elected or appointed:

- (1) Parent Governors;
- (2) Staff governors;
- (3) LEA governors;
- (4) Community governors;
- (5) Foundation governors;
- (6) Partnership governors;
- (7) Sponsor governors.

16. In calculating the number of governors required in each category in accordance with regulations 18–21, the numbers shall be rounded up or down to the nearest whole number.

17. In calculating the number of staff governors required, the head teacher shall be included whether or not he has resigned his governorship.

Community Schools and community special schools

18. (1) The governing body of a community school or a community special school **(j)** shall consist of the following:

- (a) One third or more shall be parent governors;
- (b) At least two but no more than one third shall be staff governors;
- (c) One fifth shall be LEA governors;
- (d) One fifth or more shall be community governors.

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

(i) defined by section 21 of the 2002 Act *ibid.*

(j) within the meaning of section 20 and schedule 2 of the 1998 Act *ibid.*

Foundation schools and foundation special schools

19. (1) The governing body of a foundation school or a foundation special school **(K)** shall consist of the following:

- (a) One third or more shall be parent governors;
- (b) At least two but no more than one third shall be staff governors;
- (c) At least one but no more than one fifth shall be LEA governors;
- (d) One tenth or more shall be community governors;
- (e) At least two but no more than one quarter shall be foundation governors or, where the school does not have a foundation, partnership governors;

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

Voluntary Controlled Schools

20. (1) The governing body of a voluntary controlled school **(I)** shall consist of the following:

- (a) One third or more shall be parent governors;
- (b) At least two but no more than one third shall be staff governors;
- (c) At least one but no more than one fifth shall be LEA governors;
- (d) One tenth or more shall be community governors;
- (e) At least two but no more than one quarter shall be foundation governors;

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

Voluntary aided schools

21. (1) The governing body of a voluntary aided school **(m)** shall consist of the following:

- (a) At least one but no more than one tenth shall be LEA governors;
- (b) At least two but no more than one third shall be staff governors;
- (c) At least one shall be a parent governor;
- (d) Such number of foundation governors as
 - (i) will lead to their outnumbering the governors mentioned in sub- paragraphs (a) to (c) by two; and
 - (ii) when those appointed under regulation 9 are counted with the parent governors, shall comprise one third or more of the total membership of governing body.

(k) within the meaning of section 20 and schedule 2 of the 1998 Act *ibid.*

(I) within the meaning of section 20 and schedule 2 of the 1998 Act *ibid.*

(m) within the meaning of the 1998 Act *ibid.*

(2) The governing body may in addition appoint

(a) up to two sponsor governors; and

(b) such number of additional foundation governors (up to two) as are required to preserve their majority.

Notification of vacancies and appointments

22. (1) Subject to paragraph (2), where a vacancy in the office of an appointed member of the governing body arises, the clerk to the governing body shall as soon as is reasonably practicable inform the governing body and give notice in writing of that fact to the person entitled to nominate or appoint a person to that office.

(2) The clerk to the governing body **(n)** shall, at least two months before the date of the expiry of the term of office of an appointed member, inform the governing body and give notice in writing of the expiry of that term to the person entitled to nominate or appoint a person to that office.

(3) Where any person makes an appointment or nominates a person to be appointed to the governing body, he shall 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.

(4) The requirement to give written notice under paragraphs (1) to (3) shall not apply to the governing body.

(5) For the purposes of this regulation, "appointed member" means-

(a) an LEA governor;

(b) a community governor;

(c) a foundation governor;

(d) a sponsor governor; or

(e) a partnership governor.

Joint appointments

23. If-

(1) the instrument of government provides for one or more governors to be appointed by persons acting jointly; and

(2) those persons fail to make an agreed appointment, the appointment shall be made by, or in accordance with a direction given by, the Secretary of State.

(n) appointed in accordance with regulations to be made under section 24 of the 2002 Act *ibid*.

PART 4 QUALIFICATIONS AND TENURE OF OFFICE

Qualifications and disqualifications

24. Schedule 6 sets out the circumstances in which a person is qualified for or disqualified from holding or continuing in office, or from being elected, appointed or nominated, as a governor.

