



Department
for Education

Governors' handbook

**For governors in maintained schools,
academies and free schools**

May 2014

Contents

Foreword by Lord Nash	5
Section 1 - The role of governing bodies	6
1.1 About this Handbook	6
1.2 Governing bodies' core functions	6
1.3 Setting vision, ethos and strategic direction	8
1.4 Holding the headteacher to account	9
1.5 Overseeing financial performance	15
1.6 The role of academy trustees	15
1.7 Accountability of governing bodies	16
1.8 Enabling better governance	19
1.9 Structure of this Handbook	21
1.10 Overview of key activities	23
Section 2 - Constitution and procedures	24
2.1 The governance structure of academies	25
2.2 Academy governance models	25
2.3 The governance structure of maintained schools	27
2.4 Ways of working	31
2.5 Governing body collaboration and federation	35
Section 3 - Education and inspection	40
3.1 The national curriculum	40
3.2 Careers guidance	43
3.3 Sex education	43
3.4 The early years foundation stage (EYFS)	44
3.5 Children with statements of special educational needs (SEN)	44
3.6 Looked after children	48
3.7 Assessing attainment and achievement	49
3.8 School inspection	49
Section 4 - Pupil wellbeing	56
4.1 Promoting the general wellbeing of pupils	56
4.2 Pupil voice	56
4.3 Behaviour and discipline	57

4.4 The school day and school year	59
4.5 School food and milk	59
4.6 School uniform	60
4.7 Pupil health and safety	60
4.8 Promoting community cohesion	62
4.9 Safeguarding and promoting the welfare of pupils	62
Section 5 - Teachers and support staff	65
5.1 General	65
5.2 Appointing staff	65
5.3 Statutory induction for newly qualified teachers (NQTs)	69
5.4 Teacher qualifications	69
5.5 Teacher and headteacher appraisal	70
5.6 Pay and conditions of service	72
5.7 Discipline, grievance, capability procedures and suspending and dismissing staff	73
5.8 Teacher regulation	74
5.9 Teachers' Pension Scheme (TPS)	75
5.10 The Local Government Pension Scheme	78
Section 6 - Organisational changes and the use of school premises	79
6.1 Conversion to academy status	79
6.2 Other organisational changes	80
6.3 Control and community use of school premises	83
6.4 Provision of childcare and other community services	84
6.5 School admissions	86
6.6 School companies	88
6.7 Duty to have regard to the views of parents	89
6.8 Parent councils	90
Section 7 - School finance	91
7.1 Financial requirements for academies	91
7.2 The accountability system for governors of maintained schools	93
7.3 Efficiency and value for money	96
7.4 The school budget	99
7.5 Charging for school activities	100
7.6 Payments to governors	101

7.7 Responsibilities of charity trustees	103
7.8 Schools forums	104
7.9 School premises	104
7.10 Funding for capital investment	105
Section 8 - Information sharing	108
8.1 Information from the governing body to the Secretary of State for Education	108
8.2 Information given to the governing body by the LA	108
8.3 Information from the governing body to the LA	108
8.4 Information from the headteacher to the governing body	109
8.5 Annual reports to parents	109
8.6 Information from the governing body to parents	110
8.7 Pupils' information	111
8.8 Retention of pupil educational records	112
8.9 Data Protection Act (DPA) 1998	112
8.10 Freedom of Information Act 2000	112
Annex A	114
Summary of changes – May 2014 edition	114
Summary of changes – January 2014 edition	115

Foreword by Lord Nash

I recognise the dedication of the hundreds of thousands of volunteers who serve as school governors. They invest a huge amount of good-will and hard work in our education system. My priority is to make sure that all their hard work pays off. This means focusing their efforts on what really matters – improving education for every child at their school. I want to make it easier for governors to do a good job. I want to be clear about the role we expect them to play. I want to strip away unnecessary rules and regulations and make sure governing bodies understand their legal duties.



The significance of governing bodies' role has in the past been under-valued. I have no doubt that governing bodies are the key strategic decision makers and vision setters in every school. They are also a key part of the overall system for school accountability. Governing bodies have a vital role to play in driving up school and pupil performance and ensuring that resources are used well to give every child the best possible education. I want all governing bodies to focus ruthlessly on these core strategic functions, and avoid getting distracted by more peripheral matters.

The education system is changing rapidly and school governance needs to change too to play its part. My ambition is that every school has a dynamic governing body. That means one that understands its responsibilities and is focused tightly on its core strategic functions. One that is no bigger than it needs to be with all governors actively contributing relevant skills and experience. One that operates efficiently and effectively through appropriate structures and procedures. The government's role is to put in place the framework to enable this to happen. Our reforms set high expectations, based on the principles of accountability and transparency.

I welcome Ofsted's explicit approach to governance. I believe that a clear and robust system of accountability is as vital to driving up the quality of governing bodies as it is to driving improvement in the quality of the schools they govern. The inspection framework is shining a light on the effectiveness and impact of governing bodies in raising standards of education. Where inspectors recommend an external review of governance it is crucial that this leads to rapid and lasting improvement in the effectiveness of the governing body.

I want all governing bodies to feel confident to provide strong strategic leadership and to hold their school leaders to account. Empowered governing bodies need transparent data on the performance and finances of the schools they govern. One of my top priorities is improve the objective and independent data available to, and used by, governing bodies for this purpose.

This Handbook distils and sets out clearly the essential information that all governors need about their duties and responsibilities. I hope this helps governors to be confident in their vital role.

A handwritten signature in blue ink, appearing to read 'John Nash', written in a cursive style.

John Nash

Parliamentary Under Secretary of State for Schools

Section 1 - The role of governing bodies

1.1 About this Handbook

This Handbook is for governors, headteachers and governing body clerks in both maintained schools and academies. It provides three levels of progressively more detailed information:

- Section 1 outlines the core role and functions of school governing bodies, all governors should read this section;
- Sections 2 to 8 summarise all of the specific legal duties on governing bodies – providing a first point of reference for those with a specific area of interest; and
- Further reading signposted from within each section provides more detailed information on the legal duties of governing bodies and any supporting guidance or resources.

References to academies should be taken to include free schools, university technical colleges (UTCs) and studio schools. Unless otherwise stated, references to the governing body should be taken to refer to the entity within a maintained school or academy that is responsible for exercising governance functions – which in the case of multi-academy trusts may be a local governing body. Likewise, references to governors should be taken to mean whoever is responsible for fulfilling governance functions. When specific reference is made to particular governance roles in an academy context the term ‘trustee’ will be used for those on the board of the trust and ‘local governor’ for those on a local governing body. References to headteachers should be taken to include academy principals. The Handbook does not apply directly to pupil referral units, sixth-form colleges and general FE colleges though they may find its general principles helpful.

While this Handbook explains what governing bodies typically need to do to be effective it does not cover how they should operate. We want governing bodies and those that represent them to define good practice. Case studies of good practice are available via the [website](#) of the National College for Teaching and Leadership (NCTL) and from many other organisations.

All of the legislation quoted within this document is available to view on legislation.gov.uk. We will publish a list of additional resources and sources of further information alongside this Handbook.

1.2 Governing bodies’ core functions

We have high expectations of governing bodies. They are the strategic leaders of our schools and have a vital role to play in making sure every child gets the best possible education. For maintained schools this is reflected in the law, which states that the

purpose of maintained school governing bodies is to ‘conduct the school with a view to promoting high standards of educational achievement at the school’¹.

In all types of schools, governing bodies should have a strong focus on three core strategic functions:

- a. **Ensuring clarity of vision, ethos and strategic direction;**
- b. **Holding the headteacher to account for the educational performance of the school and its pupils, and the performance management of staff; and**
- c. **Overseeing the financial performance of the school and making sure its money is well spent.**

These functions are reflected in regulations for maintained schools that came into force in September 2013² and in the criteria Ofsted inspectors use to judge the effectiveness of governance in both maintained schools and academies. They are also discussed further in [departmental advice](#) on the role of governing bodies in maintained schools.

Some governing bodies of maintained schools, and all academy boards of trustees, have additional functions and responsibilities. Depending on the category of school, they may own land, act as employers, admission authorities, or boards of charitable trustees and company directors. Their functions are shown at Table 1.

	Voluntary-controlled	Voluntary-aided	Community	Foundation	Trust	Academy / free school
Admissions authority	No	Yes	No	Yes	Yes	Yes
Employer of staff	No ^a	Yes	No ^a	Yes	Yes	Yes
Owner of land and buildings	No ^b	No ^c	No	Yes (usually) ^d	No ^c	In certain cases
Revenue funding	LA	LA	LA	LA	LA	Secretary of State
Charitable Status	Exempt charity ^e	Exempt charity ^e	No	Exempt charity ^e	No	Exempt charity ^e

Table 1 – Governing body functions

^a While the LA employs staff, the governing body undertakes employer responsibilities

^b In most cases the charitable foundation owns some or all of the land

^c Usually a charitable foundation owns the land and buildings

^d With a foundation - land and buildings are usually owned by a charitable foundation. Without a foundation - the governing body owns the land and buildings

^e An exempt charity is one that is not regulated by, and cannot register with, the Charity Commission

¹ Section 21(2) of the Education Act 2002.

² The School Governance (Roles, Procedures and Allowances) (England) Regulations 2013.

This amounts to a demanding role for governing bodies. Evidence suggests that those that deliver it well do so by:

- understanding their strategic role – building a productive and supportive relationship with the headteacher while holding them to account for school performance and taking hard strategic decisions in the light of objective data;
- ensuring governors have the necessary skills and commitment, including to challenge the school to bring about improvement and hold leaders to account for performance;
- appointing an effective chair to lead and manage the governing body – [guidance](#) on the crucial role of the chair of governors, developed jointly with the National Governors' Association, is available on the NCTL website;
- appointing a high quality clerk to advise them on the nature of their functions and duties and ensure the governing body operates efficiently and effectively;
- evaluating their performance regularly in the light of Ofsted expectations and other good practice and making changes as necessary to improve their effectiveness; and
- governing more than one school to develop a more strategic perspective and create more robust accountability through the ability to compare and contrast across schools.

Effective governing bodies also think carefully about how they are organised. This includes thinking about whether and how to use their powers to delegate functions and decisions to committees or individual governors. Governing bodies may decide to task individual governors to take an interest in a specific area, such as SEN, safeguarding or health and safety, but there is no legal requirement for either maintained schools or academies to do so. There are many different models and governing bodies are best placed to decide for themselves what will work best in their own circumstances. It is the overall governing body, however, that in all cases remains accountable in law and to Ofsted for the exercise of its functions. We expect every governing body to focus strongly on its core functions and to retain oversight of them.

This Handbook explains where maintained school governing bodies cannot by law delegate functions or decisions to individual governors or the headteacher. Academy trusts are free to decide for themselves what they delegate, including in the case of multi-academy trusts, to any local governing bodies.

1.3 Setting vision, ethos and strategic direction

Governing bodies are the key strategic decision-making body of every school. It is their role to set the school's strategic framework and to ensure all statutory duties are met.

The governing body should ensure that the school has a medium to long-term vision for its future – which it may be helpful to articulate in a specific written vision statement. The governing body should also ensure that there is a robust strategy in place for achieving its vision. This strategy should address the fundamental questions of: where are we now, where do we want to be, and how are we going to get there. This includes giving consideration to the type of school which would offer the best opportunities for achieving future aims.

The strategy should provide a robust framework for setting priorities, creating accountability and monitoring progress in realising the school's vision. The strategy should include SMART targets and key performance indicators (KPIs). The focus should be on significant strategic challenges and opportunities for school improvement. Avoiding unnecessary detail and peripheral issues will prevent the governing body's attention being spread too thinly and help create a practical and powerful tool for facilitating the board's core business. Additional detail, such as those things needed to deliver the headline KPIs, may be recorded in a separate more detailed plan maintained by the headteacher.

Foundation governors, such as those appointed by a church or diocese, have a specific role in preserving and developing the ethos of the school, including any religious character. They must also ensure the school is conducted in accordance with the foundations' governing documents, including any trust deed relating to the school.

1.4 Holding the headteacher to account

One of the most significant decisions a governing body makes is the selection and appointment of a headteacher. For most governors, such a decision may be a rare event, perhaps taken only once during their term of office. It is therefore essential that governing bodies follow up references to speak directly to those able to identify the true strengths and weaknesses of each candidate and seek advice and support as necessary to ensure they make the best possible decision. '[A guide to selecting and recruiting a new headteacher](#)', developed jointly with the National Governors' Association, is available on the NCTL website.

Having appointed a headteacher, governing bodies should support and strengthen their leadership and hold them to account for the day-to-day running of the school, including the performance management of teachers. Governing bodies should play a strategic role, and avoid routine involvement in operational matters. It should focus strongly on holding the headteacher to account for exercising their professional judgement in these matters and all of their other duties.

Since the governing body is responsible in law for the running of the school, it may need to intervene in operational matters if a circumstance arises where, because of the actions or inactions of the headteacher, the school may be in breach of a duty if it did not

intervene. Under these circumstances, having advised the governing body, the headteacher must comply with any reasonable direction given by it.

It is essential to have skilled governors, but equally important to emphasise that the skills required are those to create robust accountability, not to do the school's job for it. For example, a governor with financial expertise should use their skills to scrutinise the school's accounts, not to help prepare them. If a governor does possess skills that the school wishes to utilise on a pro bono basis, then it is important that this is considered voluntary work and not governance, and steps should be taken to ensure that this does not blur lines of accountability.

The relationship between the governing body and headteacher is discussed further in [departmental advice](#) on the Roles, Procedures and Allowances Regulations 2013.

1.4.1 Asking the right questions

Effective governing bodies hold their headteacher and other senior school leaders to account for improving school performance by asking the right questions. This might include asking:

- Which groups of pupils are the highest and lowest performing, and why? Do you have credible plans for addressing underperformance or less than expected progress? How will we know that things are improving?
- Which year groups or subjects get the best and worst results and why? How does this relate to the quality of teaching across the school? What is your strategy for improving the areas of weakest performance?
- How are you going to raise standards for all children, including the most and least able, those with special educational needs, those receiving free school meals, boys and girls, those of a particular ethnicity, and any who are currently underachieving? How will we know if your approach is working?
- Do we have the right staff and the right development and reward arrangements?
- What is the school's approach to implementation of pay reform and performance related pay? If appropriate, is it compliant with the most up to date version of the School Teachers' Pay and Conditions Document?
- Is this a happy school with a positive learning culture? What is our track record on attendance, behaviour and bullying? Are safeguarding procedures securely in place? What are you doing to address any current issues, and how we will know if it is working?
- How good is our wider offer to pupils? Is the school offering a good range of sports, arts and voluntary activities? Is school food healthy and popular?
- Do we listen to what pupils and parents are telling us?

1.4.2 The importance of objective data

Governing bodies must have good and timely data to help them see clearly the questions they need to ask and to provide answers to their questions.

Many governors may not be familiar with looking at and understanding data. There is a large volume of data available. It is essential that every governing body have at least one governor with the skills to understand and interpret the full detail of the financial and performance data available. These governors should make sure that the wider governing body has a correct understanding of the school's performance and finances. They should identify from the data the issues that most need to be discussed. Other governors should learn from them and undertake any available training opportunities to improve their confidence and skills in looking at data. While governing bodies may decide to establish a committee to look in detail at performance data, all governors should be able to engage fully with discussions about the performance of their school.

It is the headteachers' job (and in maintained schools it is their legal duty³) to give governing bodies all the information they need to do their job well. This means they should help governing bodies access the data published by the department and Ofsted. They should also provide regularly whatever management information the governing body requires to monitor different aspects of life in the school throughout the year. In particular, governing bodies will need to see information relating to the priorities they have identified for improvement. This might include data on:

- pupil learning and progress;
- pupil applications, admissions, attendance and exclusions;
- staff absence, recruitment, retention, morale and performance; and
- the quality of teaching.

Governing bodies, not headteachers, should determine the scope and format of headteachers' termly reports. This will mean that they receive the information they need in a format that enables them to stay focused on their core strategic functions and not get distracted or overwhelmed by information of secondary importance.

The headteacher and school should not be the only source of information for the governing body. That would make it hard to hold the headteacher to account properly. Governors need to make sure that at least once a year they see objective data from other sources so that they can feel empowered to ask pertinent and searching questions. Governing bodies can get annual performance data direct from a number of sources.

³ Section 30 of the Education Act 2002.

1.4.3 Sources of data

Ofsted's school performance dashboard

Ofsted has published short reports for schools in England to explain their overall performance in a clear and simple way. The reports cover pupils' attainment and progress in core subjects, their attendance, and how well the school is doing for its disadvantaged pupils. They show how well schools are performing compared to national averages and compared to similar schools – those whose pupils had similar attainment when they entered the school. Reports are available at key stages 1, 2 and 4. Key stage 5 reports are currently being developed and will be available later in 2013.

Governors who are not used to looking at performance data will find these reports an easy way to understand whether and how their school needs to improve. Our school and college performance tables and RAISEonline⁴ provide more detailed information that will help governors look further into any issues they find.

School and college performance tables

We collect data about schools and publish it in performance tables for everyone to see on GOV.UK. This helps to ensure that there is sufficient transparency and public accountability for schools' performance.

The performance tables provide information on pupil attainment and progress, school finances, pupil absence and school workforce. They also contain the most recent overall Ofsted judgement on each school and a link to inspection reports.

Governors can use performance tables to compare their own school with other local or similar schools to see:

- how well their school is doing against a range of performance measures – including each of our 'floor standard' measures on attainment and progress;
- how well a primary school is doing at key stage 2 in English, and mathematics (from 2013, this will be in reading; writing; grammar, punctuation and spelling, and mathematics);
- how well a secondary school is doing at key stage 4 in terms of the number of pupils achieving 5A*-C (or equivalents) including English and mathematics GCSEs, and percentage of pupils achieving 5+ A*-G grade GCSEs (or equivalent);
- how well a sixth-form is doing in A levels and other level 3 qualifications;
- how attainment and progress compares between different groups of pupils, including disadvantaged pupils, those with English as an Additional Language

⁴ [Reporting and Analysis for Improvement through school Self-Evaluation](#)

(EAL), and 'non-mobile' pupils (i.e. those who have been in the school throughout each of the last two years);

- how the school spends its money, shown as £ per pupil to allow comparison between schools of different size; and
- information about people who work at the school, including the number of teachers, teaching assistants, support workers; their average salaries; and the ratio of teachers to pupils.

RAISEonline

[RAISEonline](#) is a secure web-based system available to governors, schools, and LAs. Ofsted inspectors also use it to inform their inspections. The system uses the data collected for the Department's performance tables, but provides a more detailed analysis. RAISEonline reports use tables, graphs and charts to show the attainment and progress of the school and a wide range of different pupil groups.

RAISEonline includes data on pupil attainment, progress, absence, and exclusions. It provides an analysis of the characteristics of pupils, such as their ethnic mix, special educational needs, and level of deprivation. All data are compared to the relevant national average. RAISEonline highlights key strengths and weaknesses. It shows clearly where a difference from the national average is large enough that we can say with confidence that it is not there by chance, but due to a genuine difference at the school.

The RAISEonline summary report contains a summary of the most important data. It has been shortened and revised for the data released in autumn 2013 and now signposts the data that governors may want to focus on as their starting point for understanding their school's performance. The summary report does not contain any named pupil data.

Legislation⁵ ensures that all governors are entitled to access the RAISEonline system for their school. The school's administrator can provide them with a 'governor' account, which allows access to the RAISEonline summary report only. Schools are not required to provide access to the interactive data contained within the RAISEonline system. Some schools may do so by giving governors a 'school' user account. It is up to the school to determine what level of data it wants to share. A summary of access rights is available in the RAISEonline library in the 'Frequently asked questions' folder.

Governors who lead on understanding and scrutinising attainment data should see and analyse the full RAISEonline summary report. For other governors, less detail may suffice – but it is important that all governors see some form of summary of key RAISEonline data for their school.

⁵ Regulation 3(5)(e) of The Education (Individual Pupil Information) (Prescribed Persons) (England) Regulations 2009.

Governors can use RAISEonline to look into their school's performance. They can look at the high-level figures. They can also drill down for example into the performance of different pupil groups. In particular, governors can use it to identify priorities for improvement in the light of:

- the attainment of different groups of pupils and in different subjects, and how this compares to [national 'floor standards'](#) for key stage 2 and key stage 4;
- the progress made by different groups of pupils and in different subjects, and how this compares to 'expected progress' measures; and
- the progress made by pupils compared to all pupils nationally and pupils with similar prior attainment.

The National Governors' Association has published [guides](#) to help governors get the most out of the data in RAISEonline. NCTL will launch free training workshops for governors on RAISEonline in early 2014.

Other data sources

In addition to the government data sources outlined above, there is a growing range of products from third parties that aim to meet the data needs of governing bodies. Many of these draw, at least in part, on our data. Bearing in mind that RAISEonline contains the data that Ofsted inspectors use, it is for governing bodies to choose which works best for them. Options include products developed by some LAs as well as organisations such as [Fischer Family Trust](#) and [Arbor](#).

School visits

Governors need to know their school if accountability is going to be robust and their vision for the school is to be achieved. Many governors find that visiting, particularly during the day, is a helpful way to find out more about the school. Through pre-arranged visits that have a clear focus, governors can see whether the school is implementing the policies and improvement plans they have signed off and how they are working in practice. Visits also provide an opportunity to talk with pupils, staff and parents to gather their views.

Governors are not inspectors and it is not their role to assess the quality or method of teaching or extent of learning. They are also not school managers and should make sure they do not interfere in the day-to-day running of the school. Both are the role of the headteacher. If governors wish to spend time within a classroom, they need to be very clear why they are doing so.

'Need to know' timelines

At the start of each term (January, April and September), the Department for Education produces a package of communications designed for schools. The package, called ['Need to Know'](#) is available on GOV.UK. It contains everything schools need to help them plan and implement forthcoming changes during the academic year and where possible, beyond. Set out in two timelines, one containing statutory information and legal

requirements which schools must adhere to, and the other containing useful information., Both timelines are broken down by term, to help schools see at a glance what is coming up, and plan accordingly. The timelines also include a key so that schools are clear about whether specific legislation applies to their type of institution.

1.5 Overseeing financial performance

Governing bodies are responsible for making sure their school's money is well spent. They should do this by making sure they have at least one governor with specific skills and experience of financial matters, and by asking questions such as:

- Are we allocating our resources in line with our strategic priorities?
- Are we making full use of all our assets and efficient use of all our financial resources?
- Are other schools buying things cheaper or getting better results with less spending per pupil?
- How can we get better value for money from our budget?

We publish a range of financial information about [maintained schools](#) and [academies](#). Governors can use this information to compare spending against that of similar schools. Benchmarking financial information in this way helps governors to question whether resources could be used more efficiently. For example:

- If the cost of energy seems high compared to similar schools, are there opportunities for investment in energy-saving devices to reduce the cost?
- If spend on learning resources seems high compared to similar schools, are there opportunities for collaborating with other local schools to bring costs down?

