

## **Statutory Guidance on the School Governance (Constitution) (England) Regulations 2012**

### **THE SCHOOL GOVERNANCE CONSTITUTION REGULATIONS 2012**

#### **GUIDANCE FOR GOVERNING BODIES, LOCAL AUTHORITIES, SCHOOL LEADERS IN ENGLAND AND GOVERNOR ORGANISATIONS AND OTHER ORGANISATIONS WITH AN INTEREST**

#### **ABOUT THIS GUIDANCE**

This is statutory guidance from the Department for Education. This means that recipients must have regard to it when carrying out duties relating to the constitution of governing bodies in maintained schools.

This guidance is about the School Governance (Constitution) (England) Regulations 2012 (“the Regulations”). The Regulations set out the arrangements for the constitution of the governing body of those maintained schools in England –

- that are established on or after 1 September 2012 or
- whose instrument of government is varied following a decision to vary made on or after 1 September 2012.

The School Governance (Constitution) (England) Regulations 2007 continue to apply to existing governing bodies until such time as it is decided to vary the instrument of government.

#### **EXPIRY/REVIEW DATE**

This guidance will next be reviewed in September 2013.

#### **WHAT LEGISLATION DOES THIS GUIDANCE RELATE TO?**

- [The School Governance \(Constitution\) \(England\) Regulations 2012](#)

#### **WHO IS THIS GUIDANCE FOR?**

This guidance is for:

- School governors
- Local Authorities
- School leaders and school staff in all maintained schools in England
- Governor organisations and other organisations with an interest

## KEY POINTS

- The Regulations allow governing bodies constituted on or after 1<sup>st</sup> September 2012 to have a minimum size of seven members<sup>1</sup>, rather than nine as under the Constitution Regulations 2007
- The governing body should ensure that it has the skills needed to conduct the governing body's business effectively
- The method of appointing the local authority governor has been amended
- A new definition of co-opted governor has been introduced
- The role of sponsor governor has been removed.

## THE REGULATIONS EXPLAINED

The Regulations, and so this Guidance, cover four aspects of the arrangements for the constitution of governing bodies:

- the description of the different categories of governor
- how governing bodies are to be constituted
- terms of office, removal and disqualification of governors, and
- instruments of government.

## CATEGORIES OF GOVERNOR (Part 2 of and Schedules 1 - 3 to the Regulations)

Sections 1.1 to 1.8 summarise the provision made in the Regulations for the various categories of governor. The categories applicable to each school are shown at Annex A. Information about disqualification is in section 3.2.

### 1.1 Parent governors (regulation 6 and Schedule 1)

Parents, including carers, of registered pupils at the school at the time of election are eligible to stand for election as parent governors.

Parent governors are elected by other parents at the school.

Schools must make every reasonable effort to fill parent governor vacancies through elections.

The governing body can appoint parent governors where—

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

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

Parent governors may continue to hold office when their child leaves the school.

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<sup>1</sup> Subject to the requirements regarding foundation governors in qualifying foundation schools and voluntary aided schools

## **1.2 Staff governors (regulation 7 and Schedule 2)**

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

Staff governors are elected by the school staff.

Staff governors cease to hold office when they cease to work at the school.

## **1.3 The head teacher**

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

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

## **1.4 Local authority governors (regulation 8)**

Local authority governors are nominated by the local authority but appointed by the governing body.

The local authority can nominate any eligible person as a local authority governor, but it is for the governing body to decide whether their nominee meets their eligibility criteria.

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

## **1.5 Foundation governors (regulation 9)**

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

Where appointed, appointment is made by the person entitled under the instrument of government (usually the school's founding body, church or other organisation) and for the purpose of securing –

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

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

## **1.6 Partnership governors (regulation 10 and Schedule 3)**

Partnership governors are appointed by the governing body.

Only those with the skills needed to contribute to the effective governance and success of the school are eligible for nomination and appointment.

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

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

- where the school has a religious character –
  - by the “appropriate diocesan authority” in the case of a Church of England or Roman Catholic school, and
  - by the “appropriate religious body” in any other case; and,
- where the school does not have a religious character, by the parents of registered pupils at the school and such others in the community as it considers 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.