Term of office

25. (1) Subject to paragraphs (2) to (6), the governing body may determine that any category or categories of governor required by an instrument of government, shall hold office for a fixed period of at least one year, up to a maximum of four years.

(2) Paragraph (1) shall not apply to any governor who is the head teacher of the school, or to any ex officio foundation governor.

(3) Paragraph (1) shall not apply to any additional governor, additional foundation governor or interim executive member appointed under sections 16, 16A, 18 or 18A of the 1998 Act **(o)** whose term of office shall be determined by the person who appointed him, up to a maximum of 4 years.

(4) (a) Any foundation governor (other than an additional foundation governor appointed under section 16 of the 1998 Act, ex officio foundation governor or substitute foundation governor) shall hold office for such a term, not exceeding four years, as the person appointing him shall determine at the time of making the appointment and notify in writing to the clerk to the governing body of the school concerned at the time of notifying him of the appointment.

(b) In default of a term being determined and notified in accordance with sub-paragraph (a), a governor to whom that sub-paragraph applies shall hold office for a term of four years.

(5) For the purpose of this regulation, "the original governor" means the ex officio foundation governor in whose place the substitute governor is appointed to act.

(6) A substitute governor shall hold office until the earlier of the following-

(a) the expiry of four years from the date when his appointment takes effect;

(b) the date when the original governor (not having been removed from office under regulation 27 (2)) gives written notice to the clerk to the governing body to the effect that he is able and willing to act as a foundation governor; or

(c) the date when a person other than the original governor takes office in the post by virtue of which the ex officio governorship exists.

(7) This regulation shall not prevent a governor -

(a) from being elected or appointed for a further term; or

(o) 1998 c.31 as amended by the Education Act 2002.

(b) from being disqualified, by virtue of any provision of these Regulations, from continuing to hold office.

Resignation

26. (1) Any governor may at any time resign his office by giving written notice to the clerk to the governing body of the school.

(2) An ex officio foundation governor may resign as governor either permanently or temporarily, but his resignation shall not prejudice the ex officio governorship of his successor in the office from which the ex officio governorship derives.

Removal of LEA and foundation governors

27. (1) Subject to paragraph (2), any LEA governor or foundation governor may be removed from office by the person who appointed him, who shall give written notice thereof to the clerk to the governing body and to the governor so removed.

(2) (a) The governing body may, in accordance with the procedure set out in regulation 30, 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, if the governing body thinks fit.

(b) A person proposing the removal of an ex officio foundation governor shall inform the governing body and the governor in question in writing of the reasons why they are proposing his removal.

Removal of community governors and sponsor governors

28. (1) Any community governor or sponsor governor may be removed from office by the governing body in accordance with the procedure set out in regulation 30.

(2) (a) Subject to sub-paragraph (b), the governing body may, in accordance with the procedure set out in regulation 30, remove any sponsor governor or community governor appointed in accordance with regulation 7(2) and Schedule 3 at the request of the nominating body, if the governing body thinks fit.

(b) A nominating body proposing the removal of such a governor shall inform the governing body and the governor in question in writing of the reasons why it is proposing his removal.

(c) In these regulations "nominating body" means any person from whom nominations were sought for the purpose of appointing, and who nominated, the governor in question.

Removal of parent governors

29. Any parent governor appointed by the governing body under Schedule 1(9) to (11) may be removed by the governing body in accordance with the procedure set out in regulation 30.

Procedure for removal of governors by the governing body

30. (1) This regulation applies in relation to the removal of a governor from office in accordance with regulation 27(2), 28 or 29.

(2) Subject to paragraphs (3) and (4), a resolution to remove a governor from office which is passed at a meeting of the governing body shall not have effect unless-

(a) 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

(b) the matter of the governor's removal from office is specified as an item of business on the agenda for each of those meetings.

(3) In relation to the removal of a governor under regulation 27(2) and 28(2), before the governing body resolve at the second meeting whether to confirm the resolution to remove the governor from office, the clerk shall give the reasons for removal provided by the person referred to in regulation 27(2) (a) or by the nominating body (as appropriate) and the governor whom it is proposed to remove shall be given an opportunity to make a statement in response.