Financial requirements on academy trusts are set out in the Education Funding Agency's (EFA) '[Academies Financial Handbook](#)' and in their funding agreement. Academies and their auditors should also read the '[Academies Accounts Direction](#)', when preparing and auditing annual reports and financial statements.

There is a wide range of information sources and tools available to help schools secure the best value for money. Further guidance and links to organisations that are able to provide support, are available on [GOV.UK](#).

1.6 The role of academy trustees

As trustees of a charity, academy trustees must comply with the following duties:

- compliance – they must ensure that the charity's resources are used for the charitable purpose and that the charity complies with the law and its governing document i.e. the articles of association.

- care – they should take reasonable care in their work. In practice it simply means ensuring that the academy trust is managed efficiently and effectively. It also means considering the need for professional advice on matters where there may be material risk to the charity.
- prudence – they must act responsibly, making sure that the academy trust's assets are protected and used for the benefit of the charity. The trustees must make sure that the academy trust is solvent and keeps appropriate financial records. These requirements are reflected in the funding agreement and the [Financial Handbook](#).

More information on the role of a charity trustee is available on the [Charity Commission's website \(CC3\)](#).

Academy trustees should also be aware of their statutory duties as company directors, which are set out in sections 170 to 177 of the Companies Act 2006. In practical terms, all trustees need to be familiar with their academy's articles of association as well as their statutory duties under the Companies Act which comprise the duties to:

- act within their powers;
- promote the success of the company;
- exercise independent judgment;
- exercise reasonable care, skill and diligence;
- avoid conflicts of interest;
- not to accept benefits from third parties; and
- declare any interest in proposed transactions or arrangements.

The duties of a company director and charitable trustee should not put anyone off from serving as an academy trustee as the core duties of the role are very similar to those of a maintained school governor.

1.7 Accountability of governing bodies

The government values every person who volunteers to help improve their school by being a governor. How well a governing body does its job has a real impact on the success of a school. Therefore, although they are made up of volunteers, governing bodies cannot afford to be amateur and must be held to account for their effectiveness.

To check that governing bodies are ensuring good use of money, LAs will look at the finances of maintained schools; the EFA and independent auditors will look at academies.

School inspectors and local communities also have a key role in holding governing bodies to account. Both can use performance data from the Department and Ofsted to see how a school is doing.

Our [‘Accountability Statement’](#) explains the system of accountability for schools in more detail.

1.7.1 Inspection

Ofsted has published the criteria that inspectors will use to judge the effectiveness of a school’s governance⁶. These criteria are consistent with the core functions of all governing bodies set out above. Inspectors will look at the extent to which governing bodies:

- ensure clarity of vision, ethos and strategic direction;
- contribute to the school’s self-evaluation and understand its strengths and weaknesses, including the impact of their own work;
- support and strengthen school leadership, including by developing their own skills
- provide challenge and hold the headteacher and other senior leaders to account for improving the quality of teaching, pupils’ achievement and pupils’ behaviour and safety, including by using the data dashboard, other progress data, examination outcomes and test results;
- use performance management systems, including the performance management of the headteacher, to improve teaching, leadership and management
- ensure solvency and probity and that the financial resources made available to the school are managed effectively;
- operate in such a way that statutory duties are met and priorities are approved
- engage with key stakeholders; and
- use the pupil premium and other resources to overcome barriers to learning, including reading, writing and mathematics.

These criteria were updated in July 2013 to include a stronger focus on how governing bodies use data to challenge and hold the headteacher to account, and how they evaluate their own impact and develop their own skills.

In every inspection report inspectors will comment on the quality of governance as part of their overall judgement on the quality of the school’s leadership and management. These criteria will help to make sure good governance gets the praise it deserves. They will also help inspectors identify when a school’s governance is not good enough.

⁶ The School Inspection Handbook, July 2013.

External Reviews of Governance

Where governance is ineffective in a school judged as 'requires improvement' and the school is graded three for leadership and management, inspectors will recommend an external review of governance. From September 2014, inspectors will make this recommendation in any school with ineffective governance.

It is crucial that governing bodies take this recommendation for an external review as a wake-up call and move promptly and decisively to commission a high quality review and act upon its plan of SMART actions to improve their effectiveness. To inform the focus of the external review, governors should use their attendance at the end of inspection feedback meeting to make sure they fully understand the weaknesses inspectors have identified.

The external review should be commissioned having regard to the [guidance](#) published by the National College for Teaching and Leadership (NCTL). NCTL and many local authorities and governor support organisations are able to signpost governing bodies to a growing choice of potential providers that may be commissioned to undertake the review.

At subsequent inspections (including monitoring inspections), inspectors will consider whether the school has acted on the recommendation for an external review and the findings of the review; and that this is leading to an improvement in governance. If a school has failed to act on a recommendation, or is not acting on its findings, inspectors may use this evidence their judgements on the school's leadership and management, and the school's overall effectiveness. In some cases, this may lead to a school being judged to be inadequate.

The [statutory guidance for local authorities on schools causing concern](#) tells local authorities to take note of all recommendations made to maintained schools for an external review. This is because the recommendation could potentially signal that there has been a failure of governance that is prejudicing standards, which could in turn warrant the use of a local authority warning notice to improve.

1.7.2 Self-evaluation

In preparation for inspection, governing bodies should evaluate regularly their own effectiveness. As explained in [departmental advice](#) for maintained schools the chair of governors has a particular responsibility for ensuring the effective functioning of the governing body. Good chairs also ask for regular feedback from their governing bodies to improve their own effectiveness and have an annual conversation with each governor to discuss the impact of their contribution to the work of the governing body.

There is a range of self-evaluation tools available that suggest suitable questions to help with self-evaluation. For example, The All-Party Parliamentary Group on Education Governance and Leadership has published [Twenty key questions for a governing body](#)

[to ask itself](#). A draft '[Recommended Code of Governance for Schools](#)' is being piloted by the Wellcome Trust as a framework to help governing bodies set strategic direction, evaluate their own performance and hold the headteacher and other senior school leaders to account for the performance of the school.

Governing bodies may decide that they would welcome external help or scrutiny in evaluating their effectiveness. The NCTL has recently updated its [information](#) about how schools might go about this.

1.7.3 Personal liability

Maintained school governing bodies are corporate bodies that are legally responsible for the conduct of the school. Because of this, individual governors are generally protected from personal liability because of the governing body's decisions and actions. Provided they act honestly, reasonably and in good faith, any liability will fall on the governing body even if it exceeds its powers, rather than on individual members.

Likewise, in academies, personal liability will not arise if members and trustees carry out their duties acting in good faith.

1.8 Enabling better governance

1.8.1 Reducing bureaucracy

We want the legal framework for governance to give governing bodies the powers they need to do their job, rather than tie them up with red tape. This means cutting back on top down rules and allowing governing bodies to operate more efficiently and effectively.

In 2012, we introduced simplified Constitution Regulations for maintained schools and more flexible model Articles of Association for academies. These allow governing bodies more freedom to focus on recruiting governors with relevant skills, and to be no bigger than they need to be to do their job well. New regulations came into force in September 2013 creating a simpler framework for the roles, procedures and allowances of maintained school governing bodies.

We are looking hard at the specific legal duties placed on governing bodies. We have already removed or simplified a number of duties that are outdated or of secondary importance. We are planning to remove and simplify more. We will update this Handbook as we do this.

1.8.2 Support and training for governors

Governing bodies have a challenging job to do. High quality induction and training can be vital to equipping governors with the skills they need, but we do not think that it is for government to make training compulsory. Our focus is on the outcome of effectiveness, it

is governing bodies that understand best the training and development needs of their governors.

Good governing bodies set out clearly what they expect of their governors, particularly when they first join the governing body. The governing body's code of conduct should set an ethos of professionalism and high expectations of governors' role, including an expectation that they undertake whatever training or development activity is needed to fill any gaps in the skills they have to contribute to effective governance. If a governor fails persistently to do this, then they will be in breach of the code of conduct and may bring the governing body or the office of a governor into disrepute – and as such provide grounds for the governing body to consider suspension.

Good governing bodies also carry out regular audits of governors' skills in the light of the skills and competences they need, and actively seek to address any gaps they identify – either through recruitment or training. They have succession plans in place and develop future leaders by identifying and nurturing talent and sharing responsibility. It is for governing bodies to identify training and development opportunities and select those that meet their needs.

The National Governors' Association (NGA) has developed a skills audit and matrix for governing bodies, to help them identify any skills and knowledge they still need to deliver their functions effectively. An updated version of the NGA skills audit is structured around the core functions of the governing body, as defined in this handbook, is available from the [NGA site](#).

Support from the National College for Teaching and Leadership (NCTL)

The leadership of the chair of governors is crucial to the effective functioning of the governing body. The NCTL has developed a [leadership development programme](#) for vice, aspiring and existing chairs and is delivering it through 18 licenced regional providers. The programme requires commitment of 50 hours learning over 3 terms and develops leadership skills through facilitated workshops, online activities, personal reflection and school based learning. Further details are available on the NCTL [website](#), including scholarships for chairs in small schools and other categories.

The NCTL provides peer-mentoring support to chairs of governors through the [National Leaders of Governance](#) programme. It also provides a wide range of good practice information, online training courses and resources for governors on its member website, which is free to join.

The NCTL has also developed a new national training programme for clerks to governing bodies to be available from September 2014, and free training workshops for governors on three key policy priorities – understanding RAISEonline, performance related pay and financial efficiency.

Further information on NCTL training is available on www.gov.uk .

Other Support

Support for governing bodies is also available from:

- [SGOSS](#) – the governor recruitment charity funded by the department to help governing bodies recruit highly skilled new governors, particularly from the world of work. This service is available, free of charge, to all types of school, including academies.
- [GovernorLine](#) – a professional helpline funded by the department offering tailored support on queries relating to governors' specific circumstances. The helpline is available to both governors and anyone working with them in a maintained school or academy. The service does not provide generic advice on information already in the public domain. The service is available free of charge via telephone 08000 722181 or Textphone: 0845 6041230.
- [National Governors' Association \(NGA\)](#) – a membership organisation for school governors and trustees in England from both maintained schools and academies. NGA aims to improve the effectiveness of governing bodies by providing expert and tailored information and advice, and challenge when appropriate.
- [Freedom and Autonomy for Schools - National Association \(FASNA\)](#) – represents the interests of self-governing schools to government, the National Employers' Organisation for School Teachers (NEOST), unions and other groups in the educational field. FASNA aims to promote autonomy for schools to enable them to raise standards for students.
- [Independent Academies Association \(IAA\)](#) – a national membership organisation that supports the leadership and governance of academies. While primarily an organisation for academy principals, it also welcomes many chairs of academy boards as members.
- LAs who determine their own offer through their governor support services.
- Other commercial governor support organisations.

Governing bodies are responsible for approving the school budget and, within that, they should make provision for meeting their own training and clerking needs.

1.9 Structure of this Handbook

The remaining sections of this Handbook set out in more detail the specific role, responsibilities and legal duties of governing bodies in relation to:

Section 2: Constitution and procedures

- The constitution of governing bodies
- Collaboration and federation between governing bodies
- Procedures governing bodies must follow

Section 3: Education and school performance

- The curriculum
- The education of children with SEN and looked after children
- Ofsted inspections

Section 4: Pupil wellbeing

- The wellbeing of pupils, including school safety and security
- Behaviour, attendance and discipline
- Reviewing decisions by the headteacher to exclude pupils
- Food and uniform policy
- Safeguarding pupils
- Supporting employees or volunteers facing an allegation

Section 5: Teachers and support staff

- Annual appraisal of the headteacher's performance
- Pre-employment checks
- Teacher appraisal, grievance, discipline and capability processes

Section 6: Organisational changes to the school and the use of school premises

- Converting to academy status
- Making other changes to the school
- The admissions process and appeals
- Relationships with parents

Section 7: School finance

- Accountability for how school money is spent
- Financial planning, expenditure and accounting arrangements
- Benchmarking spending against others to improve efficiency

Section 8: Information sharing:

- Sharing information with the Secretary of State and, in some cases, with LAs
- Responding to requests for information under the Freedom of Information and the Data Protection Acts

1.10 Overview of key activities

An overview of governing bodies' key activities is shown at Figure 1.

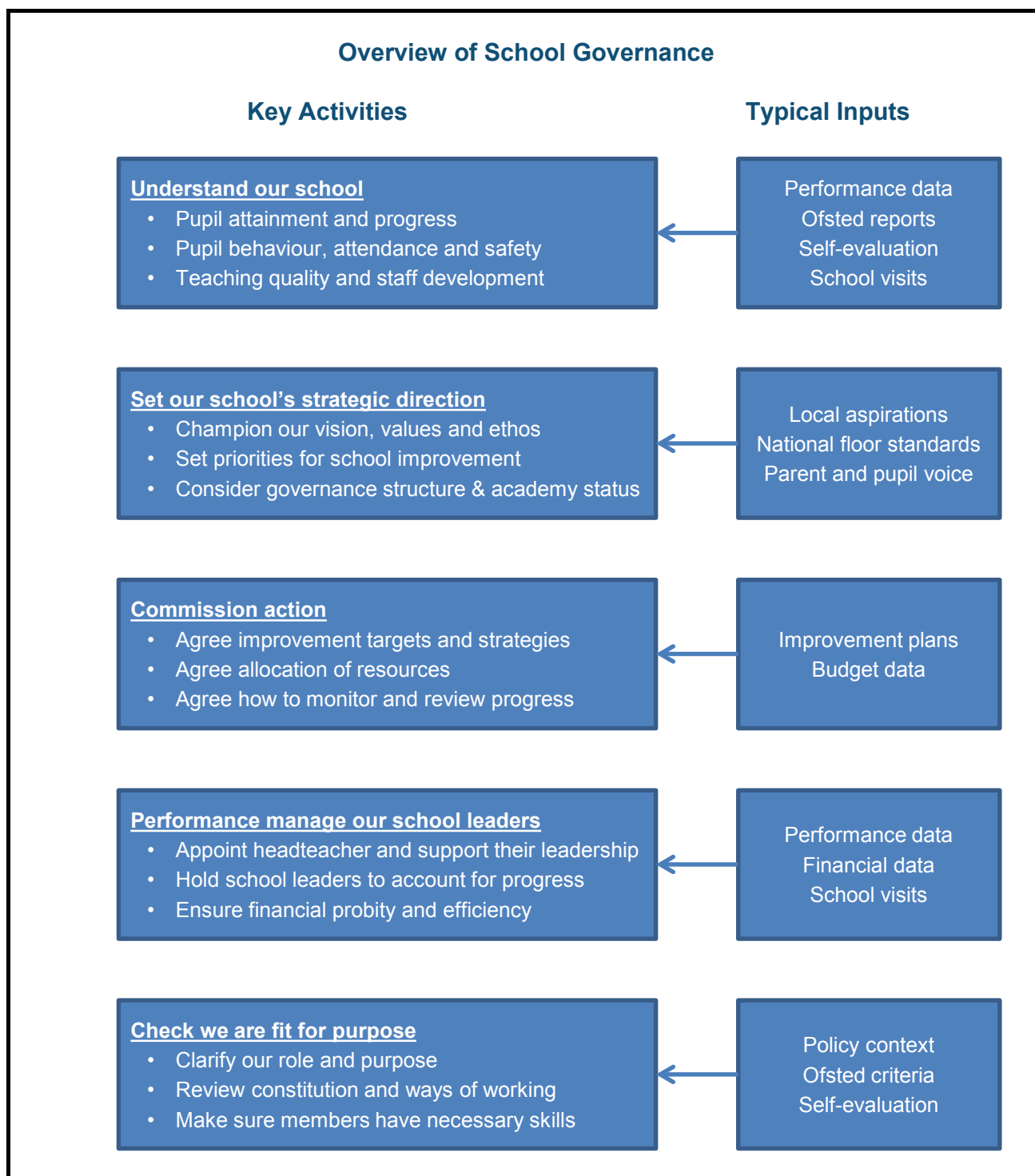


Figure 1 – Governing body key activities

Section 2 - Constitution and procedures

The effectiveness of a governing body depends on the quality of its governors and the ways in which they work together and with school leaders. This section explains how the governing body must be constituted and how it should conduct itself.

Structure and membership of the governing body

While governing bodies in some schools have more flexibility than in others, all governing bodies have a choice about how they are structured. The constitution, or structure, of the governing body determines how many and what type of people govern the school. We have given governing bodies more freedom to determine their own constitution. We have relaxed rules that in the past have meant some governing bodies had to be large. We want governing bodies to be tightly focused and no larger than they need to be to carry out their functions effectively with every member actively contributing relevant skills and experience. In general, smaller governing bodies are more likely to be cohesive and dynamic, and able to act more decisively.

The need for governing bodies to establish committees, including for exclusions or disciplinary matters, does not in itself necessitate a large governing body. Committees of the governing body can be established specifically for the purposes to which new associate members may be appointed and/or the committee may be established as a joint committee under the [Collaboration Regulations](#) to enable the committee to include governors from another school.

The primary consideration in the appointment and election of new governors should be the skills and experience the governing body needs to be effective. Meaningful and effective engagement with parents, staff and the wider community is vital, but not guaranteed by the presence of the various categories of governor on the governing body. The membership of the governing body should focus on skills, with stakeholder engagement as an important but distinct activity for which governing bodies will need to assure themselves that appropriate structures and arrangements are in place. Governors themselves should seek to assist their school to build relationships with business and other employers, in order to enhance the education and raise the aspirations of pupils.

While all current and prospective governors should commit to continuing professional development to acquire new skills, filling a vacancy on the governing body provides a specific opportunity to fill any skills gaps. For every vacancy, governing bodies should conduct a skills audit to identify any gaps in the skills, knowledge and experience of existing governors, and set out for the relevant electorate or appointing person the specific skills and experience they require.

Governing bodies may consider re-constitution if things are not going well – for example following an Ofsted inspection or in the light of an external review. They may also consider re-constitution as a positive and proactive move to ensure they are fit for

purpose for the future, including in the context of a conversion to academy status.

[SGOSS](#), the governor recruitment charity, can help governing bodies in maintained schools and academies to find new governors with the skills they require. Governing bodies are responsible for training and developing their members to ensure they have the necessary skills.

2.1 The governance structure of academies

An academy trust is a charitable company limited by guarantee. All academy trusts have two layers of governance:

- The Members of the trust, who are akin to shareholders, are the subscribers to its memorandum of association, and any other individuals permitted under its charitable articles of association. Members have a limited financial liability to the trust in the event it is wound up and have the power to appoint and remove trustees; and
- The trustees, who are responsible for the three core strategic governance functions outlined in section 1. The trustees are also the directors of the charitable company. They are responsible for ensuring the charitable company achieves its objectives, as well as compliance with charity and company law and the academy trust's funding agreement.

While members can also serve as trustees, the most robust governance structures retain at least some distinction between the two groups.

In a multi-academy trust, a further layer of governance is possible through the delegation of governance functions to local governing bodies, made up of local governors.

Academy trusts have almost complete flexibility to shape their governance arrangements and design the constitution of their boards and local governing bodies as they see fit. Their specific arrangements are set out in their individual articles of association. Converting to academy status is a good opportunity to review the constitution of the existing governing body and make changes as necessary to ensure that governance arrangements will be fit for purpose.

2.2 Academy governance models

A standalone academy is a single legal entity responsible for one academy that has its own articles of association and funding agreement with the Secretary of State.

Multi-academy trusts (MATs) are also a single legal entity but its board of trustees is accountable for a number of academies in its chain. Each academy may have a local governing body to which the MAT trustees may delegate some governance functions. Local governors who sit on local governing bodies are not trustees of the academy trust

unless they also sit on the trust's board.

In multi-academy trusts, where trustees and members are responsible for more than one academy, it is the department's view that while there can be some overlap in the two layers, the most robust governance structures will retain at least some distinction between trustees and members. This promotes internal challenge and scrutiny, which members who are independent of the trustees can provide.

In single school academy converters and free schools, the academy trust should consider what structure is most effective for its specific circumstances. This may include a flat governance structure in which all the trustees are also members.

The department recommends that trusts should ideally have at least five members, though it should be noted that trusts could have more should they choose to. Five members ensures that the trust has enough members to take decisions via special resolution (75% of members agree) without requiring unanimity, while minimising circumstances in which a split membership prevents decisions being taken by ordinary resolution (at least 51% of the members are in favour).

Instead of establishing local governing bodies, some MATs choose instead to engage with individual academies through an advisory body. These advisory bodies do not perform any delegated functions but act as a mechanism through which the MAT trustees can gather information in order to make their own decisions about individual academies.

All individuals involved in the governance of a multi-academy trust, whether at trust level or at the local governing body level, should know who the trustees are and understand what functions have been delegated by the trust to the local governing body or bodies.

In the umbrella trust model, individual academy trusts work collaboratively through an overarching charitable trust. This trust, known as the umbrella trust, has its own board of trustees who oversee a number of academy trusts, each with their own members and board of trustees. The umbrella trust ensures collaboration and shared governance through the umbrella trust appointing a majority or minority of Members or trustees to the individual academy trusts.

A lead sponsor will have majority control of the academy trust by having the right to appoint the majority of its Members. Likewise, the minority or majority control of the church in a voluntary controlled or voluntary aided school is retained on conversion to academy status through minority or majority control over the appointment of Members of the trust – who in turn appoint the majority of the trustees.

There are very few requirements relating to the constitution of the board of trustees in our model articles of association. The board of an academy trust must include at least two elected parent governors – in a multi-academy trust the parents can be represented at local governing body level or on the trust's board. The principal must be a trustee unless he or she chooses not to be. Other than this, academy trusts are free to constitute a

board or local governing body in the way they consider is most appropriate for each academy for which they are responsible. In doing so, they should ensure each body has the necessary skills and expertise to carry out its functions.

Academy trusts must also ensure that they are not LA influenced. A company is deemed to have influenced status if 20% or more of its members or trustees are 'associated persons'. Associated persons are current council members (councillors), current council officers, or anyone who has been a council member within the past 4 years. An officer of the LA includes any person employed as a director by the LA, a LA clerical officer or any other employee of the LA such as cleaners, kitchen staff if employed directly by the LA. Headteachers of community schools, voluntary controlled schools, community special schools and maintained nursery schools are also associated persons. The academy trust must ensure that the LA does not have more than 19.9% of the voting rights or seats on the board of trustees.

Free schools benefit from the same freedom as other academy trusts. The proposer group need to use the pre-opening period to recruit skilled trustees. They should design governance structures and reporting arrangements that will drive improvement in their school. We provide pre-opening guidance on governance to every free school proposer group. For university technical colleges there is a requirement that nominees of the employer and university sponsors must together form the majority on the board of trustees.

2.3 The governance structure of maintained schools

2.3.1 Changes to the School Governance (Constitution) (England) Regulations 2012

New skills-based eligibility criteria for appointed governors

From 1 September 2014, changes to the 2012 Constitution Regulations will require that any newly appointed governor has in the opinion of the person making the appointment 'the skills required to contribute to the effective governance and success of the school'. This could include specific skills such as an ability to understand data or finances as well as general capabilities such as the capacity and willingness to learn. The introduction of these changes will emphasise to all governing bodies the importance of appointing persons with the necessary skills to improve the overall effectiveness of the governing body.