### **1.7 Co-opted governors (regulation 11)**

Co-opted governors are appointed by the governing body.

Co-opted governors 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.

### **1.8 Associate members (regulation 12)**

Associate members are appointed by the governing body to serve on one or more governing body committees and attend full governing body meetings. They are not governors but bring expertise and experience which can add to that provided by the governor membership.

The definition of associate member is wide and pupils, school staff and people who want to contribute specifically on issues related to their area of expertise (finance, for example) can be appointed as associate members.

## **2. 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 A shows the constitution of governing body by category of governor.

### **2.1 Requirements for all maintained schools (regulation 13)**

The total number of governors in all schools must be no fewer than seven. There is no upper limit but we recommend that the governing body consider whether a smaller number of governors would allow business to be conducted more effectively.

The governing body must include –

- at least two parent governors
- the head teacher unless the head teacher resigns

- one staff governor
- one local authority governor.

The governing body may appoint as many co-opted governors as they consider necessary but 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 head teacher, exceed one-third of the total membership of the governing body.

The governing body of a foundation or voluntary school may also appoint additional co-opted governors as they deem necessary.

## **2.2 Additional requirements for foundation and voluntary schools (regulation 14)**

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

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

## **2.3 Surplus governors (regulation 15)**

Where a school has more governors in a particular category than is provided for in the instrument of government for the school then the excess must be removed—

- by the resignation of the required number of governors
- by governors ceasing to hold office on the basis of length of service, starting with the governor with the shortest length of service
- by drawing lots, where governors have served for the same length of time.

## **3. NOTIFICATION OF APPOINTMENTS, TERM OF OFFICE, REMOVAL AND DISQUALIFICATION (Part 4 of the Regulations)**

### **3.1 Notification of appointments (regulation 16)**

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

### **3.2 Qualifications and disqualifications (regulation 17 and Schedule 4 to the Regulations)**

Grounds for disqualification fall into three broad categories:

- general grounds

- grounds that apply to particular categories of governor
- 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.

### 3.2.1 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.

### 3.2.2 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.

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

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

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

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

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

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

- is the subject of a bankruptcy restrictions order or an interim order, debt relief restrictions order, an interim debt relief restrictions order or their estate has been sequestrated and the sequestration has not been discharged, annulled or reduced
- is subject to a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986, a disqualification order under Part 2 of the Companies (Northern Ireland) Order 1989, a disqualification undertaking accepted under the Company Directors Disqualification (Northern Ireland) Order 2002, or an order made under section 429(2)(b) of the Insolvency Act 1986 (failure to pay under county court administration order)

- has been removed from the office of charity trustee or trustee for a charity by the Charity Commission or Commissioners or High Court on grounds of any misconduct or mismanagement, or under section 34 of the Charities and Trustee Investment (Scotland) Act 2005 from being concerned in the management or control of any body
- is included in the list of teachers or workers considered by the Secretary of State as unsuitable to work with children or young people
- is barred from any regulated activity relating to children
- is disqualified from working with children or from registering for childminding or providing day care
- is disqualified from being an independent school proprietor, teacher or employee by the Secretary of State
- has been sentenced to three months or more in prison (without the option of a fine) in the five years before becoming a governor or since becoming a governor
- has received a prison sentence of two years or more in the 20 years before becoming a governor
- has at any time received a prison sentence of five years or more
- has been fined for causing a nuisance or disturbance on school premises during the five years prior to or since appointment or election as a governor
- refuses a request by the clerk to make an application to the Criminal Records Bureau for a criminal records certificate.

### **3.3 Term of office (regulation 18)**

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

- a head teacher or an ex officio foundation governor stops being a governor when the position which entitles them to be a governor comes to an end
- an additional governor appointed under Part 4 of the Education and Inspections Act 2006 holds office for such period as the appointer determines up to four years
- the instrument of government may specify a shorter term of office (being at least a year) for a particular category of governor
- a substitute governor term of office is dependent on the return or replacement of the original governor.

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

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

Any governor may at any time resign by giving written notice to the clerk. We recommend that the bodies responsible for elections and appointments make it clear to prospective governors that they can resign before their term of office ends, and that not being able to serve the full term should not discourage them from becoming a governor.