(4) In relation to the removal of a community governor or a sponsor governor under regulation 28 (1) or a parent governor under regulation 29, before the governing body resolve at the second meeting whether to confirm the resolution to remove the governor from office, the governor or governors proposing his removal shall at that meeting state their reasons for doing so and the governor whom it is proposed to remove shall be given an opportunity to make a statement in response.

PART 5 INSTRUMENT OF GOVERNMENT

Interpretation of "appropriate diocesan authority"

31. In this Part, "appropriate diocesan authority" shall have the meaning given by section 142(1) and (4) of the 1998 Act **(p)**

Duty to have regard to guidance

32. In respect of the making of instruments of government **(q)**, the matters to be dealt with in such instruments, the form of such instruments, and the review and variation of such instruments, governing bodies and local education authorities shall have regard to any guidance given from time to time by the Secretary of State.

Contents and form of instrument of government

33. (1) The instrument of government for a maintained school shall set out:

- (a) the name of the school;
- (b) the category of school (within section 20 (1) of the 1998 Act **(r)**) to which the school belongs;
- (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, specifying:
 - (i) the number of governors in each category of governor;
 - (ii) the total membership of the governing body, including any sponsor governors and additional foundation governors appointed in accordance with regulation 21(2)
- (e) where, under regulation 25 the governing body have determined that the term of office for a category or categories of governor should 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 by the holder of a named office;
 - (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 has sponsor governors, the name of the sponsors who are entitled to nominate persons for appointment as such governors under Schedule 5;

(p) 1998 c.31.

(q) defined by section 21 of the 2002 Act.

(r) 1998 c.31

- (h) where the school is a maintained special school, the names of any body entitled to nominate a person for appointment as a community governor under regulation 7(2) and Schedule 3;
- (i) where the school has a trust deed, that fact;
- (j) where the school is a foundation or voluntary school which has a religious character, a description of the ethos of the school; and
- (k) the date when the instrument of government takes effect.

(2) The manner in which the governing body are 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.

(3) The instrument of government shall (subject to any statutory provision) comply with any trust deed relating to the school.

Procedure for making an instrument

34. (1) The governing body shall prepare a draft of the instrument of government and submit it to the local education authority.

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

- (a) the foundation governors;
- (b) any trustees under a trust deed relating to the school; and
- (c) in the case of a Church of England school or Roman Catholic Church school, the appropriate diocesan authority.

(3) On receiving the draft the local education authority shall consider whether it complies with all applicable statutory provisions, and if :

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

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

(4) If, in the case of a school which has foundation governors, there is at any time disagreement as to the content of the draft among the persons mentioned in paragraph (2), any of those persons may refer the draft to the Secretary of State who shall give such direction as he thinks fit having regard, in particular, to the category of school to which the school belongs.

(5) If neither of sub-paragraphs (a) and (b) of paragraph (3) applies in the case of a school which does not have foundation governors, the local education authority shall-

- (a) notify 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 the local education authority on revising the draft;

and the instrument of government shall be made by the local education authority either in the form of a revised draft agreed between the local education authority and the governing body or (in the absence of such agreement) in such form as the local education authority think fit having regard, in particular, to the category of school to which the school belongs.

(6) Nothing in this regulation requires the agreement of, or enables any objection to be made by, any person to any part of a draft instrument that reflects any decision taken by the governing body or any other person which the governing body or that person is required or authorised to take by virtue of any statutory provision.

Review of instruments of government

35. (1) The governing body or the local education 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 education authority decide that the instrument of government should be varied, the governing body or (as the case may be) the local education authority shall 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 shall notify the local education authority as to whether or not they are content with it and, if not content, their reasons.

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

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

unless the persons mentioned in regulation 34(2) have approved the proposed variation.

(5) If-

- (a) both the governing body and the local education authority have agreed to the proposed variation as notified under paragraph (2), or
- (b) there is agreement between the local education authority, the governing body and (if the school has foundation governors) the persons mentioned in Regulation 34 (2) that some other variation should be made instead,

the instrument of government shall be varied accordingly by the local education authority.