The eligibility criteria for elected parent governors and staff governors remain the same, but governing bodies should make clear when a vacancy becomes available the skills they are looking for to inform the electorate.

Transition from 2007 Regulations

The 2007 Constitution Regulations continue to apply to a governing body constituted under an instrument of government that takes effect before 1st September 2012 unless it has chosen to reconstitute under the 2012 Constitution Regulations. However, since, the 2012 Constitution Regulations provide greater flexibility for governing bodies to constitute as they see fit we see no need to perpetuate the more prescriptive 2007 regime.

An amendment to the 2012 Constitution Regulations that will come into force in September 2014 will require all governing bodies to be constituted under the 2012 Constitution Regulations by September 2015. Governing bodies should use this as an opportunity to review and evaluate their effectiveness and ensure their constitution and membership is fit for purpose.

The flexibility of the 2012 Constitution Regulations, particularly the ability to co-opt governors, means that as long as the governing body believes all existing members have the skills to contribute to effective governance, there would be nothing preventing them from retaining all of the individuals currently serving on the governing body.

Surplus governors

Following reconstitution, a governing body may have more governors in a particular category than is provided for in its instrument of government. This situation could arise if a governing body has decided to reduce in size but sufficient resignations are not forthcoming for the remaining members to fit within the new structure. From 1 September 2014 how any surplus is eliminated will be a matter for local discretion based on the relevance of governors skills. This will replace the current arrangements for maintained schools where surplus governors are removed based on the 'juniority principal'. Further information may be found in updated statutory guidance on the 2012 Regulations.

New Statutory guidance, available on GOV.UK, takes account of, and explains the changes to the 2012 Constitution Regulations outlined above. It also reflects a number of additional changes to the existing guidance as set out below.

2.3.2 Arrangements for maintained schools until September 2014

Maintained school governing bodies established before 1 September 2012 that have not varied their instrument since that date

The minimum size of the governing body in a maintained school is 9 except in voluntary-aided (VA) schools and qualifying foundation schools where the minimum size of the governing body is 10 and 11 respectively. The maximum size is 20 people, excluding provisions on sponsor governors explained below. Within this range, each governing body can adopt the model of their choice, provided it complies with the guiding principles, which prescribe which categories of governor must be represented on the governing body and the level of representation for each of the categories. The four compulsory categories of governor for community, community special schools and maintained nursery schools are:

- parent governors;
- staff governors;
- local authority governors; and
- community governors.

Foundation and voluntary-controlled (VC) schools have foundation governors as an additional fifth compulsory stakeholder group. VA schools also have foundation governors, but do not have community governors – and so have four compulsory stakeholder groups.

Sponsor governors form an optional additional group:

- in primary schools, the governing body can appoint one or two additional sponsor governors, and in secondary schools, the governing body can appoint up to four additional sponsor governors. These governors do not count towards the maximum size; and
- in a VA school or a qualifying foundation school, where the governing body appoints sponsor governors the same number of foundation governors may be appointed to preserve their majority.

This means that in practice the maximum size of a governing body at a VA and qualifying foundation primary school is 24 (20 plus two sponsor governors, plus two foundation governors to preserve the majority of two). The maximum size of a governing body at a VA and qualifying foundation secondary school is 28 (20 plus up to four sponsor governors, plus up to four foundation governors to preserve the majority of two). We have published [statutory guidance](#) on the School Governance (Constitution) (England) Regulations 2007. The guidance, written for the appropriate category of school, provides information about the:

- proportion of places on the governing body that must be reserved for the different categories;
- eligibility criteria for each category of governorship; and
- procedures for electing and appointing governors.

Maintained school governing bodies constituted under an instrument taking effect on or after 1 September 2012 and existing governing bodies that have varied their instrument since that date

Where governing bodies of maintained schools were established after 1 September 2012 or existing governing bodies varied their instrument since that date, they must be constituted under the School Governance (Constitution) (England) Regulations 2012. These regulations provide that the minimum size of the governing body is seven members and the governing body must include:

- at least two parent governors;

- the headteacher, unless the headteacher decides not to be a governor;
- only one staff governor;
- only one LA governor; and
- foundation governors or partnership governors as specified in the regulations.

The governing body may appoint as many additional co-opted governors as it considers necessary. The number of co-opted governors who are eligible to be elected or appointed as staff governors must not (when added to the one staff governor and the headteacher) exceed one-third of the total membership of the governing body.

The governing body can appoint associate members to serve on one or more governing body committees. Associate members can attend full governing body meetings but may be excluded from any part of a meeting where the business being considered concerns a member of school staff or an individual pupil. They are appointed for a period of between one and four years and can be reappointed at the end of their term of office. Associate members are not governors and they are not recorded in the instrument of government.

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 (for instance, finance) can be appointed as associate members.

A school may have more governors in a particular category than is provided for in its instrument of government. This situation could arise if a governing body has decided to reconstitute and reduce in size but sufficient resignations are not forthcoming for the remaining members to fit within the new structure. If this circumstance arises, until September 2014, regulation 15 of the 2012 Constitution Regulation requires that governors must cease to hold office based on their juniority.

As part of our proposed reforms to the regulations on the constitution of maintained school governing bodies, we plan to amend regulation 15 to provide greater local discretion to identify which existing governors should continue to hold office, dependent on skills.

Statutory guidance for maintained schools

[Statutory guidance](#) on the 2007 Constitution Regulations and [statutory guidance](#) on the 2012 Constitution Regulations set out in each case the:

- proportion of places on the governing body that must be reserved for the different categories;
- eligibility criteria for each category of governorship; and
- procedures for electing and appointing governors.
- rules on governors' terms of office;
- grounds and procedure for removal of governors from office;

- rules and procedures for the removal of surplus governors; and
- grounds on which people are disqualified from serving as a governor.

The constitution of all maintained school governing bodies is set out in their instrument of government⁷. The governing body drafts the instrument and submits it to the LA. Before the governing body submits the draft instrument to the LA, it must be approved by any foundation governors and, where relevant, any trustees and/or the appropriate religious body. The LA must check if the draft instrument complies with the legal requirements, including the relevant guiding principles for the constitution of governing bodies. If the instrument complies with the legal requirements, the LA will ‘make’ the instrument. The instrument can be reviewed and changed at any time.

2.4 Ways of working

Governing bodies are generally best placed to decide how they can best work effectively in the light of their own local circumstances. There are, however, some key general principles and some specific basic rules to ensure a minimum level of effectiveness.

2.4.1 Equality

The Equality Act 2010 applies to all schools in their role as employers, as providers of education to the pupils in their care and as providers of a service or public function. The governing body or academy trust is responsible for compliance with the public sector equality duties of the Act and the specific education sections (part 4) for school pupils.

The Equality Act’s general and specific public sector equality duties mean that schools must:

- have due regard to the need to eliminate discrimination;
- advance equality of opportunity and foster good relations across all characteristics; and
- publish equality objectives and information demonstrating how they are doing this.

The Equality and Human Rights Commission (EHRC) can enforce this duty by issuing a compliance notice to order a school to meet the duty within a certain timescale.

Our [departmental advice](#) on the Equality Act 2010 gives detailed information for schools.

Governing bodies should make sure that their school complies with all aspects of discrimination law. The best way to do this is to ensure that they apply the principles of

⁷ This includes community, community special, foundation (including qualifying foundation schools, foundation schools with and foundation schools without a foundation), foundation special, voluntary-aided (VA), voluntary-controlled (VC) and maintained nursery schools.

fairness and equality in everything that the school does. Schools with a religious character have legitimate exemptions.

Discrimination claims are heard in the county court, with the exception of pupil disability claims in schools and employment claims, which are both heard in specific tribunals.

2.4.2 Governing bodies' relationship with school leaders

The relationship between governing bodies, particularly the chair of governors, and the headteacher is crucial to effective governance. They should work in close partnership, but retain sufficient distance to allow the headteacher to run the school and the governing body to hold them to account effectively for doing so.

Headteachers are responsible for the internal organisation, management and control of the school. It is their job to implement the strategic framework established by the governing body. The governing body should not be involved in the detail of the day-to-day management of the school. The governing body delegates powers to allow the headteacher to perform his or her management duties. The headteacher must report to the governing body regularly on how those powers have been carried out. The headteacher should give the governing body information on the performance of the school and other reports that the governing body may need to carry out its functions. The governing body should offer the headteacher challenge and constructive advice.

The National Association of Headteachers (NAHT), the Association for College and School Leaders (ASCL) and the National Governors' Association (NGA) has issued a [joint statement](#) on the principles for the working relationship between governing bodies and school leaders.

2.4.3 Time off work

Serving as a governor helps employees develop board-level skills and experience that they may not otherwise develop until much later in their careers. The learning and development benefits are therefore significant and more than compensate for the flexibility and time off that staff may need to fulfil their governor duties. The CBI has stated clearly that it sees a robust business case for more employers [supporting their staff to volunteer as governors](#)⁸.

By law, employers must give employees who are school governors in maintained schools 'reasonable time off' to carry out their duties⁹. The employee and employer must agree on what is 'reasonable time off'. Among the points they should discuss are:

⁸ CBI Report: Leading the Way – Improving School Governance and Leadership

⁹ Section 50 of the Employment Rights Act 1996

- how much time is needed overall to perform the duties;
- whether the employee is also being given time off from work for other activities;
- the particular circumstances of the employer's business; and
- the likely effect that the employee's absence may have on it.

Employers may give time off with pay but do not have to do so. This is for discussion between the employee and the employer. Guidance on time off for public duties is available on [GOV.UK](https://www.gov.uk).

If the employee and employer cannot agree on any of these questions, either of them can ask for help from the [Advisory Conciliation and Arbitration Service](https://www.acas.co.uk) (ACAS), which will try to settle any differences informally. An employee who is still not satisfied may complain to an Employment Tribunal.

2.4.4 Governing body procedures

Any rules on how governing bodies of academies must operate will be set out in their Articles of Association.

In September 2013, we introduced new Roles, Procedures and Allowances regulations for maintained schools and the management committees of pupil referral units. The regulations replaced three separate sets of regulations covering governing body procedures, terms of reference and governors' allowances.

In respect of governing body procedures, the new regulations include provisions that:

- reduce prescription on how governing bodies exercise their functions, while retaining their overall legal responsibility and accountability;
- require the appointment of a clerk and define the role of the clerk in advising the governing body on the nature of their duties and functions;
- require clerks to provide written notice for meetings at least seven clear days in advance, together with a copy of the agenda and any reports and papers to be considered at the meeting. The chair may determine a shorter period is appropriate in cases of emergency.
- define the quorum for governing body meetings and for any vote at a meeting is one half (rounded up to the nearest whole number) of the membership of the governing body, not including any vacant positions.
- prevent a decision on a change of maintained school name from taking effect unless the issue was an agenda item at a meeting for which appropriate notice was given.
- give governing bodies the power to make arrangements for their members to be present at board and committee meetings 'virtually', for example by telephone or video conference, and therefore to participate in discussion and decision making remotely.

- simplify arrangements for the payment of allowances for out-of-pocket expenses incurred by governors in connection with their duties as governors.

Additional information can be found in the [departmental advice](#) on these regulations.

2.4.5 Dealing with complaints

The governing bodies of all schools have a duty to consider complaints about the school and any community facilities or services that it provides¹⁰. They must reassure themselves that their school has a procedure to deal with complaints and that the procedure is publicised. An academy is required, through the obligations set out in its funding agreement, to ensure that a complaints procedure is drawn up and carried out effectively.

Academies must make available on request a procedure for dealing with complaints. The expectation is that this should be published online. For complaints from parents of pupils, this procedure must comply with The Education (Independent School Standards) Regulations 2010 and offer:

- an opportunity to resolve the complaint with the academy on an informal basis, for example through discussion with a senior member of staff;
- a formal complaint stage when the complaint is made in writing and usually responded to by the chair of governors; and
- a hearing with a panel set up by the academy trust, comprising at least three people not directly involved in the matters detailed in the complaint, one of whom must be independent of the management and running of the school.

The funding agreement also sets out a requirement for an academy to handle complaints that arose in part or in whole before the academy opened.

An individual can complain to the Secretary of State for Education if they believe that a governing body is acting 'unreasonably', or is failing to carry out its statutory duties properly¹¹. The Education Funding Agency (EFA) handles complaints about academies and free schools on behalf of the Secretary of State.

Our [guidance on making a complaint about a school](#) gives detailed information about the role of the Secretary of State and EFA in the complaints process. [Guidance](#) to help schools draw up a complaints procedure is available.

¹⁰ Section 29 of the Education Act 2002. For academies, free schools and independent schools - The Education (Independent Schools Standards) Regulations 2010 (as amended).

¹¹ Sections 496 and 497 of the Education Act 1996.

2.5 Governing body collaboration and federation

Working together delivers benefits to schools at many levels, including in relation to their governance. The frameworks are in place for both maintained schools and academies to create governance structures that span more than one school.

2.5.1 Academy collaboration

Academies may collaborate formally in multi-academy trusts or under umbrella trust arrangements. In a multi-academy trust, there is one legal entity accountable for all academies in the chain and each academy may have a local governing body or advisory body to which some matters may be delegated. Under an umbrella trust, each academy is a separate legal entity with its own articles and funding agreement – the umbrella trust ensures collaboration through its role in appointing the majority or minority of trustees or members to the individual academy trusts.

Academies may also collaborate informally through collaborative partnerships. They may decide to agree a memorandum of understanding between themselves, but there is no shared governance arrangement required between them, and each academy retains its own Articles and funding agreement.

More information about academy collaboration is available on [GOV.UK](https://www.gov.uk)

2.5.2 Maintained school collaboration

Maintained schools may collaborate formally with other maintained schools, hold joint governing body meetings and form joint committees¹². Regulations¹³ leave much of the detailed arrangements to the schools concerned. They allow two or more governing bodies to arrange for any of their functions to be carried out jointly. They also allow those functions to be delegated to a joint committee. The specific procedures (on clerking and membership of committees, for example) generally mirror those for individual schools. Individual governing bodies retain legal responsibility and corporate liability for all decisions made on their behalf. Governing bodies must therefore make sure that they receive regular reports, including signed minutes, from any joint committees they agree to establish.

Since May 2007, maintained schools may enter into collaborative arrangements with FE colleges through the use of joint committees¹⁴. [Guidance](#) is available on GOV.UK.

¹² Section 26 of the Education Act 2002.

¹³ The School Governance (Collaboration) (England) Regulations 2003.

¹⁴ The Collaboration Arrangements (Maintained Schools and Further Education Bodies) (England) Regulations 2003.

Maintained schools may collaborate informally with non-maintained schools. Under these circumstances, they do not need to follow regulations. This type of collaboration allows the creation of joint committees that meets as needed and may only make recommendations. The individual schools' governing body powers cannot be delegated.

2.5.3 Maintained school federation

Federation creates a single governing body to govern more than one maintained school. Schools in federations continue to be individual schools, keeping their existing category and character. Admission to each school continues to be determined by the appropriate admissions authority. The governing body of the federation will receive individual budgets for each of the federated schools, and will be able to use them across the schools in the federation.

The governing body decision to federate must follow a prescribed process, which is detailed in our guidance and advice.

In summary, the governing body must:

- attend a meeting, for which seven clear days' notice has been given and specified as an item of business on the agenda, to discuss and consider a report on the proposal to federate;
- give notice of the proposal to the governing body of the federation and to those listed in regulations;
- consider whether to give preliminary consent to the school joining the federation (or not to join);
- jointly, with the other governing body or bodies, publish the proposals;
- make the proposals available for inspection at all reasonable times at the school;
- consider the responses to the proposals and determine whether to:
 - proceed with the proposals as published;
 - proceed with modifications that the governing body considers appropriate; or
 - not to proceed with the proposals to federate.
- within one week of determination, governing bodies that have agreed to proceed must jointly inform the LA(s) and the Secretary of State of the federation (governing bodies now notify the Secretary of State by updating their school details on [Edubase](#)); as must those determining not to proceed with the proposals;
- prepare a new instrument of government - a draft instrument is provided in the relevant guidance document;
- prepare a report immediately before the federation date of the action taken by the governing body in the discharge of their functions; and

- make available to the governing body of the federation all minutes and papers of the governing body, including the above report.

On the federation date:

- the existing governing bodies are dissolved;
- the governing body of the federation is incorporated;
- all land and property, which immediately before the federation date was held by the governing body of a federated school is transferred and vests in the governing body of the federation; and
- all rights and liabilities that existed immediately before the federation date, which were acquired or incurred by the governing body of a federated school, are transferred to the governing body of the federation.

This list is not exhaustive and governing bodies are advised to refer to the appropriate departmental advice. The constitution of the federated governing body is provided in more detail in the relevant advice or guidance.

Governing bodies must also follow a prescribed process when they wish to leave a federation or where federations are dissolved; these processes are detailed in the federation regulations.

Statutory guidance on the School Governance (Federations) (England) Regulations 2007 continues to apply to existing federated governing bodies until such time as it is decided to vary the instrument of government.

2.5.4 Changes to the School Governance (Federations) (England) Regulations 2012

Skills-based eligibility criteria

The 2012 Federations Regulations mirror the categories of governor set out in the 2012 Constitution Regulations.

From 1 September 2014, the eligibility criteria of the categories in the 2012 Federations Regulations will be amended in line with the changes made to the categories of governor defined in the 2012 Constitution Regulations. This will mean that the eligibility criteria for all categories of appointed governor are in line with the current skills-focused definition of co-opted governors.

The composition of governing bodies of federations

There is a restriction in the 2012 Federations Regulations on the number of co-opted governors who are also eligible to serve as staff governors. This is intended to replicate the analogous provision in the 2012 Constitution Regulations. The intention behind both provisions is to restrict the number of staff serving as governors to less than one third of the governing body.

An omission in the 2012 Federations Regulations could currently lead to an excess number of staff serving as co-opted governors. In September 2014, amendments to the regulations will come into force so that the total number of co-opted governors who are also eligible to be elected or appointed as staff governors (when counted with the staff governor and the head teacher/s) must not exceed one third of the total membership of the governing body of the federation.

An analogous change will be made to Schedule 1 paragraph 3 in respect of temporary co-opted governors in new schools intending to federate.

Surplus governors

There is currently no provision on surplus governors in the 2012 Federations Regulations. We have amended the 2012 Federations Regulations to add the same provision we are proposing for the 2012 Constitution Regulations.

Transition from 2007 Regulations

Regulation 4 of the Federations Regulations currently provides for the 2007 Federations Regulations to continue to apply to a governing body of a federation that is constituted under an instrument of government that takes effect before 1st September 2012 unless it chooses to reconstitute under the 2012 Federations Regulations.

In line with the changes made to the 2012 Constitution Regulations, we have amended the 2012 Federations Regulations to require all governing bodies of Federations to be constituted under the 2012 Federations Regulations by September 2015.

2.5.5 Current arrangements for Governing Bodies of Federations Established after 1 September 2012

Governing bodies entering into a federation must now do so in accordance with the School Governance (Federations) Regulations 2012. These regulations require that the governing body of the federation cannot have fewer than seven members, and must include:

- one parent governor in respect of each school in the federation;
- the headteacher of each federated school unless the headteacher resigns as a governor;
- one staff governor; and
- one LA governor.

In addition, federations comprising foundation and voluntary schools are required to have foundation or partnership governors.

It is possible that each school within a federation will have its own headteacher. In these circumstances, each headteacher will be entitled to a place on the governing body. To be a headteacher the person must be being paid at the appropriate pay scale and be

performing the duties in the school which the governing body has conferred upon the headteacher through the [“School Teachers’ Pay and Conditions Document”](#)

The governing body may also appoint as many co-opted governors as they consider necessary, but in doing so, it must take into account the additional requirement for federations comprising foundation and voluntary schools where there may be a requirement to have a majority of foundation governors. While the number of parent governors is restricted to one per school, governing bodies may wish to appoint further parents as co-opted governors.

We intend to amend regulations to clarify that the number of co-opted governors who are eligible to be elected or appointed as staff governors must not, when counted with the one staff governor and the headteachers, exceed one-third of the total membership of the governing body.

Section 3 - Education and inspection

Governing bodies' primary interest should be in high and rising standards of education for all pupils in their school.

Governors should assist their school to build relationships with business and other employers in order to enhance the education and raise the aspirations of pupils.

3.1 The national curriculum

Academies do not have to follow the national curriculum. They are bound by their funding agreement to teach a broad and balanced curriculum to the age of 16. This must include English, mathematics and science in mainstream academies. Alternative provision academies are not required to teach science.

Responsibility for the school curriculum in state schools is shared between the headteacher, the governing body and (to a limited extent) LAs. The law¹⁵ says that the curriculum for a maintained school (or maintained nursery school) should be balanced and broadly based, and should:

- promote the spiritual, moral, cultural, mental and physical development of pupils at the school and of society; and
- prepare pupils at the school for the opportunities, responsibilities and experiences of later life.

Governing bodies in maintained schools should reassure themselves that:

- enough teaching time is provided for pupils to cover the national curriculum and other statutory requirements;
- the relevant assessment arrangements are implemented (see section 3.7 Assessing attainment);
- all courses provided for all pupils below the age of 19 that lead to qualifications such as GCSEs and A levels, are approved by the Secretary of State.

The statutory requirements for each subject within the national curriculum for primary and secondary schools are available on GOV.UK

In September 2013, the new national curriculum framework was published. The majority of the new national curriculum will come into force from September 2014, so schools have time to prepare to teach it.

¹⁵ Section 78 of the Education Act 2002

To ensure that schools are able to prepare for a smooth transition to the new national curriculum, the programmes of study (and related attainment targets and assessment arrangements) for all national curriculum subjects at all four key stages have been disapplied for school year 2013/14, except for English, mathematics and science for pupils in primary schools in years 1, 2, 5 and 6. This means that schools will be able to adjust their curriculum during 2013/14 so that it provides a good foundation for teaching the new curriculum in 2014/15. The programmes of study for English, mathematics and science at key stage 4 have been disapplied for schools years 2013/14 and 2014/15.

3.1.1 Study programmes post-16

In September 2013, new study programmes for 16-19 year olds and changes to funding came into effect.

The 16-19 study programmes:

- aid progression to a higher level than students' prior attainment;
- include substantial qualifications that provide a recognised route into employment, or higher education;
- require students to work towards GCSE A*-C grade in mathematics and English; and
- provide genuine work experience to help students get the experience and skills they will need for future work or education.

Funding will be per student rather than per qualification. This will allow for more innovation and flexibility to meet the needs of all students, including those with learning difficulties and/or disabilities. The Education Funding Agency (EFA) has published [information about the new funding formula](#).

3.1.2 Religious education

All state-funded schools must teach religious education. In maintained schools the governing body shares responsibility with the headteacher and, where relevant, the LA, for ensuring that the requirements are met¹⁶. Religious education is also compulsory in faith and non-faith academies as set out in their funding agreements.