### **3.4 Removal of governors (regulations 20 - 24)**

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

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

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

The governing body may remove co-opted governors and partnership governors (for details see section 3.5)

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

The governing body may not remove any staff governor.

### **3.5 Procedure for removal of governors by the governing body (regulation 25)**

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

- the removal is confirmed by a resolution passed at a second meeting of the governing body not less than 14 days after the first meeting
- the removal of the governor has been specified as an item on the agenda of both meetings, and
- the following additional conditions are satisfied.

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

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

## **4. 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 school and other matters relating to the school. Part 5 of the Regulations makes provision regarding the contents and form of the instrument and the procedure for making and reviewing it.

### **4.1 Contents and form (regulation 28)**

A model instrument of government is shown at Annex B. There are additional requirements for certain categories of school, which are highlighted in the Annex.

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.

#### **4.2 Making the instrument of government (regulation 29)**

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

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

Extra requirements apply in the case of a school with foundation governors.

#### **4.3 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:

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

#### **4.4 Copies of the instrument of governments of government (regulation 31)**

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

### **FURTHER SOURCES OF INFORMATION**

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

- [The School Governance \(Constitution\) \(England\) Regulations 2007](#)
- [The Education Act 2002](#)

**Constitution of governing bodies by category of governor**

	Foundation/trust governors	Partnership governors	Parent governors	Staff governors (including headteacher)	Local authority governors	Co-opted Governors
Community <sup>2</sup>	N/A	N/A	At least 2	Headteacher + 1	1	As determined by the GB and no more than 1/3 where they are also eligible to be elected as staff governors when counted with the staff governor and headteacher.
Foundation with no foundation <sup>3</sup>	N/A	At least 2 but no more than ¼	At least 2	Headteacher + 1	1	As determined by the GB
Foundation with a foundation that appoints a minority of the GB	At least 2 but no more than 45%	N/A	At least 2	Headteacher + 1	1	As determined by the GB
Qualifying Foundation	<b>Overall control of GB.</b> A majority of up to 2 over all other categories of governor	N/A	At least 2	Headteacher + 1	1	As determined by the GB
Voluntary controlled	At least 2 but no more than 1/4	N/A	At least 2	Headteacher + 1	1	As determined by the GB
Voluntary aided	<b>Overall control of GB.</b> Majority of 2 over all other categories of governor	N/A	At least 2	Headteacher + 1	1	As determined by the GB

<sup>2</sup> Including community special schools and maintained nursery schools

<sup>3</sup> Including foundation special schools

## INSTRUMENT OF GOVERNMENT

1. The name of the school is.....

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

VA, QF,  
VC, F

Also [*If applicable*] whether the school has a foundation, and whether the school is a qualifying foundation school.

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>i</sup>:

a. X parent governors

b. One LA governor

c. One staff governor

d. One headteacher

F

e. X foundation governors [*at least two (but no more than 45%)*], or

VA

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

QF

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

VC

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

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

g. [*If applicable*] X partnership 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*].

VA, QF,  
VC, F

7. 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, QF,  
VC, F

8. [*where applicable*]

(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 20(2) of the Regulations.

- VA, QF 9. *[Repeat 8(a) and (b) as necessary where there is more than one ex officio foundation governorship].*
- VA, QF 10. Set out the name of any person entitled to request the removal of any ex officio foundation governor and to appoint any substitute governor.
- VA, QF 11. *[Where the school has a trust]* the fact that a trust exists.
- VA, QF 12. *[If the school has a religious character]* a description of the ethos of the school.
13. This instrument of government comes into effect on [....]
14. This instrument was made by order of ..... Local Authority on .....
15. A copy of the instrument must be supplied to every member of the governor body (and the headteacher if not a governor), any trustees and to the appropriate religious body.

**Key:**

VA - Voluntary Aided

VC - Voluntary Controlled

QF - Qualifying foundation

F - Foundation

All other clauses are mandatory for all schools

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<sup>i</sup> For paragraph 4, the required number of governors by category are provided at Annex A to this guidance