(6) If, in the case of a school which has foundation governors, there is at any time disagreement as to the proposed variation among the persons mentioned in Regulation 35(2) any of those persons may refer the proposed variation to the Secretary of State; and on such a reference the Secretary of State shall give such direction as he thinks fit having regard, in particular, to the category of school to which the school belongs.

(7) If neither sub-paragraphs (a) and (b) of paragraph (5) applies in the case of a school which does not have foundation governors, the local education authority shall-

(a) notify the governing body of the reasons-

(i) why they are not content with the governing body's proposed variation, or

(ii) why they wish to proceed with their own variation,

as the case may be, and

(b) give the governing body a reasonable opportunity to reach agreement with the local education authority on revising the variation;

and the instrument of government shall be varied by the local education authority either in the manner agreed between the local education authority and the governing body or (in the absence of such agreement) in such manner as the local education authority think fit having regard, in particular, to the category of school to which the school belongs.

(8) Nothing in this regulation is to be taken as requiring the local education authority to vary the instrument of government if they do not consider it appropriate to do so.

(9) The requirement under Regulation 34(3) for the local education authority to consider compliance with all applicable statutory provisions, shall apply in relation to a proposed variation of an instrument of government as it applies in relation to a draft of such an instrument.

(10) Where an instrument of government is varied under this regulation the instrument shall set out the date the variation takes effect.

(11) Nothing in this regulation requires the agreement of, or enables any objection to be made by, any person to any proposed variation that reflects any decision taken by the governing body or any other person which the governing body or that person is required or authorised to take by virtue of any statutory provision.

Other requirements relating to instruments of government

36. (1) The local education authority which maintains a school for which an instrument of government has been made shall secure that the persons set out in paragraph (2) are provided (free of charge) with-

(a) a copy of the school's instrument of government; and

(b) where any variation is made to the school's instrument of government a consolidated version of the instrument of government incorporating all variations made by order of the local education authority (other than any 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 member of the governing body of the school;

(b) the head teacher, if the head teacher is not a member of the governing body;

(c) any trustees under a trust deed relating to the school; and

(d) in the case of a Church of England school or Roman Catholic Church school, the appropriate diocesan authority.

Duty to secure making of instruments of government

37. A local education authority shall make, by 30 August 2006, an instrument of government in accordance with these regulations for each school which is maintained by them.

Schedule 1

(Regulation 3)

Election and appointment of parent governors

1. Subject to paragraphs 2 and 3 in this Schedule "appropriate authority" means-

(1) In relation to a community, community special or voluntary controlled school, the local education authority;

(2) In relation to a voluntary aided, foundation or foundation special school, the governing body.

2. Where a local education authority is the appropriate authority in relation to a school, that authority may delegate to the head teacher of the school any of its functions under this Schedule.

3. The local education authority shall be the appropriate authority in relation to a school within paragraph 1(b) if the governing body and the local education authority so agree.

4. Subject to paragraphs 5 to 8 the appropriate authority shall make all the necessary arrangements for the election of parent governors.

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

6. Any election which is contested shall be held by secret ballot.

7. (1) The arrangements made under paragraph 4 shall provide for every person who is entitled to vote to have an opportunity to do so by post.

(2) For the purposes of sub-paragraph (1), "post" shall be construed as including delivery by hand.

(3) The arrangements made under paragraph 4 may provide for every person who is entitled to vote to have an opportunity to do so by electronic means.

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

- (1) informed of the vacancy and that it is required to be filled by election;
- (2) informed that he is entitled to stand as a candidate and vote in the election; and
- (3) given the opportunity to do so.

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

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

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

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

10. (1) Except where paragraph 12 applies, in appointing a parent governor the governing body shall appoint-

- (a) a parent of a registered pupil at the school; or
- (b) a parent of a former registered pupil at the school; or
- (c) a parent of a child under or of compulsory school age.