3.1.3 Collective worship

Academies must provide a daily act of collective worship by virtue of their funding agreement. An academy wishing to have the broadly Christian requirement removed and

¹⁶ For maintained schools these requirements are contained in section 80 of the Education Act 2002 and Schedule 19 of the School Standards and Framework Act 1998.

replaced by collective worship of another faith should apply to the Secretary of State via the EFA.

All maintained schools must provide a daily act of broadly Christian collective worship for their pupils. In community schools and non-faith foundation schools, the headteacher is responsible for arranging this after consulting the governing body. In voluntary-aided, voluntary-controlled schools and foundation schools with a religious character, the governing body is responsible for arranging the worship after consulting the headteacher.

In some maintained schools, the family background of some or all pupils may lead the headteacher and governing body to conclude that broadly Christian collective worship is not suitable. The headteacher can apply to the local Standing Advisory Council for Religious Education (SACRE) to have the broadly Christian requirement removed and replaced by collective worship of another faith and should consult the governing body in doing so¹⁷. [Non-statutory guidance](#) on the teaching of religious education in England is available.

3.1.4 Political bias

Academy trusts, governing bodies, headteachers and LAs must not allow the promotion of one-sided political views. This applies both to the teaching of any subject and to extra-curricular activities at the school¹⁸. Where political issues are covered, opposing views must be presented in a balanced way. The academy trust, governing body, headteacher and LA must also prevent pupils under 12 from taking part in political activities. This covers activities at school or elsewhere. This applies only where a member of staff or anyone acting on behalf of the school or a member of staff arranges the activity.

3.1.5 Disapplication of the national curriculum

'Disapplication' is the decision not to apply elements of the national curriculum in certain circumstances. Where elements of the national curriculum are being disapplied for pupils in individual maintained schools, governing bodies, have a role to play in various 'disapplication' processes, depending on the circumstances. Details are in [guidance](#) on GOV.UK.

3.1.6 Curriculum policy

There is no longer a duty on governing bodies and headteachers to prepare a policy for the school curriculum. If schools do choose to adopt such a policy, it should be 'broad brush'; it does not need to be a detailed map of all secular curriculum activities.

¹⁷ Section 70 and Schedule 20 of the School Standards and Framework Act 1998.

¹⁸ Sections 406 and 407 of the Education Act 1996.

3.2 Careers guidance

Governors have a crucial role to play in connecting their school with the wider community of business and other professional people in order to enhance the education and career aspirations of pupils. This includes helping secure speakers, mentors and work experience placements, all of which can help engage employers in the school and in turn potentially lead to them providing new skilled governors.

Maintained schools must secure access to independent careers guidance for pupils in years 8-13. Many academies and free schools are subject to the same duty through their funding agreements.

Schools must have regard to [statutory guidance](#), which sets a clear framework for the provision of advice and guidance. Academies without the careers requirement are encouraged to follow the guidance as a statement of good practice. It states that governing bodies should:

- ensure that the advice and guidance provided is impartial, includes information on the range of options (including apprenticeships and other vocational pathways) and promotes the best interests of the pupils to whom it is given;
- provide clear advice to the headteacher on which a strategy for advice and guidance can be based that is part of a clear framework linked to outcomes for pupils ; and
- consider the importance of providing pupils with access to inspiring activities through sustained contacts with employers, mentors and coaches.

The governing body can refer to [non-statutory departmental advice](#), which sets out some common features of inspirational, high quality advice and guidance.

3.3 Sex education

All maintained schools providing secondary education must provide sex education as part of the basic school curriculum. This includes education about HIV and AIDS and other sexually transmitted diseases. All maintained schools must teach human growth and reproduction as set out in the statutory national curriculum for science. Headteachers and governors must make sure that sex education has due regard to moral considerations and the importance of family life.

Governing bodies and headteachers of maintained schools providing primary education must decide whether sex education, beyond that set out in the statutory national curriculum for science should be included in their school's curriculum. If so, they must decide what it should consist of and how it should be organised, and keep a record of their decisions.

Governing bodies of maintained schools (excluding maintained nursery schools) and academies should reassure themselves that the school has a written statement of the policy they adopt on sex education and make it available to parents.

3.3.1 Statutory Guidance

All schools providing sex education at both primary and secondary level, and including academies through their funding agreements, must have regard to the Secretary of State's '[Guidance on Sex and Relationship Education](#)',¹⁹. Sex education is therefore often known by the broader title 'sex and relationship education' (SRE). The guidance document ensures SRE is delivered appropriately to all pupils, and that such education covers a range of topics and issues.

3.4 The early years foundation stage (EYFS)

The EYFS framework sets out requirements for both learning and development, and safeguarding and welfare in early years provision. It is mandatory²⁰ for all providers. This includes maintained schools and academies and all providers on the Early Years Register. The EYFS [statutory guidance](#) outlines the framework. A range of policies and procedures may be needed by schools delivering the EYFS; these are outlined in the statutory guidance. Governing bodies of establishments delivering the EYFS should reassure themselves that the policies and procedures are in place. Further [guidance and supporting materials](#) are available on GOV.UK.

3.5 Children with statements of special educational needs (SEN)

Legally, a child is defined as having SEN if he or she has a learning difficulty that calls for special educational provision to be made for him or her. A learning difficulty means that the child has significantly greater difficulty in learning than most children of the same age do. Alternatively, it means that the child has a disability that prevents or hinders him or her from making use of educational facilities of a kind generally provided for children of the same age in schools within the area of the LA.

¹⁹ Section 403 of the Education Act 1996 and section 148 of the Learning and Skills Act 2000.

²⁰ The EYFS is given legal force through an Order and Regulations made under the Childcare Act 2006. These are: The Early Years Foundation Stage (Welfare Requirements) Regulations 2012, The Early Years Foundation Stage (Learning and Development Requirements) Order 2007 as amended by The Early Years Foundation Stage (Learning and Development Requirements) (Amendment) Order 2008 and The Early Years Foundation Stage (Learning and Development Requirements) (Amendment) Order 2012.

3.5.1 Responsibilities of the governing body with regard to SEN

Governing bodies of maintained schools have legal duties²¹ in relation to pupils with SEN. The governing bodies of the great majority of academies have the same responsibilities in relation to pupils with SEN by virtue of their funding agreements. In practice, the governing body functions to meet these duties can be delegated to a committee, individual governor or to the headteacher. It should decide, with the headteacher, the school's general policy and approach to meeting children's SEN, including those with and without SEN statements. Statements are documents drawn up by LAs that set out a child's SEN and the provision that must be made for the child to meet those needs.

The governing body must set up appropriate staffing and funding arrangements and oversee the school's work. The general duties of governing bodies and the 'responsible person' are set out in full in paragraphs 1:16 to 1:22 of the '[SEN Code of Practice](#)'.

For community, foundation, voluntary schools or maintained nursery schools ('mainstream schools'), the governing body may also appoint a committee to monitor the school's work for children with SEN.

In summary, governing bodies of mainstream schools have the following legal duties under the Education Act 1996. The vast majority of academies must also meet these requirements by virtue of their funding agreement. They must:

- use best endeavours in exercising their functions to ensure that the necessary special education provision is made for any pupil who has SEN;
- ensure that parents are notified by the school when special educational provision is being made for their child, because it is considered that he or she has SEN;
- make sure that the responsible person makes all staff that are likely to teach the pupil aware of the pupil's SEN;
- make sure that the teachers in the school are aware of the importance of identifying pupils who have SEN and of providing appropriate teaching;
- designate a member of staff at the school (to be known as the 'special educational needs co-ordinator') as having responsibility for co-ordinating the provision for pupils with SEN (see below);
- consult the LA and the governing bodies of other schools when it seems necessary to co-ordinate special educational teaching in the area;
- ensure that pupils with SEN join in the everyday activities of the school together with children without SEN, as far as is compatible with them receiving the necessary special educational provision; the provision of efficient education for all

²¹ under the Education Act 1996.

other pupils; and the efficient use of resources;

- publish information on the school's SEN policy on its website, and reflect any changes to the policy as soon as is practicable and complete an annual update;
- take account of the '[SEN Code of Practice](#)' when carrying out their duties towards all pupils with SEN; and
- where an LA or the First-tier Tribunal (SEND) names a maintained school as the school the child will attend on an SEN statement the governing body must admit the child to the school. Before naming a maintained school on a statement, the LA must consult the governing body of the school (see below).

The responsible person is generally the headteacher, but may be the chair of the governing body or a governor appointed by the governing body to take that responsibility. If the responsible person is the headteacher, it is advisable to have one other governor with an interest in SEN.

Governing bodies and academy trusts are also under a duty to make reasonable adjustments to avoid substantial disadvantages experienced by disabled pupils. Governing bodies and academy trusts are required, where reasonable, to provide auxiliary aids and services as part of the 'reasonable adjustments' duty. Technical guidance on schools' reasonable adjustments duty is available from the [Equality and Human Rights Commission](#).

3.5.2 Admission of pupils with SEN: duties of Admission Authorities (including governing bodies)

The '[School Admissions Code](#)' that came into force in February 2012²² makes clear that all children whose statement of SEN names the school must be admitted. The admission of pupils with SEN but without statements should be handled in the same way as for all other pupils. If the school is not oversubscribed, all applicants must be offered a place (with the exception of designated grammar schools). Admission authorities must ensure that their arrangements will not disadvantage unfairly, or discriminate against a child with a disability or special educational needs. The 'Admissions Code' applies to all maintained schools in England. Academies must comply, by their funding agreement, with the Code and the law relating to admissions. Information about school admissions is in section 6 of this Handbook.

3.5.3 Admission of SEN pupils with statements to mainstream schools

Where the LA names a maintained mainstream school the governing body of the school

²² The Codes are supported by the School Admissions (Admissions Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012, and the School Admissions (Appeal Arrangements) (England) Regulations 2012.

is under a duty to admit the child²³. LAs are under a duty to consult the governing body of a maintained school before naming the school on the statement²⁴. Academies are obliged, through their funding agreements, to admit children whose statements name them.

The general responsibilities of the governing body in the admission of pupils with SEN to mainstream schools are set out in the 'Admissions Code' and the Equality Act. They must draw up and implement an 'accessibility plan' for disabled pupils that aims to:

- increase the extent to which disabled pupils can participate in the curriculum;
- improve the physical environment of schools to enable disabled pupils to take better advantage of education, benefits, facilities and services provided; and
- improve the availability of accessible information to disabled pupils.

Schools must also take into account the need to provide adequate resources for implementing plans and must regularly review them. An accessibility plan may be a freestanding document but may also be published as part of another document such as the school development plan.

3.5.4 Admission to special schools for pupils with SEN

The overwhelming majority of children admitted to maintained special schools have SEN statements and the governing body has the same duty to admit as maintained mainstream schools (see above). Children without statements can be admitted to special schools in specific circumstances – for the purposes of assessment or following a change of circumstances²⁵. Children are admitted to academy special schools through being named on a statement. The academy has an obligation to admit under the terms of its funding agreement.

3.5.5 Teachers in mainstream schools with responsibility for SEN

The governing body of a community, foundation or voluntary school or a maintained nursery school must designate a member of staff at the school, known as the special educational needs co-ordinator (SENCO)²⁶. The SENCO has lead responsibility for co-ordinating the provision for pupils with SEN and disabilities. Regulations²⁷ require that the lead person designated by the governing body as SENCO must be a qualified teacher at

²³ Section 324 (5)(b) of the Education Act 1996.

²⁴ Schedule 27, 3A of the Education Act 1996.

²⁵ Regulation 12A of the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001.

²⁶ Section 317 of the Education Act 1996 (as amended by section 173 of the Education and Inspections Act 2006).

²⁷ Education (Special Educational Needs Co-ordinators) (England) Regulations 2008.

the school, or the headteacher or acting headteacher. These requirements also extend to academies through their funding agreement.

The governing body should reassure itself that the key responsibilities of the SENCO are drawn up and monitor the effectiveness of the way the responsibilities are carried out against a list of illustrative activities, as described in the 'SEN Code of Practice' (chapter 1, paragraphs 16–22).

Governing bodies should also reassure themselves that any newly appointed SENCO gains a nationally approved masters-level training qualification, known as the 'National Award for Special Educational Needs Co-ordination' within three years of appointment²⁸. Experienced SENCOs, who have been in post in a school for more than a year and then transferred to another school after the regulations came into force, are not subject to the training requirement.

3.6 Looked after children

3.6.1 School admissions

Admission authorities are required, with some limited exceptions, to give priority to looked after children, children adopted from care under the Adoption and Children Act 2002 and those who left care under a 'Special Guardianship Order' or 'Residence Order' in their oversubscription criteria²⁹. The practical effect of this is that in a school's published admission arrangements, the first and highest oversubscription criterion must be looked after children (see paragraph 1.7 of the 'Admissions Code'). Provisions also apply to schools with a religious character and grammar schools (paragraphs 1.37 and 1.19 of the 'Admissions Code').

The law³⁰ gives an LA that looks after a child the right to direct the admission authority of any maintained school to give them a place. This applies, even where the school is currently full, or is in another LA area (see paragraph 3.19 of the 'School Admission Code 2012').

Governing bodies of all maintained schools are required to appoint a designated teacher to promote the educational achievement of looked after children who are on the school roll³¹. Academies are under an obligation to do this through their funding

²⁸ The Education (Special Educational Needs Co-ordinators) (England) (Amendment) Regulations 2009.

²⁹ The School Admissions (School Admissions and Co-ordination of Admission Arrangements)(England) Regulations 2012.

³⁰ Section 97A of the School Standards and Framework Act 1998.

³¹ The Children and Young Persons Act 2008, and the Designated Teacher (Looked After Pupils etc.) (England) Regulations 2009.

agreements. [Statutory guidance](#) on the roles and responsibilities of designated teachers is available online.

Governing bodies must ensure, as a minimum, that:

- a designated teacher is appointed;
- the teacher undertakes appropriate training;
- it considers an annual report from the designated teacher; and
- acts on issues that the report raises.

Regulations specify that the role should be carried out by:

- a qualified teacher, within the meaning of section 132 of the Education Act 2002, who has completed the appropriate induction period (if required); or
- the headteacher or acting headteacher at the school.

All looked after children have a personal education plan (PEP) as part of the care plan that is drawn up by the LA that looks after them. The PEP forms part of the child's education record³².

3.7 Assessing attainment and achievement

Teachers should monitor their pupils' progress in each subject as a normal part of their teaching. By law, schools must assess pupils' attainment at key points in their compulsory education. These key points are when pupils have completed the early years foundation stage and the programmes of study for key stages 1, 2 and 3, usually at the ages of 5, 7, 11 and 14. There is also a statutory check of phonics at the end of year 1 (age 6). This process is known as statutory assessment.

While governors are not directly involved in these processes, they may find our [guidance](#) provides useful background in the context of their responsibilities to drive up school and pupil level performance.

3.8 School inspection

3.8.1 Section 5 inspections

Routine school inspections of maintained schools and academies are carried out under section 5 of the Education Act 2005. The scope of the inspection is defined in that statute and is set out in more detail in 'The framework for school inspection' (the Framework),

³² the Education (Pupil Information) (England) Regulations 2005.

which is published by Ofsted. There is also a Handbook setting out further details including the criteria that inspectors will consider in looking at a governing body's effectiveness. Both documents are on the [Ofsted website](#).

Recent regulation³³ exempts from routine inspection all outstanding maintained primary and secondary schools and academies. This exemption also applies to academy converters whose predecessor school achieved an 'outstanding' grade overall at its most recent section 5 inspection. However, certain types of schools are not exempt, regardless of the inspection grade awarded at the most recent inspection. These are special schools (including maintained residential special schools and non-maintained special schools with residential provision), pupil referral units and maintained nursery schools.

Since September 2012, the quality of school governance has been central to the overall inspection judgement on the overall leadership and management of a school. Every inspection report contains an explicit comment on the quality of governance, and where governance is weak in a school that 'requires improvement', inspectors may recommend an external review of governance arrangements.

³³ The Education (Exemption from School Inspection) (England) Regulations 2012.

3.8.2 Timing of inspections

Inspection Grade	Inspection frequency	Monitoring frequency	Risk Assessment
1 - Outstanding	Exempt	n/a	3rd year after inspection and annually thereafter
2 - Good	Within 3-5 years	n/a	3rd year after inspection and annually thereafter
3 - Requires improvement	Within 2 years	If leadership weak, initial monitoring inspection 4-6 weeks after publication of section 5 report, then dependent on leadership capacity	Ongoing through monitoring visits
4 - Inadequate (Serious weaknesses and Special Measures)	Between 18 months and 2 years	1-5 monitoring visits before section 5 inspection dependent on leadership capacity	n/a

Table 2 – Timing of inspections

Ofsted may inspect without notice but in most cases, schools receive notice of around half a day. Notification will normally be to the headteacher at, or just after, midday on the working day before the start of the inspection. Part of the purpose of the notification call is to make arrangements for a meeting with the chair of governors and/or representatives of those responsible for governance, and request that as many governors as possible are present at the feedback meeting. The purpose of the feedback session is to share the main findings of the inspection and recommendations for improvement.

A maintained nursery school that was judged to be 'good' or 'outstanding' at its last full section 5 inspection will be inspected within three years from the end of the school year in which it was last inspected.

Pupil referral units and special schools (including maintained residential special schools and non-maintained special schools with residential provision) will normally be inspected within three school years from the end of the school year in which the last inspection of the school took place.

When notice is given, under section 6, the governing body must take reasonable steps to notify:

- parents of registered pupils at the school about the time of the inspection; and
- any other persons as may be prescribed.

Ofsted must ensure that a copy of the final report is sent to:

- the governing body;
- the headteacher;
- the LA;
- those who appoint the foundation governors and the appropriate appointing authority, if different; and
- the EFA, if the school has a sixth-form.

When it receives the report, the governing body³⁴, must arrange for:

- the parents of all pupils to be sent a copy of it within five working days;
- the report to be made available to any member of the public who wishes to see it, at such times and places as may be reasonable; and
- copies of the report to be provided to anyone who asks.

From 1 September 2012, the amended School Information regulations³⁵ require governing bodies of maintained schools to publish specified information on a website. This includes publishing details of where and how parents may access the most recent report about the school published by Ofsted, for example, by a link to the school's report on the [Ofsted website](#). The governing body should also consider translating the report into other languages where appropriate.

3.8.3 Interim statements

Where Ofsted decides that, following the risk assessment, a school previously judged to be 'good' is not to be inspected; it will publish an interim assessment letter. Interim assessment letters are usually published towards the end of the third year from the end of the school year in which the last section 5 inspection took place. The interim assessment letter explains that the school will not be inspected during the period of a year from the date of publication, unless Ofsted receives information indicating that an earlier inspection is necessary. Those responsible for the governance of the school, such as the governing body or appropriate authority, must send a copy of the interim assessment letter to all registered parents of pupils at the school within five working days of receiving it.

³⁴ Section 14 of the Education Act 2005.

³⁵ The School Information (England) (Amendment) Regulations 2012.

3.8.4 Other Ofsted inspections (section 8 inspections)

In addition to the regular programme of section 5 inspections, Ofsted inspects schools for a variety of reasons, such as:

- to gather evidence for reports and advice on curriculum subjects;
- to assess specific themes and initiatives, for example, literacy and numeracy in primary schools; and
- to monitor progress in 'satisfactory' schools and those causing concern.

Outstanding schools are not exempt from section 8 inspections. Section 8 inspections are published on Ofsted's website.

3.8.5 Schools causing concern

By 'schools causing concern' we are referring not just to schools 'eligible for intervention'³⁶ but also those about which the LA and/or the Secretary of State have other serious concerns which need to be addressed. This might be where attainment levels are consistently below the floor standards, where there has been a serious drop in performance or where the performance is not meeting the expected standards of comparable schools.

We published an updated version of the statutory guidance, [Schools Causing Concern - guidance for local authorities](#), on 2 May 2014.

There is now a new section clearly setting out, in ten key points, what local authorities who champion educational excellence do. This has been added in response to local authorities' requests for further clarity on their role in school improvement.

Whilst our expectation remains that local authorities should intervene early, the guidance also makes clear that local authorities have no statutory powers of intervention with academies. They should contact the department swiftly where there are concerns about an academy in their area. Lastly, the guidance specifies that local authorities should not wait for Ofsted to recommend a review of governance to intervene.

The guidance provides information on the legislative requirements for intervening with maintained schools in order to help local authorities fulfil their statutory duty. The guidance will be kept under review and updated as necessary.

An explanation of the criteria for the current key stage 2 and key stage 4 accountability measures are available on [GOV.UK](#). Governing bodies are also encouraged to read and become familiar with the guidance and the legislation to which it relates.

³⁶ As defined in Part 4 of the Education and Inspections Act 2006.

3.8.6 Section 48 inspections

The governing body of a voluntary or foundation school or academy that has been designated as having a religious character is responsible for making sure that the content of the school's act of collective worship, and any denominational religious education provided for pupils, is inspected approximately every five years³⁷ (a 'section 48 inspection'). These aspects of the school's provision will not be included in the section 5 inspection arranged by Ofsted. The governing body may arrange for the section 48 inspection also to cover the spiritual, moral, social and cultural development of pupils at the school. The contractual arrangements for the carrying out of section 48 inspections, including fees, are a matter for the governing body. When choosing an inspector for the section 48 inspection, the governing body (or in the case of a voluntary-controlled school, the foundation governors) must consult one of the following bodies shown in Table 3.

School designation	Consultation body
Church of England or Roman Catholic	The appropriate diocesan authority
Jewish	Jewish Studies Education Inspection Service
Methodist	Education Secretary to the Methodist Church
Muslim	Association of Muslim Schools
Sikh	Network of Sikh Organisations
Seventh-day Adventist	Education Department of the British Union Conference of Seventh-day Adventists

Table 3 – Consultation bodies for section 48 inspections

A grant is available towards the cost of the section 48 inspection. The process for claiming the grant is managed by the individual faith groups. Claims are made using grant form [DRE1](#). An inspection report must be prepared within 15 working days of the end of the inspection. Under section 49, the governing body must publish this in the same way as for section 5 inspections.

3.8.7 Ofsted's involvement in parental complaints about schools

By law, and in certain circumstances, Ofsted is able to investigate complaints by parents about their child's school for the purpose of deciding whether to use its inspection

³⁷ Section 48 of the Education Act 2005. This applies to academies via clauses in their funding agreement.

powers. It has powers to obtain information to facilitate an investigation. Governors may find it useful to familiarise themselves with Ofsted's [guidance](#) to parents.

If requested to do so, the governing body must provide Ofsted with any information held by it which Ofsted specifies and any other information that the school considers to be relevant to the investigation of a complaint.

Should Ofsted consider it appropriate for the purpose of an investigation that Ofsted meets with parents, the governing body (or in the case of a school which does not have a delegated budget, the LA) must co-operate with Ofsted in arranging the meeting. This includes allowing a meeting to take place on the school premises, fixing a date for the meeting and notifying parents and the LA of the meeting. A representative of the governing body and the LA may also attend the meeting.