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

11. -(1) Where the school is a community special or foundation special school, in appointing a parent governor the governing body shall appoint-

- (a) a parent of a registered pupil at the school; or
- (b) a parent of a former pupil at the school; or
- (c) a parent of a child under or of compulsory school age with special educational needs for which the school is approved; or
- (d) a parent with experience of educating a child with special educational needs.

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

Schedule 2

(Regulation 4)

Election of staff governors

1. In this schedule "appropriate authority" shall have the same meaning as in Schedule 1.
2. Where an authority is the appropriate authority in relation to a school, that authority may delegate to the head teacher of the school any of its functions under this Schedule.
3. Subject to paragraphs 4 and 5, the appropriate authority shall make all the necessary arrangements for the election of staff governors.
4. The power conferred by paragraph 3-
 - (1) includes the power to make provision as to qualifying dates, but
 - (2) does not include power to impose any requirements as to the minimum number of votes required to be cast for a candidate to be elected.
5. Any election which is contested, shall be held by secret ballot.

Schedule 3

(Regulation 7(2))

Appointment of community governors at community special schools and foundation special schools

1. Subject to paragraphs 2 and 3, the governing body of a community special school or foundation special school shall appoint community governors in accordance with regulation 7(1).
2. (1) In relation to a community special school or foundation special school established in a hospital, the local education authority shall designate either-
 - (a) one or more primary care trusts; or
 - (b) the national health service trust.

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

(2) The governing body shall invite the appropriate body to nominate (and if more than one, jointly) a person to be appointed as one of the community governors in accordance with regulation 7(2).

(3) For the purposes of this paragraph;

"national health service trust" means a body established by the Secretary of State under section 5 of the National Health Service or Community Care Act 1990 **(s)**

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

3. The governing body of a community special school or foundation special school not established in a hospital shall appoint as one of their community governors-

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

(2) if two or more voluntary organisations are so designated as appropriate voluntary organisations concerned with such matters, a person (if any) nominated by those organisations acting jointly.

Schedule 4

(Regulation 10)

Appointment of partnership governors

1. Where a partnership governor is required, the governing body shall seek nominations from parents of registered pupils at the school, and from such other persons in the community served by the school as they consider appropriate.

2. Subject to Schedule 6(19), no person shall nominate for appointment, or appoint, a person as a partnership governor unless that person would be eligible for appointment by the governing body as a community governor.

3. Subject to paragraph 4 (2), no governor may nominate a person for appointment as a partnership governor.

4. (1) The governing body shall appoint such number of partnership governors as are required by the instrument of government from among eligible nominees.

(2) If the number of eligible nominees is less than the number of vacancies, the number of partnership governors required shall be made up by persons selected by the governing body.

5. Where the governing body make an appointment under paragraph 4 (2) having rejected any person nominated under paragraph 1, they shall give written reasons for their decision to the local education authority and to the person rejected.

6. The governing body shall make all necessary arrangements for and determine all other matters relating to the nomination and appointment of partnership governors.

(s) 1990 c.19 as amended by the Health Act 1999 (1999 C.8).

(t) 1977 c.49 as amended by the Health Act 1999 *ibid*.

Appointment of sponsor governors

1. In this Schedule, "sponsor" in relation to a school means-

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

(2) any other person (not being otherwise represented on the governing body) who provides or has provided substantial services to the school.

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

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

Qualifications and Disqualifications**General**

1. (1) No person shall be qualified to be a governor unless he is aged 18 or over at the date of his election or appointment.

(2) This provision shall not apply to an associate member appointed under regulation 12.

2. No associate member shall be qualified to vote on any business transacted by any committee of the governing body unless he is aged 18 or over at the date of his appointment.

3. No person shall at any time hold more than one governorship of the same school.

4. Subject to paragraphs 16 to 19, the fact that a person is qualified to be elected or appointed as a governor of a particular category at a school does not disqualify him from election or appointment or from continuing as a governor of any other category at that school.

Mental disorder

5. A person shall be disqualified from holding or for continuing to hold office as a governor of a school at any time when he is liable to be detained under the Mental Health Act 1983 **(u)**.