If Ofsted prepares a report of an investigation, that report must be passed to the governing body (or in the case of a school that does not have a delegated budget, the LA). The body must then send a copy of the Ofsted report to all registered parents.

Section 4 - Pupil wellbeing

4.1 Promoting the general wellbeing of pupils

The [Education and Inspections Act 2006](#) places a duty on governing bodies of maintained schools to promote wellbeing. 'Wellbeing' is defined in the Children Act 2004 as:

- physical and mental health and emotional wellbeing;
- protection from harm and neglect;
- education, training and recreation;
- the contribution children make to society; and
- social and economic wellbeing.

Section 4 of that Act explains which issues governors need to consider, to reassure themselves that pupils are adequately being cared for and protected from harm while in school. Education, training and recreation are covered in section 3 of this Handbook.

4.2 Pupil voice

The term "pupil voice" refers to ways of listening to the views of pupils and/or involving them in decision-making. You may also hear the expressions "learner voice" or "consulting pupils".

Under [Section 176 of the Education 2002 Act](#) governing bodies of maintained schools and LAs are currently required to have regard to statutory guidance on consulting with pupils about matters that affect them.

This legislation is underpinned by the general principles of the [United Nations Conventions on the Rights of the Child \(UNCRC\)](#) - articles 2, 3, 6 and, in particular, article 12 which states the following:

- Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
- For this purpose, the child, in particular, shall be provided the opportunity to be heard either directly in any judicial and administrative proceedings affecting the child, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

The UNCRC has not been incorporated into national law, so there is no statutory duty to comply with it. However, the government has reiterated its commitment to pay 'due

regard' to the Convention when new policy is made and legislation proposed. Schools are strongly encouraged to pay due regard to the Convention.

4.3 Behaviour and discipline

An academy trust must make sure that a written policy is drawn up and carried out that promotes good behaviour among pupils and defines the sanctions to be adopted where pupils misbehave³⁸.

Maintained school governing bodies must make sure that their school has policies designed to promote good behaviour and discipline among pupils. These policies must include the school's approach to the use of reasonable force to control or restrain pupils. Guidance on reasonable force is in ['Use of Reasonable Force – Advice for headteachers, staff and governing bodies'](#). Maintained schools should not have a 'no contact' policy.

The governing body must also make, and periodically review, a written statement of principles to help the headteacher determine the measures that make up the school's behaviour policy³⁹. This duty cannot be delegated. The governing body must consult the headteacher, other appropriate members of staff, parents and all registered pupils before making or changing this statement of principles⁴⁰. It must also publish the statement on a website⁴¹. Information on these responsibilities and statutory guidance to which the governing body must have regard is given in ['Behaviour and Discipline in Schools: Guidance for Governing Bodies'](#) issued by the Secretary of State.

4.3.1 Directing pupils off-site to improve their behaviour

The legislation for directing a pupil off-site does not apply to academies. However, an academy may direct a pupil off-site under general powers in their Memorandum and Articles of Association.

A maintained school governing body may send pupils to provision outside school premises that is aimed at improving their behaviour ('directing off-site'⁴²)⁴³. It should make sure that the pupil continues to receive a good education whilst addressing the needs that require intervention. The governing body may direct a pupil off-site without the parent's consent but should, where possible, engage parents in the process. There are

³⁸ The Education (Independent School Standards) (England) Regulations 2010.

³⁹ Subject to the passage of legislation, this requirement may be repealed during 2013/2014.

⁴⁰ Section 88 of the Education and Inspections Act 2006.

⁴¹ The School Information (England) Regulations 2008 as amended by the School Information (England) (Amendment) Regulations 2012.

⁴² This power is routinely delegated to the headteacher.

⁴³ Section 29A of the Education Act 2002.

specific requirements in relation to notifying parents and reviewing the placement. [Statutory guidance](#) for maintained schools is available on GOV.UK.

The requirement to review a placement every 30 days was removed in January 2013. A placement may continue beyond the end of the academic year in which it is made. Further information on governors' powers and responsibilities and statutory guidance to which the governing body must have regard, is provided in '[Alternative Provision: A Guide for Local Authorities, Headteachers and Governing Bodies of Schools, Pupil Referral Units and Other Providers of Alternative Provision](#)'.

4.3.2 Excluding pupils

An explanation of governing bodies' and academy trusts' legal duties in relation to exclusion, as well as statutory guidance on performing these duties, is provided in '[Exclusion from maintained schools, Academies and pupil referral units in England: A guide for those with legal responsibilities in relation to exclusion](#)'.

The governing body has key responsibilities in relation to reviewing headteachers' exclusion decisions⁴⁴ and must arrange suitable full-time education for excluded pupils from the sixth school day of a fixed-period exclusion⁴⁵.

Academy trusts are also responsible for arranging an independent review panel to consider permanent exclusions, where requested by parents. For maintained schools, this duty rests with the LA.

Governing bodies have a wider role to hold headteachers to account for the lawful use of exclusion. Exclusion must be for disciplinary reason and all exclusions must be done in line with the legal requirements. Where a pupil is removed from the school premises without being excluded there needs to be a lawful basis for this decision, for example, under the powers of a maintained school to direct a pupil offsite to improve their behaviour (section 4.2.1).

4.3.3 School attendance

The governing body of a maintained school or academy trust must reassure itself that the school keeps admission and attendance registers in accordance with the regulations⁴⁶. Further information and guidance is available in the [school attendance](#) section of GOV.UK. The governing body must make sure that the school provides information requested by the Secretary of State, including the termly absence data the

⁴⁴ Section 51A of the Education Act 2002 and The School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012.

⁴⁵ Section 100 of the Education and Inspections Act 2006.

⁴⁶ Education (Pupil Registration) (England) Regulations 2006.

departmente collect⁴⁷.

4.3.4 Parenting measures

The maintained school governing body, academy trust, headteacher and LA have powers to intervene where a pupil's behaviour or attendance at school becomes problematic⁴⁸. Information on parenting contracts, parenting orders and penalty notices are in section 3 of the statutory guidance '[Advice on school attendance](#)'. Governing bodies, academy trusts, headteachers and LAs must have regard to it when carrying out their duties.

4.4 The school day and school year

Academies set their own school day and term dates. The provisions on school sessions do not apply to them. The headteacher of a maintained school will recommend the length of the school day, including session times and breaks. The governing body must agree the recommendation. School employers determine the term dates⁴⁹. Maintained schools must open for at least 380 sessions (190 days) in a school year⁵⁰. The school year must begin after July. If a school is prevented from meeting and cannot make up the lost session(s) it can be deemed to have been open for the required 380 sessions.

4.5 School food and milk

Maintained school governing bodies and academies must provide paid-for lunches for registered pupils, including nursery pupils who receive education both before and after lunch. This only applies where the parents request them and it would be unreasonable not to provide them. These meals must be free for pupils who receive, or whose parents receive, an eligible benefit. Maintained schools and academies are not obliged to offer milk to pupils. Where they choose to, it must be provided free of charge to pupils who receive or whose parents receive an eligible benefit. Governing bodies of maintained schools should ensure that all food provided by the school meets nutritional standards⁵¹.

⁴⁷ Section 538 of the Education Act 1996.

⁴⁸ Sections 18-23 of the Anti-social Behaviour Act 2003.

⁴⁹ Section 32 of the Education Act 2002.

⁵⁰ Education (School Day and School Year) (England) Regulations 1999.

⁵¹ The Education (Nutritional Standards and Requirements for school Food)(England) Regulations 2007 (SI 2007/2359) as amended by the 2008 regulations (SI 2008/1800) and the 2011 regulations (SI 2011/1190).

4.6 School uniform

In all schools, governing bodies decide whether there should be a school uniform and other rules relating to pupils' appearance and, if so, what they should be. [Non-statutory guidance](#) on school uniform and related policies is available on GOV.UK.

4.7 Pupil health and safety

4.7.1 Liability for health and safety

The main legislation covering this area is the Health and Safety at Work etc. Act 1974 and regulations made under that Act. The employer is responsible for health and safety.

Information about the law on pupil health and safety is in [departmental advice](#) on Health and Safety for Schools. This advice summarises health and safety law relevant to schools and explains how it affects governing bodies as well as LAs, headteachers and other school staff. It covers activities that take place on school premises as well as school trips. The advice applies to all state funded schools. Where the school is the employer, the governing body must make sure that the school has a policy on health and safety.

4.7.2 Pupils unable to attend school through ill health

The duty to provide suitable education for children of compulsory school age who cannot attend school due to illness or injury (alternative provision) rests with LAs. All schools, including academies, have a key role in ensuring that children on their roll with medical needs also receive a good education. They should involve the relevant LA without delay when it is clear that a pupil's health will prevent them from attending school for 15 days or more.

4.7.3 Supporting pupils in school with additional health needs

Some pupils have additional health needs and may require medicines, adaptations or support to keep well. Governing bodies must oversee the development of policies that cover their own circumstances. Having an additional health needs policy (or including information in health and safety and/or SEN policies) helps ensure consistent arrangements are in place. Where the school is the employer the governing body will be directly responsible for the policy. For other schools, the responsibility will usually be delegated by the LA. The policy should address emergency procedures, training, supervision, record keeping, including storage and disposal. It should also set up a named staff member to coordinate health care needs and to link with parents.

4.7.4 First aid

Where they are the employer, governing bodies have overall responsibility for first-aid under the Health and Safety (First Aid) Regulations 1981. The regulations set out first-aid provision in the work place, and require employers to provide adequate and appropriate equipment, facilities and qualified first-aid personnel. It is recommended that schools treat pupils as if they were employees for the purposes of first-aid and provide first-aid materials and expertise as appropriate, based on risk assessment. This responsibility may be delegated by the LA where they are the employer.

4.7.5 Pupils with disabilities and special educational needs (SEN)

The governing body must reassure itself that the school prepares and implements an accessibility strategy to improve the physical environment of the school for pupils with disabilities and SEN⁵². This should include consideration of their particular health and safety needs on the school premises and how these can be met.

Governors of schools providing extended services must also consider their duties under the Equality Act 2010. In particular, whether the proposed extended services affect their functions and responsibilities towards their pupils, users of these services or their employees. When services are provided by a third party on schools' premises, either independently of the school or on behalf of the school, governors should establish who would be regarded as the service provider with the responsibility to make 'reasonable adjustments' and/or access improvements for disabled users, pupils or employees.

4.7.6 School security

In community, voluntary-controlled and community special schools, the responsibility to make the school secure ultimately rests with the LA as employer. It may however, delegate these duties to the schools. With all other schools, including academies, responsibility rests with the schools.

All schools have a common law power to bar troublesome adults from the school premises. Governing bodies of foundation, voluntary-aided and foundation special schools also have a power under section 547 of the Education Act 1996 to authorise someone to remove from school premises any intruder causing a disturbance or nuisance. In community and voluntary-controlled schools, this power is exercised by the LA unless it is delegated to the school. This power of removal also extends to academies. [Departmental advice](#) on this power is on GOV.UK.

⁵² The Equalities Act 2010

Schools using automated biometric recognition systems should be aware of their legal duties under the Protection of Freedoms Act 2012. [Departmental advice](#) about these duties is on GOV.UK.

4.7.7 Fire Safety

Governing bodies of all schools must reassure themselves that annual risk assessments are carried out to make sure that the fire precautions needed in the school are in place.

4.7.8 Playground supervision

We do not have a recommendation about the number of adults who should be in charge of pupils during lunch and other breaks. This should be determined locally by the school, having assessed risks and making sure that competent supervisors are available.

4.8 Promoting community cohesion

All state funded schools are required to promote community cohesion. The duty was first introduced through the Education and Inspections Act 2006 and came into effect in September 2007. The governing body (or school executive, where the governing body opts to delegate the responsibility) decides how to fulfil this duty in the light of their local circumstances.

4.9 Safeguarding and promoting the welfare of pupils

4.9.1 General duty

Section 175 of the Education Act 2002 places a duty on the governing bodies of maintained schools, and regulations under section 157, about safeguarding pupils in Independent Schools (which include academies) requires academy trusts to have arrangements in place to ensure that they:

- carry out their functions with a view to safeguarding and promoting the welfare of children; and
- have regard to the statutory guidance issued by the Secretary of State in considering what arrangements they need to make for the purpose of that section.

[Statutory guidance](#), 'Safeguarding children - Keeping children safe in education', places statutory requirements on all governing bodies. Governing bodies must make sure their school has policies and procedures in place and take into account any statutory guidance issued by the Secretary of State, any LA guidance and locally agreed interagency procedures.

Educational settings have a central role to play in the early identification of any welfare concerns about an individual child, additional needs they might have and indicators of possible abuse and neglect. To be effective, all schools should work with other organisations, share and receive information about individual children in order to protect them from harm. All schools should have regard to the guidance set out in [Working Together to Safeguard Children, 2013](#).

4.9.2 Allegations against staff and volunteers

Employers have a duty of care to their employees. Governing bodies should make sure that the school provides effective support for anyone facing an allegation. They must also provide them with a named contact within school if they are suspended. If an allegation is made, the headteacher, chair of governors or chair of the management committee (the 'case manager') should immediately discuss the case with the LA Designated Officer (LADO). This initial discussion allows the LADO and case manager to consider the nature, content and context of the allegation and agree a course of action.

Statutory guidance '[Safeguarding children - Keeping children safe in education](#)' sets out the procedures all schools must have in place for dealing with allegations.

The procedures should make it clear that all allegations should be reported straight away, normally to the headteacher. The procedures should also identify the person, often the chair of governors, to whom reports should be made in the absence of the headteacher, or in cases where the headteacher themselves are the subject of the allegation or concern. Procedures should also include contact details for the LADO responsible for providing advice and monitoring cases.

Chairs of governing bodies are expected to work with the headteacher (unless the allegation concerns the headteacher) and LADO to confirm the facts about individual cases. They are also expected to reach a joint decision on the way forward in each case. Chairs have a key role in deciding courses of action, including disciplinary action, in those cases where a criminal investigation may not be required. In cases where allegations have been substantiated, the chair should work with the LADO and headteacher to determine whether there are any improvements to be made to the school's procedures or practice to help prevent similar events in the future.

It is helpful if all governing body members have training about safeguarding, whether the governing body acts collectively or an individual member takes the lead. This will make sure they have the knowledge and information needed to perform their functions and understand their responsibilities.

Governing bodies should make sure that a senior member of the school's leadership team is designated to take lead responsibility for dealing with safeguarding issues; providing advice and support to other staff; liaising with the LA; and working with other agencies.

4.9.3 Safe recruitment procedures

A key aspect of safeguarding is the vetting of applicants and prospective volunteers working with children to make sure they are not unsuitable. Guidance about this is in section 5 of this Handbook, and also in [‘Keeping Children Safe in Education’](#).

Section 5 - Teachers and support staff

5.1 General

The governing body of a maintained school may delegate all of its functions relating to staff employment in schools⁵³ with the exception of:

- establishing a selection panel to appoint a headteacher or deputy headteacher;
- making sure that headteachers benefit from any statutory entitlements and comply with the duties imposed on them which are contained within the [‘School Teachers’ Pay and Conditions Document’](#) (STPCD);
- responding to any report from the LA that raises serious concerns about the performance of the headteacher;
- establishing procedures for the regulation of conduct and discipline of staff; and
- making sure that safer recruitment procedures are applied.

The main staffing functions of the governing body in a maintained school are set out in the School Staffing (England) Regulations 2009 and supporting [‘Guidance on managing staff employment in schools’](#). Some of this guidance is statutory and governing bodies must have regard to it when exercising their functions under the Regulations. Academy trusts are free to decide which functions they delegate.

Not all governing body duties and responsibilities listed in this section fall from the School Staffing Regulations and supporting guidance. Where this is the case, alternative guidance and regulations are given.

In addition to their responsibilities under employment law, maintained school governing bodies and academy trusts also have responsibilities under the Equality Act 2010. This sets out that employers must not discriminate against employees on any protected grounds (e.g. race or sex) in relation to pay, conditions, opportunities, promotion, training or dismissals. Advice for employers on their responsibilities is available on the [ACAS](#) website.

5.2 Appointing staff

Appointing a headteacher is a pivotal decision in the life of a school. It is crucial that a governing body has the skills it needs to carry out a thorough and effective selection process. Governors may need to seek help or training, for example, on good interviewing techniques or on how to secure meaningful and accurate references – which should

⁵³ Regulation 4 of the School Staffing (England) Regulations 2009.

include speaking directly to those able to identify the weaknesses as well as the strengths of each candidate to test the robustness of written references.

The NCTL [recruitment toolkit](#) supports the headteacher selection, assessment and interview process. The toolkit provides expert advice; an action checklist; videos and publications. Free registration is required to access the toolkit.

Academy trusts are free to appoint staff in accordance with employment law and in line with the requirements set out in their funding agreement.

Every maintained school must have a headteacher⁵⁴. The governing body must notify the LA in writing of any headteacher vacancy, advertise the post in an appropriate manner, and then appoint a selection panel. The governing body must appoint a member of staff to carry out the functions of a headteacher pending the appointment of a headteacher or in the absence of a headteacher.

As part of the appointment process the governing body of a maintained school or academy trust may ask for details about whether a headteacher or teacher at the school has been subject to capability procedures in the previous two years. A maintained school must provide this. The trust of any academy that opened after April 2013 must also provide this information⁵⁵.

Where the LA is the employer⁵⁶, a representative of the authority may attend proceedings relating to the selection or dismissal of any teacher. The governing body must consider any advice offered by the representative. Where the governing body is the employer⁵⁷ and where it has been agreed the LA has advisory rights, the governing body must consider any advice offered.

5.2.1 Discrimination in appointments and during service

Employers must be aware of their responsibilities in respect of discrimination within equalities legislation⁵⁸ when recruiting staff and throughout the employment relationship.

Employers are not allowed to ask about the health and disability of any candidate until after a job offer has been made, unless such an enquiry is to establish their capability to carry out a function intrinsic to the work concerned. Governing bodies and academy trusts must make 'reasonable adjustments' to their employment arrangements, practices

⁵⁴ Sections 35(3) and 36(3) Education Act 2002.

⁵⁵ Subject to the terms of its funding agreement an academy that opens earlier than April 2013 may also be required to provide information relating to a teacher's capability procedures.

⁵⁶ Community, voluntary-controlled, community special or maintained nursery schools (section 35 of the Education Act 2002).

⁵⁷ Foundation, voluntary-aided and foundation special schools (section 36 of the Education Act 2002)

⁵⁸ The Equality Act 2010.

or premises if such changes would help alleviate any disadvantage suffered by a disabled employee compared to a non-disabled person.

Legislation⁵⁹ sets out the circumstances in which maintained schools, designated by the Secretary of State as having a religious character, have some leeway to take into account certain religious or denominational considerations in making specified employment decisions relating to their staff (i.e. decisions on appointment, remuneration, promotion and dismissal). Guidance on the subject is provided in Chapter 9 of our [‘Guidance on managing staff employment in schools’](#), entitled ‘Staff at schools with a religious character’.

In relation to academies, converters follow the position of the school prior to conversion. New academies are able to appoint all their teaching staff on the basis of faith in line with their designation, and can appoint support staff by application of religious criteria, where they can demonstrate a genuine occupational requirement for doing so.

5.2.2 Employment checks

When making appointments, governing bodies and academy trusts must take into account the requirements of equalities legislation and best employment practices.

Once the governing body or academy trust has chosen a preferred candidate, and before any appointment is made, it must:

- check the identity of the candidate;
- their right to work in the United Kingdom⁶⁰ and whether the candidate has the necessary health and mental fitness to teach⁶¹; and
- whether any reasonable adjustments are required to allow teaching staff to provide effective and efficient teaching.

Governing bodies and academy trusts should also:

- take up references from the applicant’s current or former employer; and
- consider asking the candidate’s current employer for details of any capability history in the previous two years, and the reasons for this.

When sharing information employers should make sure that they act in accordance with the Data Protection Act 1998 and data protection principles, making sure that the information is provided fairly and lawfully to prospective employers.

⁵⁹ Sections 58 to 60 of the School Standards and Framework Act 1998.

⁶⁰ Regulations 12 and 24 of the School Staffing (England) Regulations 2009 for maintained schools and for academy schools and AP academies, in line with the requirements set out in their funding agreement.

⁶¹ The Education (Health Standards) (England) Regulations 2003.

For the majority of work in schools, governing bodies and academy trusts must obtain, for all new appointments, an enhanced Criminal Record check before, or as soon as practicable after appointment, and a barred list check before appointment if the work is within the scope of 'regulated activity' relating to children.⁶² The checks are conducted by the Disclosure and Barring Service (DBS). Governing bodies will usually make the request for the DBS checks through their LA, which acts as an umbrella body for the DBS; academy trusts will have their own umbrella body arrangements. Further guidance on these checks is available on the [DBS website](#). The current statutory guidance '[Safeguarding children - Keeping children safe in education](#)' (SCSRE) was published in 2006 and came into force in 2007. Revised guidance will be published shortly.

The governing body or academy trust is required to carry out additional checks if the applicant has lived outside the UK. Employers have a duty⁶³ to check potential employees' documents before employing them, to ensure they have the right to work in the UK. Further guidance on the checks needed to establish the right to work in the UK is available on the [UK Border Agency website](#).

The governing body or academy trust must reassure itself that all appropriate suitability checks have been undertaken and that the school keeps a single central record, detailing the range of checks it has carried out on its staff.

The barred list check, is a check that the person is not barred from 'regulated activity' – work that a barred person must not do. From September 2012, the amended definition of regulated activity in relation to children comprises, in summary:

- a. unsupervised activities: teaching, training, instructing, caring for or supervising children, or providing advice/guidance on wellbeing, or driving a vehicle that is being used solely for the purpose of transporting children and their carers/escorts;
- b. work carried out, in and for the purposes of a limited range of establishments, where that work gives the opportunity to have contact with children: for example, work in schools, children's homes, childcare premises. This does not include work by volunteers who are supervised to the [required level](#) unless the volunteer provides certain types of personal or health care to a child⁶⁴.

Work under (a) or (b) is regulated activity only if done regularly, with the exception of the provision of healthcare or certain types of personal care (for example, helping a child dress) which is always a regulated activity. The scope of regulated activity has been reduced, as part of moves to scale back disclosure and barring arrangements to

⁶² As defined in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.

⁶³ The Immigration, Asylum and Nationality Act 2006.

⁶⁴ The types of personal and health care are specified in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.

common-sense levels. Most work in a school will be work that individuals must not do if they are barred. Schools must refer to the [Disclosure and Barring Service \(DBS\)](#) anyone who has harmed or poses a risk of harm to a child and who has been removed from working (paid or unpaid) in regulated activity, or would have been removed had they not left (see section 5.7). The DBS will consider whether to bar the person. Referrals should be made as soon as possible after the resignation or removal of the individual. Guidance on referrals is provided by the [DBS](#).