Governor of more than two schools

6. (1) A person shall be disqualified from holding office as a governor of a school if, were he to be appointed or elected to that office, he would, on the date on which the appointment or election would have taken effect, be a member of the governing body of more than two schools.

(u) 1983 c.20.

(2) For the purposes of sub-paragraph (1) no account shall be taken of temporary governorships, or additional governorships of governors appointed under sections 16, 16A, 18 or 18A of the 1998 Act **(v)**

Failure to attend meetings

7. (1) This paragraph shall apply in the case of any governor of a school who is not a governor by virtue of his office.

(2) Such a governor who, without the consent of the governing body concerned, has failed to attend the meetings thereof for a continuous period of six months beginning with the date of a meeting, shall, on the expiry of that period, be disqualified from continuing to hold office as a governor of that school.

(3) A foundation governor (other than an ex officio foundation governor), LEA governor, community governor, partnership governor or sponsor governor who has been disqualified as a governor of a school under sub-paragraph (2) shall not qualify for election nomination or appointment as a governor of any category at that school during the twelve months immediately following his disqualification under sub-paragraph (2).

Bankruptcy

8. A person shall be disqualified from holding or continuing to hold office as a governor of a school if-

(1) he has been adjudged bankrupt or sequestration of his estate has been awarded and (in either case) he has not been discharged and the bankruptcy order has not been annulled or rescinded;

(2) he has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it.

Disqualification of company directors

9. A person shall be disqualified from holding or for continuing to hold office as a governor of a school at any time when he is subject to a disqualification order under the Company Directors Disqualification Act 1986 **(w)** or to an order made under section 429(2)(b) of the Insolvency Act 1986 **(x)** (failure to pay under county court administration order).

Disqualification of charity trustees

10. A person shall be disqualified from holding or for continuing to hold office as a governor of a school if-

(1) he has been removed from the office of trustee for a charity by an order made by the Charity Commissioners or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity for which he was responsible or to which he was privy, or which he by his conduct contributed to or facilitated; or

(v) 1998 c.31 as amended by the 2002 Act.

(w) 1986.c.46 as amended by the Insolvency Act 2000 (2000 c.39).

(x) 1986 c.45.

(2) he has been removed, under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 **(y)** (powers of Court of Session to deal with management of charities), from being concerned in the management or control of any body.

Persons whose employment is prohibited or restricted

11. (1) A person shall be disqualified from holding or continuing to hold office as a governor of a school at any time when he is

- (a) included in the list of teachers and workers with children or young persons whose employment is prohibited or restricted under section 1 of the Protection of Children Act 1999 **(z)**;
- (b) subject to a direction of the Secretary of State under section 142 of the 2002 Act **(aa)**;
- (c) disqualified from working with children under sections 28 and 29 of the Criminal Justice and Court Services Act 2000 **(bb)**.

Persons disqualified from being proprietors of independent schools

12. A person shall be disqualified from holding or continuing to hold office as a governor of a school at any time when he is, by virtue of an order made under section 470 or section 471 of the 1996 Act **(cc)**, disqualified from being the proprietor of any independent school or from being a teacher or other employee in any school.

Criminal convictions

13. (1) Subject to sub-paragraph (6) below, a person shall be disqualified from holding, or continuing to hold, office as a governor of a school where any of sub-paragraphs (2) to (4) or (6) below apply to him.

(2) This sub-paragraph applies to a person if-

- (a) within the period of five years ending with the date immediately preceding the date on which his appointment or election as governor would otherwise have taken effect or, as the case may be, on which he would otherwise have become a governor by virtue of his office ; or
- (b) since his appointment or election as governor or, as the case may be, since he became a governor by virtue of his office, he has been convicted, whether in the United Kingdom or elsewhere, of any offence and has had passed on him a sentence of imprisonment (whether suspended or not) for a period of not less than three months without the option of a fine.

(y) 1990 c.40. The functions of the Lord Advocate under this section transferred to the Secretary of State by the Transfer of Functions (Lord Advocate and Secretary of State) Order 1999 SI 1999/678.

(z) 1999 c.14 as amended by the Care Standards Act 2000 (2000 c.14).

(aa) 2002 c.[].

(bb) 2000 c.43.

(cc) 1996 c.56 as amended by the Care Standards Act 2000 *ibid*.

(3) This sub-paragraph applies to a person if within the period of 20 years ending with the date immediately preceding the date on which his appointment or election as governor would otherwise have taken effect or, as the case may be, on which he would otherwise have become a governor by virtue of his office, he has been convicted as aforesaid of any offence and has had passed on him a sentence of imprisonment for a period of not less than two and a half years.

(4) This sub-paragraph applies to a person if he has at any time been convicted as aforesaid of any offence and he has had passed on him a sentence of imprisonment for a period of not less than five years.

(5) For the purposes of sub-paragraphs (2) to (4) above, there shall be disregarded any conviction by or before a court outside the United Kingdom of an offence which, if the facts giving rise to the offence had taken place in any part of the United Kingdom, would not have constituted an offence under the law in force in that part of the United Kingdom.

(6) This sub-paragraph applies to a person if-

- (a) within the period of five years ending with the date immediately preceding the date on which his appointment or election as governor would otherwise have taken effect or, as the case may be, on which he would otherwise have become a governor by virtue of his office; or
- (b) since his appointment or election as governor or, as the case may be, since he became a governor by virtue of his office,

he has been convicted under section 547 of the Education Act 1996 **(dd)** (nuisance and disturbance on education premises) of an offence which took place on the premises of a maintained school, and has been sentenced to a fine.

Refusal to make an application for a criminal records certificate

14. A person shall be disqualified from holding or continuing to hold office as a governor at any time when he refuses a request by the clerk to the governing body to make an application under section 113 of the Police Act 1997 **(ee)** for a criminal records certificate.

Notification to clerk

15. Where, by virtue of any paragraphs 8 to 13-

- (1) a person becomes disqualified from holding, or for continuing to hold, office as a governor of a school; and
- (2) he is, or is proposed, to become a governor,

he shall upon becoming so disqualified give notice of that fact to the clerk to the governing body of the school.

(dd) 1996 c.56 as amended by the 2002 Act *ibid*.

(ee) 1997 c.50 as amended by the Protection of Children Act 1999 and the Care Standards Act 2000 *ibid*.

Community governors

16. A person shall be disqualified from appointment as a community governor of a school if he is-

- (1) a registered pupil at the school;
- (2) eligible to be a staff governor of the school; or
- (3) an elected member of the local education authority.

Parent governors

17. A person shall be disqualified from election or appointment as a parent governor of a school if he is -

- (1) an elected member of the local education authority; or
- (2) paid to work at the school for more than 500 hours in any twelve month period commencing on 1st August and finishing on 31st July.

18. A person shall not be disqualified from continuing to hold office as a parent governor when he ceases to be a parent of a registered pupil at the school or to fulfil any of the requirements set out in paragraphs 11 and 12 of Schedule 1 unless he is otherwise disqualified under these Regulations.

Partnership governors

19. A person shall be disqualified from nomination or appointment as a partnership governor of a school if he is-

- (1) a parent of a registered pupil at the school; or
- (2) a registered pupil at the school; or
- (3) eligible to be a staff governor of the school; or
- (4) an elected member of the local education authority; or
- (5) employed by the local education authority in connection with its functions as a local education authority.

Staff governors

20. A staff governor of a school shall, upon ceasing to work at the school, be disqualified from continuing to hold office as such a governor.

Ex officio Foundation Governors

21. An ex officio foundation governor shall, upon ceasing to hold the office from which his governorship derives, be disqualified from continuing to hold office as such a governor.

Copies of this publication can be obtained from:

DfES publications

PO Box 5050

Sherwood Park

Annesley

Nottingham NG15 0DJ

Tel: 0845 6022260

Fax: 0845 6033360

Textphone: 0845 6055560

email: dfes@prolog.uk.com

Please quote ref: DfES/0643/2002

© Crown copyright 2002

Produced by the Department for Education and Skills

Extracts from this document may be reproduced for non commercial education or training purposes on the condition that the source is acknowledged.

www.dfes.gov.uk