5.2.3 The Employer Access Online system

When making appointments, governing bodies and, where applicable, academy trusts will need to reassure themselves that mechanisms are in place within the school to check that any persons employed to teach have the required teaching qualifications and have successfully completed any statutory induction, if required. The [NCTL's Employer Access Online](#) system can be used to confirm teaching qualifications and the satisfactory completion of the necessary induction period for UK trained teachers.

Governing bodies and academy trusts must always make sure that any person employed to teach is not prohibited from teaching by checking the NCTL's Employer Access Online system.

[Further information](#) on the lists held and the Employer Access Online system can be accessed from GOV.UK. Making these checks is a key public safeguard, alongside criminal record checks, identity checks and the scheme for barring unsuitable persons from working with children, run by the DBS.

5.3 Statutory induction for newly qualified teachers (NQTs)

The governing body or academy trust must be satisfied that the institution in which the induction of NQTs is being served has the capacity to support the NQT and that the headteacher is fulfilling their responsibilities. In addition, charges made by appropriate bodies for their services in respect of induction in maintained schools will be directed to the governing body. The full [statutory guidance](#) is on GOV.UK.

5.4 Teacher qualifications

The governing body of a maintained school or non-maintained special school should be aware the teachers must hold qualified teacher status (QTS)⁶⁵ (unless the teacher satisfies one of the requirements or conditions specified in the [Schedule to the appropriate regulations](#)). The need to make sure that any teachers that it employs hold

⁶⁵ Regulation 3(1) of the Education (Specified Work) (England) Regulations 2012.

QTS also applies to any academy trust whose funding agreement retains a clause to this effect.

Since 1 April 2012, further education teachers who have been awarded QTLS by the Institute for Learning (IfL) and are members of the IfL are recognised as qualified teachers in schools. This will allow them to be appointed to permanent posts in state maintained schools in England and they will be paid on the qualified teachers' pay scale. They will continue to be recognised as qualified school teachers providing they remain a member of the IfL.

The same statutory requirement to hold QTS is not in place for teachers employed by academies unless the academy's funding agreement retains a clause to that effect. An academy may be required through its funding agreement to employ teachers with QTS, but the department may agree to relax this requirement if requested by an academy. Even in academies, special educational needs coordinators and designated teachers for looked after children must have QTS. All teachers in special academies must hold QTS. There is no requirement for teaching staff in free schools to hold QTS.

5.5 Teacher and headteacher appraisal

Academies are free to determine their own appraisal process and may adopt the requirements for maintained schools if they wish.

Governing bodies in maintained schools have a statutory duty⁶⁶ to:

- appoint an external adviser for advice and support on the headteacher's appraisal and to consult that adviser on setting objectives for, and appraisal of, the headteacher;
- inform the headteacher of the standards against which their performance will be assessed;
- set objectives for the headteacher;
- appraise the performance of the headteacher, assessing their performance of their role and responsibilities against the relevant standards and their objectives;
- assess the headteacher's professional development needs and action needed to address them;
- make a recommendation on headteacher's pay, where relevant;
- give the headteacher a written report of their appraisal which includes the assessments and recommendation above;

⁶⁶ The Education (School Teachers' Appraisal) (England) Regulations 2012.

- determine the appraisal period that applies to teachers (including headteachers)⁶⁷;
- adopt a document that sets out the appraisal process for teachers (including headteachers) and make that document available to teachers; and
- make sure that headteachers carry out their duties in respect of appraising other teachers.

In practice, governing bodies will want, in relation to the appraisal of the headteacher, to:

- satisfy themselves that the external advisor has the skills, experience and objectivity to provide them with advice and support;
- consider whether to delegate the headteacher's appraisal to a sub-group;
- satisfy themselves that the headteacher's objectives are SMART⁶⁸;
- decide which standards they will use to assess the headteacher's performance. They must assess headteachers' performance against the Teachers' Standards and may also wish to use the National Standards for Headteachers;
- decide what arrangements to make for observing the headteacher's performance, including any arrangements for classroom observation where headteachers teach; and
- satisfy themselves that appraisal evidence informs other decisions, for example, on professional development and pay.

In relation to appraisal more widely, governing bodies will want to:

- scrutinise the content of the school's draft appraisal policy carefully to make sure that it will support effective appraisal in the school, challenging the headteacher as appropriate. In particular they will want to satisfy themselves with:
 - the provision that is made for the appraisal of teacher performance against the Teachers' Standards;
 - the arrangements being made for classroom observation, now that there is no annual limit on the amount of observation that can take place;
 - any arrangements for the headteacher to delegate the duty of managing the performance of teachers to others.
- satisfy themselves that the appraisal policy is being implemented effectively and fairly in the school, challenging the headteacher on how objectives and assessments are quality assured and moderated;
- satisfy themselves that appraisal evidence informs other decisions for example, on professional development and pay; and

⁶⁷ Regulation 5 of The Education (School Teachers' Appraisal) (England) Regulations 2012.

⁶⁸ Specific, measurable, achievable, realistic, time-bound.

- keep the policy under review and amend it as necessary.

5.6 Pay and conditions of service

New pay progression arrangements came into force on 1 September 2013. The arrangements apply to maintained schools. September 2013 will be the last time that annual pay increments are awarded to teachers based on the length of their service. After this, decisions about teachers' pay progression will be linked to performance, with their first annual performance-related progression pay increases being made in September 2014. We have published [non-statutory advice](#) to help governing bodies to determine their approach to teachers' pay.

The relevant body (usually the governing body) must adopt and take full responsibility for maintaining, updating and implementing a robust and considered pay policy that:

- sets out clearly the basis on which all decisions that determine pay will be made and communicated to all teachers;
- sets out the extent to which specific functions relating to pay determination will be delegated to others, such as the headteacher;
- explains the role that the relevant body will play in determining decisions relating to individual teachers;
- fully complies with all relevant aspects of equalities legislation;
- sets the date by which it will determine teachers' annual pay review; and
- establishes procedures for addressing teachers' grievances in relation to their pay in accordance with the ACAS Code of Practice.

Such a policy must conform to any statutory provisions that are set out within the STPCD. Governing bodies must assure themselves that the arrangements proposed for linking appraisal to pay progression are robust and can be applied consistently.

All teachers in maintained schools are subject to statutory conditions relating to their professional duties and working time⁶⁹. In addition to these statutory conditions, teachers are subject to other conditions of employment laid down in their contracts of employment, such as those that provide for sick pay and maternity leave. The terms of certain local agreements may also be incorporated into their contracts of employment.

In schools where the LA is the legal employer, the pay and conditions of service for school support staff must be on the scale of grades determined by the LA. In foundation and voluntary-aided schools, the governing body is free to determine the pay and conditions of support staff.

⁶⁹ Parts 8 to 10 of the STPCD.

Academy trusts are free to set their own pay and conditions of service for any teachers and support staff⁷⁰.

5.7 Discipline, grievance, capability procedures and suspending and dismissing staff

The full governing body of maintained schools must approve disciplinary and grievance procedures for staff. Academy trusts may delegate this duty. Maintained school governing bodies must also approve capability procedures for dealing with staff underperformance and provide a procedure to enable staff to appeal against a decision to dismiss them. Governing bodies may adopt the department's ['Model capability policy for teachers'](#).

Advice for governing bodies about establishing these procedures is provided in ['Guidance on managing staff employment in schools'](#). Governing bodies should be mindful of their obligations under employment law and take into account the ['Advisory, Conciliation and Arbitration Service \(ACAS\) Code of Practice'](#).

Academy trusts are responsible for establishing their own staff procedures and need to take account of the relevant law and guidance.

5.7.1 Trade unions and disputes with staff

Employers are bound to recognise those trades unions with which they have a voluntary recognition agreement or which they are required to recognise by the Central Arbitration Committee. In foundation and voluntary-aided schools, it will be the governing body as the employer that will recognise such unions; for community and voluntary-controlled schools it will be the LA.

Trade union recognition and the continuation of consultation and bargaining rights are protected under the [Transfer of Undertakings \(Protection of Employment\) Regulations \(TUPE\) \(2006\)](#). This means that for staff transferring from an existing school to an academy trust, any trade union recognition agreements applying to transferring staff will also transfer, as will any collective agreements in force at the time of transfer. The process for trade union recognition is set out in the Trade Union and Labour Relations (Consolidation) Act 1992 (TULR(C)A). Further information about ACAS and the advice it provides on trade union recognition is on the [ACAS](#) website.

⁷⁰ Where a maintained school converts to an academy, at the point of transfer the existing terms and conditions of teachers and support staff are protected under The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) arrangements. The STPCD will, therefore, remain relevant to any teachers whose contract has not been renegotiated.

If a trade union organises industrial action in a school it must follow the law on balloting for the action to be lawful. Both strike action and action short of strike action may be protected under the same ballot. Unions must give the employer notice of their intention to hold a ballot and the notice must satisfy certain conditions. Industrial action must begin within four weeks of the last date of the ballot and unions must give at least seven days' notice of the beginning of the industrial action to employers.

If the conduct of the ballot does not comply with the statutory requirements, strike action taken as a result of the ballot will be unlawful (subject to provisions excusing small accidental errors in respect of the employees balloted). This means that employers can apply to the court for an injunction preventing the strike action from taking place.

If the industrial action taken is lawful then participants cannot be fairly dismissed for a period of 12 weeks after the start of the action, and longer in some circumstances. Employers are entitled to deduct full pay from any employee participating in strike action for the duration of the action. Employers may also deduct pay from employees participating in action short of a strike.

While employees are not required to tell their employers whether they intend to take strike action, employers are fully entitled to ask staff if they are planning to strike.

Further advice on handling strike action in schools can be found [here](#).

5.7.2 Employment tribunals

Employment tribunals hear complaints lodged against employers on the grounds that they have discriminated against individuals or failed to respect their rights under employment law. Tribunals can order an employee to be re-engaged or reinstated, and they can award compensation. Guidance on the role of employment tribunals is on the [GOV.UK](#) and [ACAS](#) websites.

5.8 Teacher regulation

The Education Act 2011 provided for the abolition of the GTCE and for the Secretary of State for Education to take responsibility for the regulation of the teaching profession from 1 April 2012. The NCTL operate the arrangements on behalf of the Secretary of State for Education. Details are available on [GOV.UK](#).

The new regulatory arrangements cover teachers in all schools in England and only deal with cases of serious misconduct. Less serious cases of misconduct, and all cases of incompetence, should be dealt with at a local level. Employers must consider whether to refer a teacher who has been dismissed for serious misconduct, or would have been dismissed had they not resigned. Members of the public, other regulators and the police are also able to refer cases of misconduct. The NCTL holds a list of teachers who have

been prohibited from working in schools in England, and a database of teachers who hold QTS and who have passed induction.

5.8.1 Referring cases to the NCTL and the Disclosure and Barring Service (DBS)

Allegations of serious misconduct against a teacher may be referred to the NCTL by any of those listed below:

- a teacher's employer, including an employment or supply agency, has a legal duty to consider whether to refer a case to the NCTL when they have dismissed a teacher for misconduct, or would have dismissed them had they not resigned first;
- members of the public who think that a case of misconduct by a teacher is serious enough to warrant a prohibition order, although the NCTL will expect local procedures to have been exhausted before it will consider investigating the case; or
- the police, the DBS and other regulators who are aware of relevant information.

A referral to the DBS must be made if someone has harmed, or poses a risk of harm to a child and who has been removed from working (paid or unpaid) in regulated activity, or would have been removed had they not left. Referrals should be made to both the DBS and the NCTL in cases where there is alleged serious teacher misconduct as well as harm or risk of harm to a child. Further details are on [GOV.UK](https://www.gov.uk)

5.9 Teachers' Pension Scheme (TPS)

The TPS is an occupational, public service pension scheme for teachers governed by regulations⁷¹. The department have overall responsibility for the TPS whilst the day-to-day administration is undertaken by Capita Teachers' Pensions. Full information regarding the terms of the TPS and the level and range of benefits available are on [TP website](#), which presents information from the perspective of both the member and the employer; employers have a crucial role in the successful administration of the TPS. Details of the full range of employer duties are on the [TP Employer Hub](#).

All employment as a teacher (both full and part time) and regardless of qualified teacher status is covered by the TPS. Membership is voluntary but employment is pensionable by default. A teacher must elect to opt out if they do not wish to contribute to the TPS; this is a personal decision on the part of the teacher and an employer cannot be selective about whether a teacher's employment is pensionable.

⁷¹ The Teachers' Pensions Regulations 2010.

In LA maintained schools (including foundation schools), the LA is deemed to be the employer for TPS purposes. This is a statutory requirement that means that the school must work with the LA in all matters relating to the TPS. In academies, the employer for TPS purposes is the academy trust.

The TPS contains flexibilities that support employers in managing their workforce and succession planning.

5.9.1 Ill health retirement

Teachers who are ill may have to stop working before their normal retirement age. Applications and supporting medical evidence will be considered by Medical Advisors appointed by the Secretary of State for Education and the decision will be made by Teachers' Pensions. There are two different levels of ill health benefits that can be awarded. Advice is available on the [TP website](#).

5.9.2 Retired teachers and re-employment

Retired teachers may be re-employed. However, those who retired on ill health grounds and have not attained their normal pension age will come within the scope of the TP Regulations upon re-employment. The only ill-health pensioners who may undertake employment, without their entitlement to ill health benefits being automatically affected, are those who retired on ill health grounds before 1 April 1997 (this would be for limited part-time work only). The scheme administrators must be informed of all re-employment and the pension will cease where individuals are considered to no longer be incapacitated. Advice is available on the [TP website](#).

5.9.3 Premature retirement

The Teachers (Compensation for Redundancy and Premature Retirement) Regulations 1997 ("PRC Regulations") govern compensation for premature retirement. Information on these Regulations is not covered on the TP website, and so an introduction is given here. For further information, you should email us at:

PensionsPolicyTeam.CORRESPONDENCE@education.gsi.gov.uk

The PRC regulations apply to all Teachers' Pension Scheme ("TPS") employers, including academies, insofar as 'mandatory compensation' for premature retirement is concerned. The Teachers' Pensions Regulations 2010 ("the pensions regulations") provide that any teacher whose employment is terminated after having reached age 55 but before the normal pension age, because of redundancy, or in the interests of the efficient discharge of the employer's functions, may receive retirement benefits. The teacher would become entitled to such benefits provided the employer provides written agreement to this effect. No employer is forced by either the PRC regulations or the pensions regulations to make premature retirement awards; any employer can instead

make a redundancy award if they so choose. However, LA maintained schools rely upon these regulations to give them authority to make premature retirement awards, either with or without discretionary compensation.

The cost of 'mandatory compensation' is met by the employer; the further a teacher is from normal pension age, the higher the amount of 'mandatory compensation' that will have to be paid. The TPS pays the remainder so that the retiree receives the full amount of pension on the service they have built up in the TPS. The total cost, therefore, is met jointly by the employer and the TPS.

Under the PRC Regulations, certain TPS employers are able to pay 'discretionary compensation' by way of annual compensation and lump sum compensation. The 'discretionary compensation' provisions within the PRC Regulations do not apply to, academies, independent schools and higher education institutions – this provision is intended for LA-maintained schools because they require a source of authority and a mechanism to make such discretionary payments. Any decision to increase a teacher's benefits in this way, and by how much, is at the employer's discretion but is subject to certain limits. There are no costs to the TPS in relation to 'discretionary compensation' payments; these are all met by the employer.

Governors should be aware that the costs of premature retirements (including 'discretionary compensation') may be taken from school budgets if the LA has not agreed to the premature retirement, or if they have good reason to do so (for example, where an LA thinks the discretionary payment is too high)⁷². It is important for the governing body to liaise with its LA regarding any planned premature retirements/redundancy compensation.

Staff appointed several years ago may have contracts which say what payments must be made if teachers take early retirement. The governing body should make sure that any decisions take account of these - legal guidance is advised.

As explained above, academies must award 'mandatory compensation', under the PRC Regulations, where they have agreed, under the pensions regulations, to a teacher having immediate access to his or her pension following premature retirement. They are not, however, required to rely on the PRC Regulations for their power to make discretionary payments and are not constrained by the conditions contained in them, including the limitations on awards – the regulations do not preclude them making their own discretionary compensation awards, either entirely separate from the TPS or via the purchase of additional pension under the TPS. The funding agreement, however, expects that an academy would apply the same criteria used by the LA in which the academy is

⁷² Section 37 of the Education Act 2002.

situated, in its decision-making. Where an academy closes with 'mandatory compensation' in payment, the liability transfers to a successor establishment.

5.10 The Local Government Pension Scheme

An academy trust that has entered into academy arrangements is a Scheme employer in the Local Government Pension Scheme (LGPS) and is listed in paragraph 21 of Part 1 of Schedule 2 to the LGPS (Administration) Regulations 2008. This means that the non-teaching staff employed by academy trusts are automatically eligible for membership of the LGPS and existing members in a maintained school retain eligibility when a school becomes an academy. The change in legal status, when a former maintained school is replaced by an academy, means that the academy trust becomes an LGPS employing authority in its own right. Academy trusts for new provision, such as free schools, studio schools and UTCs will also be LGPS employers.

[Detailed advice](#) relating to the LGPS and Frequently Asked Questions (FAQs) can be accessed on GOV.UK.

Section 6 - Organisational changes and the use of school premises

6.1 Conversion to academy status

Governing bodies play a pivotal role in deciding whether conversion to academy status is right for their school. The governing body must pass a resolution confirming its desire to convert to academy status before the school can make a formal application to start the conversion process. Any trustees and those who appoint any foundation governors must also give their consent before the governing body can apply.

Maintained school governing bodies considering conversion to academy status must consult people that they think appropriate. Schools with a religious designation must also consult their Diocesan Board or relevant religious authority and must secure that body's consent before submitting an application.

Schools can consult in a number of ways such as via a website, newsletters and face-to-face meetings or discussions. It is important that people being consulted are given all relevant information about what is proposed and have a fair chance to respond. There is no set time for carrying out the consultation, although it is useful to have discussions early in the process. The consultation process must be completed before a funding agreement is signed with the Secretary of State.

The governing body must be able to confirm that a consultation has taken place, when it was carried out and that the views obtained were properly considered. Schools do not have to provide documentary evidence of this as part of the academy conversion process but will need to make sure it is available on request.

Under equalities legislation, public bodies must have 'due regard' to the need to eliminate discrimination, promote equality of opportunity and foster good relations when carrying out their duties. Governing bodies should consider whether they have met the requirements under the Equality Act 2010 or whether any further action needs to be taken in relation to their conversion to academy status.

When a school converts to an academy, TUPE legislation entitles staff to transfer under the same employment terms and conditions. The current employer (the LA in community and voluntary-controlled (VC) schools and the governing body in foundation and voluntary-aided schools) has a statutory obligation to inform their employees' representatives (i.e. trade union or elected representatives) that:

- the transfer is to take place;
- the date of the transfer and the reasons for it;
- the legal economic and social implications of the transfer; and

- whether the current employer, or as the new employer, the academy trust, expects to make changes connected to the transfer that will affect the employees' terms and conditions of employment and, if so, what those changes will be.

It is also good practice to provide this information to the employees themselves at an early stage in the process. Employers should consider seeking legal advice to make sure that they can identify the potential implications for employees of the transfer.

Where an employer (current or new) decides that changes are to be made to employees' terms and conditions of employment, it is important to make sure that the process for introducing those changes complies with employment law. This will usually involve consultation both with employees' representatives and with the affected employees.

The NCTL's '[Academies online resource](#)' will help schools considering a move to academy status. Free membership is required to access the resource.

The Education Funding Agency has published [Top Tips](#) for governors of schools on the path to becoming an academy.

6.1.1 Support for another school

The Department for Education expects schools which convert to academy status to support one or more other schools, whether maintained schools or academies. Academies can choose what they do to support another school or schools and how they do it, but it must be intended to raise standards. This is a key aspect of the creation of a self-improving school system. The governing body of an academy has a role in making sure that it delivers its commitment to other schools, however it is done. The governing body might itself be directly involved in offering support to raise standards of school governance. To keep bureaucracy to a minimum this commitment will not be regularly monitored by DfE.

6.2 Other organisational changes

The different types of maintained school are set out in the introduction to this Handbook. The school type determines the 'prescribed alterations' and significant changes that the governing body can propose. Examples are:

- a change of school type;
- transfer of site or discontinuance of a split site;
- co-educational to single sex or vice versa;
- changes to SEN etc.; or
- school closure (including in order to add, change or remove religious character).

Subject to parliamentary approval, from 28 January 2014 governing bodies will be able to make some changes to their school's size and characteristics without following a statutory process:

- a change of age range of up to 3 years (provided that this does not add a sixth form);
- expanding the school;
- adding boarding provision.

LAs will still be able to propose these changes, but will need to follow a statutory process to do so.

[Guidance](#) on the roles and processes to be followed⁷³ are available on GOV.UK.

Academy trusts can apply to the Secretary of State, via the Education Funding Agency (EFA) to make changes to their existing arrangements.

From 28 January 2014, fast track significant changes – expansions, age range changes (by up to three years), adding boarding provision and amending admissions arrangements in old style funding agreements – do not require a formal business case. Approval from the Secretary of State is still required but he will approve the majority of these requests, provided that he is assured that adequate local consultation has taken place, that financial arrangements are sound, and that appropriate planning permissions have been secured. [Guidance on these changes](#) is available on GOV.UK.

6.2.1 Closure of a voluntary or foundation school

In addition to the method above, the governing body of a foundation, VA or VC school may close their school by giving two years' notice. This must follow the process set out in section 30 of the School Standards and Framework Act 1998.

6.2.2 Governing body as decision maker

The governing body of a community, community special, foundation, foundation special, VA or VC school is the decision maker for 'foundation' proposals⁷⁴ unless referred to the schools' adjudicator by the LA in 'prescribed' circumstances⁷⁵.

⁷³ The Education and Inspections Act 2006, the School Organisation (Establishment and Discontinuance of Schools) (England) Regulations 2013, the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013, and the School Organisation (Removal of Foundation, Reduction in Number of Foundation Governors and Ability of Foundation to Pay Debts) (England) Regulations 2007.

⁷⁴ A change of category to foundation; the acquisition of a Trust or acquisition of a foundation majority

⁷⁵ Schedule 1, paragraph 10 of The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007, as amended.

Following a VA school's governing body decision, in 'prescribed' circumstances, the LA, Roman Catholic and/or Church of England diocese, or the EFA, may request referral to the schools' adjudicator. The request must be made within four weeks of the governing body's decision. The governing body must submit the proposals, and any objections or comments relating to them, to the adjudicator within one week of receiving the request.

6.2.3 Right of appeal by a governing body

The governing body of a foundation, foundation special, voluntary controlled or voluntary aided school can appeal to the schools' adjudicator if they disagree with the LA's decision on any 'prescribed alteration' or closure proposals for its school. Any request for referral must be made within four weeks of the LA's decision.

6.2.4 Revocation of proposals

Where statutory proposals are approved, the proposer must carry them out. If, however, circumstances change significantly and it is difficult or no longer appropriate to carry out approved proposals, the original proposer can publish 'revocation proposals'. Approval of the revocation proposals removes the duty to carry out the original proposals.

Where the governing body of a foundation or voluntary school with a religious character publishes foundation 'revocation proposals', it must notify the local Roman Catholic and/or Church of England diocese, the EFA (where appropriate) and any trustees, of its decision.

6.2.5 Removal of a trust or reduction in the number of foundation governors

The governing body of a foundation school may remove the Trust or alter the school's instrument of government so that the Trust no longer appoints the majority of governors. This would apply where they believe it to be in the best interests of the school. It applies only to Trust schools that have been established or have acquired their Trust under the Education and Inspections Act 2006. This is a statutory process⁷⁶. When a Trust is removed, the school becomes a foundation school without a foundation.

⁷⁶the School Organisation (Removal of Foundation, Reduction in Number of Foundation Governors and Ability of Foundations to Pay Debts) (England) Regulations 2007.

6.3 Control and community use of school premises

6.3.1 Day-to-day control of school premises

Academy trusts are responsible for the running of the school and have control over the land and other assets.

All maintained school governing bodies control the occupation and use of premises during and outside school hours. This means that governing bodies have control over what happens in school buildings and grounds. They are also responsible for deciding how school facilities are used. There are limited exceptions to this, such as:

- in a school where a trust deed transfers control to someone other than the governing body;
- where a Transfer of Control Agreement (TofCA) has been made (see below);
- where the LA issues directions⁷⁷ on how school premises should be used, e.g. regular booking for youth or community groups; or
- where the school is needed for local or general elections.

6.3.2 Use of premises for extended activities and community services

Schools can accommodate extended and community services. Examples include after-school clubs, adult education, out-of-school childcare (including breakfast clubs and holiday care), and sport and youth clubs. Some schools offer or rent out their facilities to voluntary organisations.

These arrangements can benefit schools, their pupils and parents, and their local communities. Schools offering extended services may benefit from improved behaviour and attendance. These arrangements can also enable schools to make the best use of their facilities, which may otherwise be underused before and after the school day and in school holidays.

Governing bodies may not use their delegated budget shares for anything other than the purposes of the school. The term ‘purposes of the school’ would normally be interpreted as including all activities that bring an educational benefit to pupils at the school. The term also includes spending on pupils registered at other maintained schools and providing community facilities for charitable services⁷⁸ (see below).

⁷⁷ Directions should be reasonable and not interfere too much with the governing body’s control. For example, the LA should not require premises to be made available to it if this would mean the governing body breaking a booking agreement.

⁷⁸ See section 27 of the Education Act 2002.

Governing bodies can charge for the provision of extended and community services⁷⁹.

An academy trust's articles of association set out the powers that the trust may exercise in pursuit of its charitable object. The current model articles allow the academy trust 'to provide educational facilities and services to students of all ages and the wider community for the public benefit'.

Academies should also consult their funding agreement. The current model funding agreement says that the academy 'will be at the heart of its community, promoting community cohesion and sharing facilities with other schools and the wider community'. The funding agreement will set out how the grant available from the Secretary of State can be used.

6.3.3 Transfer of control agreements

Governing bodies can enter into a Transfer of Control Agreement (TofCA) as a way of sharing control of the school premises with another body, or transferring control to it. The other body, known as the 'controlling body', will continue to occupy and use the premises during the times specified in the agreement. Transferring control of the premises to local community groups, sports associations and service providers can allow school facilities to be used without needing ongoing management or administrative time from the school staff. The governing body of a community school must obtain the LA's consent before entering into a TofCA that transfers control during school hours.

It may not be necessary for a school to enter into a TofCA to enable another organisation to use their premises. Alternative options for a school include retaining overall control of the premises while subletting use of part of their premises to another organisation or entering into a Service Level Agreement with another organisation.

6.4 Provision of childcare and other community services

Many schools and academies offer comprehensive programmes of before and after school and holiday care, and other activities, throughout the year. These programmes support pupils and parents, place the schools and academies at the hearts of their communities, and can generate profit that can be reinvested to improve services.

In deciding what, if any, extended activities to offer and in making decisions on the form any such activities should take, governing bodies should:

- make sure that extended activities or services benefit the public and any profits made are reinvested in the service or in the school;

⁷⁹ See section 27(3) of the Education Act 2002.

- make sure that in providing extended activities or services, these do not conflict unduly with their statutory duties, in particular their duty to promote high educational achievement in the school;
- consult the LA, school staff, parents of its school's registered pupils and anyone else the school considers appropriate, given the nature of the service. This should include some or all of the registered pupils where appropriate, particularly in view of their age and understanding;
- refer to any advice given by the LA and to guidance issued by the department; and
- make sure that any childcare for children under the age of three provided by the school is registered with Ofsted, and any other childcare provided is registered where necessary or appropriate.

Academy trusts may choose to run extended services and provide childcare, as well as run nurseries and children's centres. This may, however, require a change to their Articles of Association. Academy trusts are advised to contact the EFA who will advise.

6.4.1 The 'charitable purpose' requirement

The governing body of a maintained school has the power to provide, or enter into contracts to provide any facilities or services that will further any 'charitable purpose' for the benefit of pupils at its school, families of pupils or people who live and work in the local community⁸⁰. This power is in addition to governing bodies' powers and responsibilities on the control and community use of school premises.

'Charitable purposes'⁸¹ may cover such services and activities as:

- childcare (including before and after school and during the holidays);
- adult and family learning;
- health and social services; and
- parenting support and other facilities of benefit to the local community. Examples include access to information and communication technology (ICT), or sports facilities.

This is not an exhaustive list and a wide range of services will be covered within the definition of charitable purposes. Any profits that a school may make from providing such services must be reinvested in the service or in the school.

⁸⁰Section 27 of the Education Act 2002.

⁸¹the Charities Act 2011.

All academy trusts are charities. Their charitable object (or objects) is (are) set out in its Articles of Association, together with the powers that the academy trust can exercise in pursuit of its charitable object(s).

6.4.2 Restrictions on extended activities

A governing body cannot engage in any activity that might interfere with its duty to promote high standards of educational achievement at the school. The governing body's use of the power is also subject to any limits or restrictions contained in the school's instrument of government or in its trust deed (if it has one) and to any local directions issued by the LA regarding the control of school premises.

Before carrying out any plans to provide facilities or services using the power in section 27 of the Education Act 2002, the governing body must consult with the LA, school staff, and parents of its school's registered pupils. The governing body can also consult some or all of the registered pupils, where the governing body considers this appropriate in view of their age and understanding and where the exercise of the power would affect those pupils, and anyone else that the governing body consider appropriate.

6.4.3 Ofsted registration and inspection for childcare facilities

Governing bodies should be aware that schools do not have to register childcare provision for children over three separately with Ofsted, where:

- at least one of the children is a registered pupil at the school;
- it is provided on school premises; and
- delivered directly by the school.

Where a school engages childcare providers who are not required to be registered by Ofsted, it is advised to work only with providers who are registered on the voluntary part of the Ofsted Childcare Register.

6.5 School admissions

The new 'School Admissions Code' and 'School Admission Appeals Code' (the Codes) came into force in February 2012⁸². The 'Admissions Code' applies to the arrangements for the admission of pupils in the 2013/14 school year and later. Appeals made on or after 1 February 2012 are dealt with under the 2012 'Admission Appeals Code'.

⁸² The Codes are supported by the School Admissions (Admissions Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012, and the School Admissions (Appeal Arrangements) (England) Regulations 2012.

The Codes apply to all state-funded schools in England. The Codes do not apply to nursery schools or any other nursery provision.

Governing bodies, LAs, Schools Adjudicators and admission appeal panels (see below) must act in accordance with the Codes.

This Handbook is a summary reference but is not a substitute for the full [Codes](#), which are on GOV.UK.

Any person or body can make an objection to the Schools Adjudicator about the admission arrangements of any state-funded school. The objection must be made by 30 June in the year in which the admission arrangements are determined. Further information on how to make an objection is available on the [Office of the Schools Adjudicator website](#).

'Admission authorities' are responsible for setting fair and transparent admission arrangements; making admission decisions and arranging admission appeals in accordance with the Codes. Admission authorities decide which children are admitted by applying the admissions criteria they have set and published. For community and VC schools the LA is the admission authority; for all other schools it is the governing body or academy trust⁸³. Governors of VA schools, foundation schools or academies should, therefore, understand their roles and responsibilities in relation to admissions.

6.5.1 Admissions arrangements

Admission authorities must set admission arrangements annually, notify their LA and publish the arrangements on their website in accordance with the 'Admissions Code'. When changes to the admission arrangements are proposed, admission authorities must consult. Consultation must last at least eight weeks between 1 November and 1 March so that the arrangements are finalised by 15 April. There should be a clear decision by the governing body to determine a set of arrangements. LAs must publish on their website by 1 May, details of where the set arrangements for all schools can be found.

Admission authorities must, as part of setting their admission arrangements, set a pupil admission number (PAN). A governing body of a community or VC school can object to the Adjudicator if they disagree with their PAN (which will be set by the LA as admission authority).

Admission authorities cannot refuse a child a place if the school is undersubscribed (fewer applications than the PAN). The only exception is where the child has been permanently excluded from two or more schools within the past two years or, in the case of selective schools, where the child has not met the required academic standard.

⁸³ An LA can delegate admissions to the governing bodies of community and voluntary-controlled schools.

Regardless of faith, a child must be offered a place in a faith school if they apply to the school and it is undersubscribed.

Partial selection based on academic ability can continue, provided it was in place at the beginning of the 1997–8 school year. New partial selection, on the grounds of aptitude for certain subjects, is allowed where the school has an agreed specialism. It is limited to 10%.

The infant class size limit is 30 pupils per school teacher. Additional children may be admitted in exceptional circumstances, these are set out in the 'Admissions Code'.

Admission authorities for oversubscribed schools must keep a waiting list for at least the first term in the normal year(s) of admission. They must also give priority on that list according to their oversubscription criteria, regardless of when an application was made.

A place in a nursery class does not guarantee admission to the reception class.

6.5.2 Admission appeals

Admissions appeal panels are independent panels set up by admissions authorities in line with the 'Admission Appeals Code'. They hear appeals against admission decisions. The 'Admission Appeals Code' provides details on appeal procedures and outlines a parent's or child's right of appeal. Where a panel finds in favour of the parent or child, the decision is binding on the school.

Free training packs for appeal panel members are available from: Information for School and College Governors (ISCG), Avondale Park School, Sirdar Road, London W11 4EE.

Further information is available on the [ISCG website](#).

6.6 School companies

Governing bodies of maintained schools may, independently or with other governing bodies and/or 'prescribed' third parties, form companies to undertake certain specified activities⁸⁴. This allows schools to purchase goods and services collectively, to provide services or facilities to other schools, or to carry out functions that an LA is able to contract out.

The existence of a company allows individual school governing bodies to enter into contracts as a group and to pool resources without being part of a formal structural collaboration such as a federation. Schools are able to follow a well-established

⁸⁴Sections 11 and 12 of the Education Act 2002.

procedure for forming a company and have considerable flexibility in how the company is run.

Where a company is formed, the governing body remains responsible for the running of the school: a school and a company are separate legal entities. It follows that if the company gets into financial trouble, there will be no risk to the school's assets or the employment of the school's staff. Teachers will not be expected to transfer to the company.

Governing bodies must have the consent of their LA to form or join a company. This can be refused only on certain specified grounds relating to the school's performance or financial management. Each company will have a supervising authority (an LA) to make sure that the company is run on a sound financial footing.

School companies can make a profit. The articles of the company must state whether profits may be distributed to its members in line with the procedures set out in the articles and/or to further the aims of the company.

An academy trust's Articles of Association set out its 'object' and the powers that it may exercise to further that object. These powers include the power to establish or support any charitable companies or trusts formed for the trust's object and to set up subsidiary companies to carry on any trade or business to raise funds for the trust.

The NCTL '[Partnership working through a school company](#)' provides information about forming a school company. A free member login is needed.

6.7 Duty to have regard to the views of parents

Maintained school governing bodies should reassure themselves that mechanisms are in place to enable all parents to put forward their views at key points in their children's education. They should be able to demonstrate the methods used to seek the views of parents and how those views have influenced their decision making⁸⁵. As part of the wider inspection process, Ofsted considers responses to its online survey [Parent View](#). The views of parents help inspectors form a picture of how a school is performing and Parent View can provide valuable information on how well the school engages with parents. Governors can access the [toolkit](#) Ofsted has developed for schools.

⁸⁵ Section 21(7) of the Education Act 2002 (as inserted by section 38 of the Education and Inspections Act. 2006

6.8 Parent councils

A Parent Council is a body of parents that represents parents and allows them to put forward their views to the headteacher and the governing body of their children's school. A Parent Council can be less formal and require a lesser commitment than being a member of the governing body. It allows more parents to contribute to their child's school. Governing bodies of a 'majority governance Trust school'⁸⁶ must establish a Parent Council⁸⁷. Other maintained schools are free to choose whether to establish a parent council and determine its membership. This includes foundation schools in which the foundation or Trust appoints a minority of foundation governors.

The governing body must decide which pupils (or groups of pupils) will require special consideration and whose parents should be represented on its Parent Council to meet the local needs of the school. The governing body must also decide how parents are appointed or elected to the Parent Council and the term for which they should serve as members.

The Parent Council, in consultation with the governing body, agrees how it will operate. Whilst many Parent Councils manage themselves, the governing body should provide the information, support and assistance it reasonably needs to perform.

The governing body must consult the Parent Council about its conduct and carrying out its powers under [section 27 of the Education Act 2002](#). The governing body decides how, when and on which issues to consult the Parent Council, and is a matter for the individual school. The governing body must take into account any advice or views expressed to it by the Parent Council when it is conducting the school or exercising its powers⁸⁸.

⁸⁶ Where the Trust or Foundation appoints the majority of governors on the governing body.

⁸⁷Section 23A of the Education Act 2002 (as inserted by section 34 of the Education and Inspections Act 2006).

⁸⁸Section 27 of the Education Act 2002.

Section 7 - School finance

This section explains the financial responsibilities of governors. Section 7.1 provides information about financial requirements for academies. Sections 7.2 – 7.6 provide information about the financial accountability arrangements for maintained schools. Sections 7.7 onwards cover topics that apply to both maintained schools and academies.

7.1 Financial requirements for academies

Legally, academy trusts are companies limited by guarantee and, under the terms of the Academies Act 2010, exempt charities. Academy trustees, therefore, are subject to the duties and responsibilities of charitable trustees and company directors.

Academy trustees have wide discretion over their use of the academy's funds but are responsible for the proper stewardship of those funds and for ensuring economy, efficiency and effectiveness in their use – the three key elements of value for money. Governors must ensure they use their discretion reasonably taking into account all relevant guidance on accountability or propriety. Governors should therefore also be aware of the Charity Commission's guidance for academies in ['Academy Schools: guidance on their regulation as charities'](#) and two guidance notes, which are relevant for academy trustees. These guidance notes are ['CC3 - The Essential Trustee: What you need to know'](#) and ['CC8 - Internal Financial Controls for Charities'](#). Governors should also be aware of the statutory duties of company directors, which are set out in the Companies Act 2006 and include the duties to:

- exercise their powers only for a proper purpose;
- promote the company's success;
- exercise independent judgement;
- exercise reasonable care, skill and diligence; and
- avoid conflicts of interest.

Academy trusts have a number of other characteristics, which distinguish their financial management arrangements from those of LA maintained schools, including:

- Academy trusts must appoint a senior executive (usually the Principal in a single academy trust and the Chief Executive in a multi-academy trust) as Accounting Officer who will carry an overriding and personal responsibility for the proper stewardship of public funds, including the securing of propriety, regularity and value for money;
- Academy Trusts are required to establish an audit committee if their income exceeds £10m or capitalised asset value of £30m. All other academy trusts have a committee, which will discharge the responsibilities of an audit committee.

- Because academies are publicly funded bodies and part of central government, they must participate in annual exercises to consolidate their accounts with those of the DfE.
- Academy trusts must approve a balanced budget for each financial year in line with its charitable objects.
- The board of trustees and AO are responsible for all financial transactions within delegated authority limits set out in the Academies Financial Handbook, and are required to seek the agreement of EFA if delegated authority limits are exceeded
- Academy trusts must refer potentially novel and contentious transactions to the EFA for explicit prior authorisation.
- Academy trusts must appoint a principal finance officer who is the trust's finance director, business manager or equivalent.
- Academy trusts must review their financial risks and have flexibility over the way they can evaluate the robustness of their internal controls.
- Academy trusts must appoint a registered statutory auditor and prepare annual financial statements in line with [EFA's Accounts Direction](#) .

Financial requirements on academy trusts are set out in the Education Funding Agency's (EFA) ['Academies Financial Handbook'](#) and in their funding agreement. Academies and their auditors should also read the ['Academies Accounts Direction'](#), when preparing and auditing annual reports and financial statements.

7.1.1 Liabilities

The board of trustees, as the body legally responsible for the liabilities of the academy, must ensure that there is adequate insurance cover to support its activities. The academy trust is required to have employer and public liability cover with the suggested minimum cover being £10 million for each.

Under their articles of association, academy trusts are also required to provide indemnity insurance to cover the liability of its trustees. The members of the academy trust will be liable to contribute up to £10 if the academy trust is wound up.

It is the department's view that insurance covering trustees for personal liability is unlikely to represent good value for money because trustees acting honestly, reasonably and within their powers will not incur personal liability. The model articles of association for the academy trust allow the trust the option to take out insurance to protect trustees if they sought such reassurance.

7.1.2 Whistleblowing

Although it is not a legal requirement for academies to adopt a whistleblowing policy, it is good practice for academies to consider how they will deal with complaints from people who are not parents of attending pupils and who wish to raise a concern. The Education Funding Agency (EFA) handles whistleblowing complaints in open academies where the complainant does not wish to contact the academy first, although complainants will be encouraged to do so. The EFA handles non-financial complaints using its procedure for handling complaints about academies. Complainants will be encouraged to submit the complaint confidentially rather than anonymously, as anonymity can hinder the EFA's ability to progress the complaint. EFA's External Assurance team handles allegations of financial irregularity.

7.2 The accountability system for governors of maintained schools

7.2.1 Accountability of governing bodies through LAs

LAs have to account for expenditure by maintained schools. They must publish these accounts and have them audited by external bodies. For this reason, each LA has to put in place a system of financial controls that apply to maintained schools in its locality. Governors of foundation schools, voluntary-aided (VA) and voluntary-controlled (VC) schools are also charity trustees and must comply with charity law, in addition to any requirements placed upon them by their LA. They may also have to work with a separate foundation that holds the land and buildings on trust for educational or religious purposes.

LA systems of accountability for schools are based on the principles of regularity, propriety and value for money. Guidance is available on the [Treasury website](#). Each LA has an officer appointed by law (the 'section 151' officer) to make sure that its financial affairs are properly managed. This includes making sure that schools act within the agreed local financial framework, and that the authority has proper oversight of the funds it distributes to schools. LAs must report on their use of education grants to the Department for Education.

7.2.2 The school budget

Maintained schools receive a delegated budget from their LA. More detail about the way this is calculated is provided in section 7.4. LAs are required to maintain a scheme for financing schools that sets out the framework for the financial relationship between them

and the schools they maintain⁸⁹ (the Scheme). The Scheme must include procedures for maintaining effective financial management, securing value for money and providing financial information to the LA. The LA must consult the governing body and headteacher of every school maintained by the LA on any proposal to revise the Scheme, before submitting a copy of its proposal to the Schools Forum for approval⁹⁰. Section 7.7 provides more information about the Schools Forum. The Scheme must cover specific matters set out in regulations⁹¹. The current version of the Scheme must be published on a website. GOV.UK has [statutory guidance](#) about schemes for financing schools.

Under the Scheme, a LA's responsibilities are:

- reviewing schools' budget plans;
- carrying out high level monitoring of school budgets;
- agreeing a deficit reduction programme with schools in deficit;
- challenging excess surplus balances held by schools without good reason;
- planning and carrying out an audit programme for schools, taking into account their SFVS returns (see section 7.3); and
- intervening in schools causing financial concern.

These arrangements enable the governing body to spend the delegated budget, within the parameters of the Scheme and other statutory requirements. Governing bodies can spend the budget delegated under the Scheme:

- for the 'purposes of the school'⁹² (usually taken to mean for the 'educational benefit of the school's pupils');
- for the benefit of pupils in other schools⁹³; and
- to provide community facilities or services⁹⁴.

Schools can raise extra funds for example, by inviting donations from parents, businesses and others, by renting out premises, and undertaking other income generating activities. Governing bodies must not use their budget share to subsidise the costs of activities that are not covered by the list of permitted activities.

⁸⁹ Section 48(1) of the School Standards and Framework Act 1998.

⁹⁰ Schedule 14 to the School Standards and Framework Act 1998.

⁹¹ The School and Early Years Finance (England) Regulations 2012.

⁹² Section 50(3)(a) of the School Standards and Framework Act 1998.

⁹³ School Budget Shares (Prescribed Purposes) Regulations 2002 made under section 50(3)(b).

⁹⁴ Section 27 of the Education Act 2002.

7.2.3 LA requirements that ensure schools spend money in accordance with Schemes

Governing bodies must comply with the requirements set by their LAs. Although these will vary in detail, they are likely to require governing bodies to:

- cooperate with the audit regime set by the LA;
- use financial controls which meet LA requirements;
- seek to achieve value for money, for example by following LA tendering requirements;
- hold the school senior leadership team to account for expenditure;
- submit an annual budget plan and provide monitoring data;
- complete a Consistent Financial Reporting return annually;
- keep an up-to-date register of business interests for all governors;
- maintain a fixed asset register; and
- comply with LA rules for unusual payments such as write-offs and severance payments.

In order to meet these requirements governing bodies need to:

- assure themselves that the school keeps accurate accounting records;
- manage the school budget and agree expenditure in a way that meets LA requirements for financing schools within the financial year;
- decide how far to delegate to the headteacher their powers to spend the delegated budget. They should set the financial limits of this delegated authority;
- determine the staff complement and a pay policy for the school (in line with STPCD);
- make sure no governor, employee or related party has benefited personally from the delegated budget, other than under agreed arrangements such as a contract of employment;
- make sure the schools' assets are under their control and measures are in place to prevent losses or misuse.

The governing body, or a committee of the governing body, must approve the budget each year and is accountable for managing the finances of the school. Governing bodies generally scrutinise the budget through a finance committee. This allows governors to retain oversight of the decision-making process and to ensure the headteacher accounts regularly for the schools' spending. Governors must assure themselves that the school is securing value for money and acting with financial probity. We strongly recommend that schools recruit one or more governors with sufficient financial skills and experience to undertake effective financial scrutiny.

7.2.4 Whistleblowing

All schools should have whistleblowing arrangements in place and governing body minutes should record that they do. For maintained schools, the arrangements should be based on the local authority policy (which applies to all schools within their remit) and could be tailored as appropriate for the school.

The governing body should agree one or more members of the school's staff and of the governing body to whom staff can report concerns. Maintained schools should make known to staff one or more people at the local authority whom their staff can report concerns to, if they feel a need to go outside the school. All school staff should be made aware of this information.

7.2.5 Personal liability

Governors are not personally liable for anything done 'in good faith' as they exercise their power to spend a school's budget share, or in delegating that power to the headteacher⁹⁵. An example of an act not done in good faith is fraud or expenditure that is authorised to be spent in a way that does not comply with the scheme of delegation.

7.3 Efficiency and value for money

7.3.1 Ensuring value for money

In schools, 'value for money' means achieving the best education for children in relation to budget spent on the school.

7.3.2 LA responsibilities including the Schools Financial Value Standard

LAs have a statutory responsibility to ensure that they secure good value for money in the use of their resources⁹⁶. This includes resources retained centrally for the provision of services to schools as well as expenditure by schools. The requirement to secure good value for money is also a condition of their receiving the Dedicated Schools Grant (DSG). This is the main source of LA funding for schools and is explained further in section 7.4.

All maintained schools must complete the Schools Financial Value Standard (SFVS) each year. The purpose of SFVS is to help schools manage their finances, to support them in securing value for money across all of their spending, and to give assurance that secure financial management arrangements are in place. The SFVS should be

⁹⁵ Section 50(7) of the School Standards and Framework Act (SSFA) 1998.

⁹⁶ The Local Government Act 1999

considered annually by governors, the headteacher and senior staff. The standard does not say what evidence the governing body should consider but governors must be confident that their response has a firm grounding. The school must send a copy of the signed standard to their LA's finance department. All LA maintained schools must complete the SFVS by the end of March each year and submit to their LA for review. More information on SFVS is on GOV.UK.

Governing bodies must demonstrate compliance through the submission of the SFVS assessment form signed by the chair of governors. The form must include a summary of remedial actions with a clear timetable, ensuring that each action has a specified deadline and an agreed owner. Governors must monitor the progress of these actions to ensure that all actions are cleared within specified deadlines.

LA and other auditors will have access to the SFVS returns. When they conduct an audit, they may check whether a governing body's self-assessment is in line with their own judgement. Auditors should make the governing body and the LA aware of any major discrepancies in schools' judgements.

7.3.3 Tools to help governing bodies achieve value for money

There is a wide range of tools available to support governing bodies achieve value for money from a school's resources. Some of the most effective are listed below.

NCTL workshops for governors

In mid-2014, the NCTL will launch training workshops for governors on understanding and driving up financial efficiency in schools.

Benchmarking

We publish schools' spending data annually in the [performance tables](#). The data is grouped into categories of income and expenditure alongside measures of attainment. This allows schools, parents and the wider public to compare how schools spend their money with the outcomes they achieve. The [Schools Financial Benchmarking website](#) enables schools to compare their spending in detail with other schools, consider their comparative performance and think about how to improve their efficiency. Academies can view comparable statistical data for [Income and expenditure in academies in England](#).

Procurement

As well as complying with basic procurement rules, schools should make sure they are getting the best deal when buying goods and services. Schools can then reinvest these savings in their priorities for teaching and learning. GOV.UK has detailed advice on [buying goods and service](#).

School business managers

Skilled school business managers (SBMs) have a big impact on the effective financial management of a school. They save headteachers' and teachers' time and help to ensure that resources are deployed effectively. The NCTL has a role in promoting and developing the role of SBMs and their website has more information.

Collaboration

Schools working together have greater opportunities to generate efficiencies as they can pool funding, purchase services jointly and share staff, functions, facilities and technology across sites. Collaboration can also help schools raise standards and maintain local provision. The NCTL provides advice and guidance for schools thinking about collaborative models.

The [efficiency and value for money in schools](#) section of GOV.UK provides more information.

7.3.4 Loss of the right to a delegated budget

The LA may suspend a school's right to a delegated budget⁹⁷ in certain circumstances. These are where a school's governing body:

- has persistently or substantially breached a requirement or restriction relating to its delegated budget;
- has not managed its budget share satisfactorily; or
- has not managed satisfactorily its expenditure or sums received in the exercise of its power to provide community facilities and services.

The LA must serve a notice to the chair of governors specifying the grounds for suspension and give the governing body and headteacher a copy of the notice. A LA may also intervene to suspend a school's right to a delegated budget where there are concerns about standards⁹⁸. The LA is required to review the suspension within a specified period.

The principal effects on a school of suspension are:

- loss of the right to decide how the delegated budget should be spent; and
- loss of powers in relation to staffing matters.

As a matter of best practice, schools and LAs ought to discuss problems that might lead to suspension and try to solve any problems before the need for formal action arises.

⁹⁷ Schedule 15 to the School Standards and Framework Act 1998.

⁹⁸ Sections 59–66 of the Education and Inspections Act 2006.

Schools should co-operate with LA monitoring of financial issues and take a proactive approach to their resolution.

Where there are concerns about financial management and/or governance in an academy trust, the Education Funding Agency has the power to issue a Financial Notice to Improve (FNtI). If an academy trust is subject to an FNtI all of their delegated authorities and other freedoms are revoked.

7.4 The school budget

The funding system for maintained schools is based on the dedicated schools grant (DSG) and pupil premium. Most funding is provided through the DSG, which is currently allocated to LAs based on historic data. From April 2013, LAs are required to pass on most of the money directly to schools and are only allowed to retain funding centrally under certain circumstances. Most of the DSG is distributed to maintained schools using locally determined formulae. To date, there has been significant variation in how LAs allocate funding to schools. In order to move to a more consistent, comparable and transparent system, from April 2013 LAs will be required to use much simpler formulae. They will be limited to a maximum of 12 factors in their formulae, which relate largely to pupil characteristics and pupil numbers (taken from the Annual School Census data), and less so on the circumstances of the school. Funding is available for pupils with high needs in special schools or mainstream school, based on the needs of the pupil.

The pupil premium is a separate funding stream to be used solely for the educational benefit of children eligible and registered for free school meals at any time during the last six years, or those who have been in continuous public care for six months. From April 2014 children looked after will attract funding from the first day of care, and eligibility will include those adopted from care or leaving care under a special guardianship order or residency order. The amount of funding will rise to £1300 for primary pupils, £935 for secondary pupils, and £1900 per looked after child. The purpose of the pupil premium is to narrow attainment gaps between those children and their peers. Governors should ensure that pupil premium funding is being spent on improving attainment for eligible pupils. Schools must publish online⁹⁹:

- the amount of the school's allocation from the pupil premium grant for the current academic year;
- how it is intended that the allocation will be spent;
- how the previous academic year's allocation was spent; and

⁹⁹ The School Information (England) Regulations 2008 as amended by the School Information (England) (Amendment) Regulations 2012

- the impact this expenditure has had on the educational attainment of pupils who were allocated the pupil premium.

Service premium payments of £300 are also made for children whose parents recently left the armed forces or who died in service, to address the emotional and social well-being of these pupils.

More information about the DSG and pupil premium, including allocations to LAs, is on [GOV.UK](https://www.gov.uk).

The year 7 literacy and numeracy catch-up premium is additional funding which enables schools to provide literacy and numeracy catch-up support for year 7 pupils. It enables those pupils that did not achieve level 4 in reading and/or mathematics at key stage 2 to be given the opportunity to catch up as quickly as possible. As for the pupil premium, governors should ensure that year 7 catch-up premium funding is being spent on improving attainment for eligible pupils. More information and advice is available on [GOV.UK](https://www.gov.uk).

7.5 Charging for school activities

School governing bodies and LAs cannot charge for admission to a state funded school or for the provision of education, subject to the limited exceptions referred to in the following advice and supporting legislation¹⁰⁰, [school charging advice](#). Schools may also invite voluntary contributions for some activities, if they make clear that the contributions are voluntary and that the child's participation in the activity is not dependent on whether or not the parent contributes. No charge can be made unless the governing body or LA has drawn up a charging and remissions policy, which must be made available to parents on request.

Academies (including free schools, studio schools and UTCs) are required through their funding agreement to comply with the law on charging for school activities.

7.5.1 School minibuses

Schools may only charge for transport in their minibuses if they hold a permit issued under section 19 of the Transport Act 1985. In some cases, the permit exempts the school from Public Service Vehicle (PSV) operator and driver licensing requirements. A permit is not required if no charge is made in cash or kind. Schools should apply to their LA for a permit for each minibus they operate individually.

Any charges made may be used to recover some or all of the costs of running the vehicle, including loss of value. The school may not make a profit, even if it is intended to

¹⁰⁰ Sections 449-462 of the Education Act 1996.

go towards the school's other running costs or charitable purposes. Further information is available from LAs or the regional Traffic Commissioners.

7.6 Payments to governors

School governance in England is rooted firmly in the principle of voluntary service. The Government is committed to maintaining and promoting this principle for governors of both academies and maintained schools. This is in line with Charity Law and corporate governance practice in other parts of the public sector.

There are a limited number of specific circumstances in which individuals serving as governors can receive payments from their school. However, this should only take place where it is clearly in the best interests of the school or academy.

7.6.1 Governor allowances and expenses

The law¹⁰¹ allows governing bodies in maintained schools with a delegated budget to choose whether to pay allowances or expenses to governors and associate members of the governing body to cover any costs, such as travel or childcare, which they have incurred as a result of serving as a governor. Where they choose to do so, it must be in accordance with a policy or scheme. Payments can only be paid for expenditure necessarily incurred to enable the person to perform any duty as a governor. This does not include payments to cover loss of earnings for attending meetings. Travel expenses must not exceed the HM Revenue and Customs (HMRC) approved mileage rates, which are changed annually and are on [HMRC website](#). Other expenses should be paid on provision of a receipt (at a rate set out in the scheme) and be limited to the amount shown on the receipt.

Where a governing body does not have a delegated budget allowances and expenses may be paid by the LA at a rate determined by them.

Governing bodies in academies are free to determine their own policy on the payment of allowances and expenses.

7.6.2 Payment for serving as a governor

Paying governors for their role as a governor is subject to very specific legal restrictions. This is true in both maintained schools and academies as set out below.

¹⁰¹ The School Governance (Roles, Procedures and Allowances) (England) Regulations 2013.

Maintained schools

There is no legal power for schools, LAs or the government to pay members of maintained school governing bodies for their duties as governors.

Schools that are performing very poorly may be 'eligible for intervention'. In these schools, the Secretary of State or the LA with the consent of the Secretary of State has the power to replace a governing body with an Interim Executive Board (IEB). They have the power to pay members of an IEB they impose, if they chose to do so. We would expect payment to be offered to IEB members only when this is in the best interests of the school. The Secretary of State has to date not offered such payment.

The legal power also exists for the Secretary of State or the LA to appoint any additional governors to a maintained school governing body if the school is 'eligible for intervention'. The Secretary of State has the power to pay any governors he appoints. However, he has not used this power to date, preferring instead to seek an academy solution for the under-performing school.

Academies

Academy trusts are independent charities. Their governors are therefore also charity trustees who must comply with Charity Law. This means that they can only receive payment for carrying out trustee duties if this payment is specifically allowed by the academy's governing document or has express authorisation from the Charity Commission. For academies, this power is not currently in the model Articles of Association and any change to allow payment to trustees would need Charity Commission authorisation.

The Charity Commission will only authorise payment to academy trustees where it has been clearly shown to be in the charity's interests. They will consider issues like the reasons for payment, whether conflicts of interests are managed appropriately, whether the Principal Regulator (for academies this is the Secretary of State for Education) is agreeable and whether payment of any trustees is in the longer term interests of the charity.

Multi-academy trusts

Like standalone academy trusts, multi-academy trusts are charities. They usually appoint a local governing body for each academy within the trust. These local governing bodies are not charities themselves, and their members are not usually trustees of the multi-academy trust. This means that the charity law restrictions on payment to trustees do not apply to members of a local governing body.

However, the government expects voluntary service to remain normal practice for members of local governing bodies. The legality of paying members of a local governing body does not remove academy trusts' duty under charity law to act only in the interests of their charitable objectives. We would expect any multi-academy trust considering

paying their local governing body members to review very carefully, whether this is in the best interest of the trust and whether this would be appropriate use of public funds. Trusts must also ensure they manage any conflicts of interest in accordance with their trust's Articles of Association.

7.6.3 Payment for services

In both maintained schools and academies it is legal for governing bodies to pay for goods and/or services, including those provided by an individual who is also serving as a governor. However, in doing so they should first assure themselves that this is in the best interests of the trust and ensure that conflicts of interests are dealt with appropriately in the decision making process. In academies, the current model articles of association permit such payments provided that the amount is reasonable and prescribed procedures to prevent conflicts of interest are followed. It is essential that any financial or contractual relationship does not undermine an individual's ability to continue to act impartially and objectively in their role as a governor.

More information about payments to trustees either for services provided or for being a trustee is available in the [Charity Commission guide \(CC11\), Trustee expenses and payments](#).

7.7 Responsibilities of charity trustees

Since 1 August 2011 academies, sixth-form colleges, voluntary and foundation schools are 'exempt charities'. Unlike most other charities, schools that are charities do not have to register with the Charity Commission because they are exempt. As the principal regulator, we monitor charitable schools to make sure that they comply with charity law. Governors of charitable schools must make sure that they:

- comply with requirements in the governing document;
- act responsibly and in the interests of the charity and its beneficiaries (who will be specified in the governing document);
- manage any conflicts of interest; and
- exercise reasonable care and skill, taking professional advice where necessary.

The Charity Commission document '[Charities and charity trustees – an introduction for school governors](#)' provides further information. The [Charity Commission website](#) contains further information for charitable trustees. Information on the '[regulation of exempt charities](#)' is also available on GOV.UK.

7.8 Schools forums

Each LA must establish a schools forum¹⁰². It advises the LA on the operation of the local Schools Budget. The forum has limited powers to make decisions about central expenditure by the LA from the schools budget.

The schools forum¹⁰³ consists of members elected by the headteachers and school governors of maintained schools, academies and pupil referral units. In addition, there are other non-schools members to represent other relevant interests such as private, voluntary and independent early education providers and the local 14-19 partnership. LAs must also consider whether diocesan authorities should be represented. Whilst the balance between headteachers and governors on the forum is for local decision, both governors and headteachers of maintained schools can expect to be involved in electing members to the forum.

7.9 School premises

7.9.1 Ownership of land and buildings

Governing bodies should know who owns the land and buildings from which their school operates. School land is usually freehold. However leasehold interests are possible and there may be several parcels of land with different ownership arrangements that together constitute the school site.

Governing bodies who are considering academy conversion should refer to our detailed [departmental guidance](#) on GOV.UK. As part of this process, they should be aware of the need to consider transfer of land and buildings, in particular the need to engage trustees where appropriate.

In the majority of schools set up through private finance initiatives (PFI), the construction of the buildings are funded by a private sector contractor and their funders. The buildings are then operated and maintained by that private sector contractor for an agreed period, typically 25 years. The PFI contract will set out the maintenance programme. These contracts will remain in force even if the LA transfers its interest in the school land to the governing body, where the school changes status. The LA's interest in such a case is the freehold and the provision for the buildings to revert at the end of the contract term.

7.9.2 Disposal and protection of publicly funded school land

VA, VC and foundation schools have particular protection for their school playing field

¹⁰² Section 47A of the School Standards and Framework Act 1998.

¹⁰³ The Schools Forums (England) Regulations 2012 set out the required membership for Forums.

land. [Guidance](#) on the disposal and protection of publicly funded land is on GOV.UK. Full information is available in our '[Advice on the protection of school playing fields and public land](#)'.

7.9.3 Closure of a foundation or voluntary school

The governing body, foundation body or trustees must¹⁰⁴ apply to the Secretary of State when a foundation or voluntary school is to be closed. The Secretary of State will consider making a legal decision ('direction') about what should happen to that land, which was bought or improved at public expense.

7.10 Funding for capital investment

We provide different kinds of capital funding to LAs and schools as follows:

7.10.1 Condition Maintenance Capital

Maintenance funding is provided to LAs and schools to support them in maintaining the condition of the school estate. Funding is allocated on a purely formulaic basis for LAs, including community and VC schools, VA schools, non-maintained special schools and sixth-form colleges. The formula uses pupil number data taken from the Annual School Census, as a proxy for building need.

For academies, allocations for condition needs are made using the [Academies Capital Maintenance Fund](#). This budget is administered by the Education Funding Agency and accessed through a bidding process.

Maintenance funding for VA schools is made available via the 'Locally Co-ordinated Voluntary-aided Programme' (LCVAP). The LA, in discussion with the voluntary sector, agrees which projects from their maintenance allocation should be prioritised for funding. The EFA administers LCVAP payments.

7.10.2 Basic Need Capital

'Basic need' supports the capital requirement for providing additional pupil places both in new or expanded maintained schools, and academies. Basic need funding is allocated on a purely formulaic basis using data from the Annual Schools Capacity Survey. It is made available to LAs in the first instance and it is for each LA to decide how basic need allocations should be prioritised at local level. Further information on the planned use of basic need funding can be supplied by the LA officer with responsibility for pupil place planning.

¹⁰⁴ Part 2 of Schedule 22 to the School Standards and Framework Act 1998.

7.10.3 Devolved Formula Capital

Devolved Formula Capital (DFC) is capital funding that is allocated, via LAs, on a purely formulaic basis and is made available to schools for their own use, in line with our departmental guidance. DFC is based on the Annual Schools Census data set, collected in January. The level of DFC, as calculated for each school by us, should be passed on by LAs to their maintained schools and by the EFA for academies. DFC is normally used for smaller capital purchases, including information and communication technology.

DFC is calculated for all maintained mainstream primary and secondary schools, special schools, pupil referral units, academies, community technical colleges and non-maintained special schools. Independent schools and nursery (direct grant) schools do not receive DFC.

Details of the capital programmes available to LAs and schools are available on [GOV.UK](https://www.gov.uk). The arrangements for VA schools are explained in the [Blue Book](#) guidance on capital funding for VA schools in England.

Further information on capital funding, including specific advice on academies, VA schools and the 16-19 sector capital, can be accessed by email to: enquiries.efacapital@education.gsi.gov.uk

7.10.4 Developments at schools

The Building Regulations 2010 set standards for the design and construction of buildings in England and Wales. Their prime purpose is to ensure the safety and health of people in or around buildings, but they also cover energy conservation and accessibility. They cover the construction of new schools and many alterations of, and improvements to, existing school buildings. As with other building types, developments at schools are bound by normal planning controls. Information on these building regulations and associated guidance are on the government [Planning Portal](#).

7.10.5 Arrangements for funding premises-related work at VA schools

Responsibility for capital work to VA school premises is shared between the governing body and the LA. The standard rate of grant support to VA school governing bodies from us is 90 per cent. LAs are able to help governing bodies with their 10 per cent contributions, subject to their own spending priorities and budget availability.

There are special arrangements for the proceeds of sale of school land in voluntary schools, which can be found at [Sale of School Land](#) on GOV.UK.

7.10.6 School premises regulations

Regulations set minimum standards for the premises of all existing and new schools in England¹⁰⁵. The regulations cover toilet and washing facilities, medical accommodation, health, safety and welfare, acoustics, lighting, water supplies and outdoor space.

¹⁰⁵ As set out in the School Premises (England) Regulations 2012 and Part 5 to Schedule 1 of the Education (Independent School Standards) (England) Regulations 2010, as amended in 2012. The latter cover academies and free schools.

Section 8 - Information sharing

This section details the roles and responsibilities of governing bodies, headteachers, LAs and other educational establishments in giving information to each other, parents, pupils and the Secretary of State for Education.

Any reference to parents in this section includes all adults with parental responsibility. It also acknowledges the rights, duties, powers, responsibilities and authority that parents have by law.

8.1 Information from the governing body to the Secretary of State for Education

Information from the school performance tables and RAISEonline provide a valuable tool to help governors monitor and compare school performance. The governing body must reassure itself that its school takes part in performance tables data checking exercises, run during September each year, to either confirm data accuracy or provide changes when required. We let headteachers know in advance when each checking exercise will start and when the checking website will become available.

The governing body must reassure itself that mandatory data collections and statistical returns requested by the Secretary of State are given to the relevant timescales and security standards.

The governing body of an academy must also refer to its funding agreement and Articles of Association for details of information to be given to the Secretary of State.

8.2 Information given to the governing body by the LA

When a maintained school governor is appointed, they should receive background information from the LA¹⁰⁶. This should include a copy of the instrument of government for the school, which sets out the composition of the governing body.

The LA gives the governing body and the headteacher financial information concerning the school.

8.3 Information from the governing body to the LA

The governing body of a maintained school must give the LA any relevant information or

¹⁰⁶ Regulation 31 of the School Governance (Constitution) Regulations 2012 or regulation 33 of the School Governance (Constitution) Regulations 2007.

reports in connection with the discharge of the governing body's functions that the LA may need.

Governing bodies of all schools, including community and foundation special schools and academies must on request, provide certain information¹⁰⁷ to parents of pupils or prospective pupils, to LAs and to primary care trusts, including:

- basic information about the school's SEN provision;
- information about the school's policies for the assessment and provision for all pupils with SEN; and
- information about the school's staffing policies and partnership with bodies beyond the school.

Further information is available in the ['SEN Code of Practice'](#).

The governing body must publish the information in a single document and make copies available free of charge to parents, the LA and the primary care trust. The LA may publish the information referred to above if the governing body agrees. Where there is an agreement, the governing body must supply the LA with the information, which must be published without alteration.

8.4 Information from the headteacher to the governing body

The headteacher must give the governing body any information asked for to help it carry out its functions.

An academy headteacher has a contractual relationship with the governing body. As the employer, the governing body would expect requests for information to be met.

8.5 Annual reports to parents

Before the end of the summer term of each school year, headteachers of maintained schools are responsible for preparing and providing parents of all children in the reception year and above with a written report on their child's achievements. The information to be included in the annual report to parents is set out in legislation¹⁰⁸.

¹⁰⁷ Education (Special Educational Needs) (Information) (England) Regulations 1999.

¹⁰⁸ Schedule 1 of the Education (Pupil Information) (England) Regulations 2005 (and the 2008 amendments to the Regulations).

8.6 Information from the governing body to parents

8.6.1 School prospectus and publishing school information on the internet

Governing bodies of maintained schools are required to publish on a website the information specified in the School Information Regulations¹⁰⁹. These regulations were amended¹¹⁰ to remove the requirement for maintained schools to publish an annual prospectus. Schools keep the freedom to choose whether they wish to continue marketing themselves through a prospectus and/or publish on a website additional information they feel is necessary to meet the needs of parents and the wider community.

Maintained schools governing bodies will need to reassure themselves that the school continues to meet any legislative requirements in developing specific policies and communicating them to parents. We publish on [GOV.UK](https://www.gov.uk) the list of statutory policies and documents that schools must have.

Academies must, by their funding agreements, comply with the relevant sections of independent schools standards prescribed under section 157 of the Education Act 2002.

The current model funding agreement requires academies to publish the same information on their website as maintained schools. Any academy should refer to its funding agreement for specific requirements.

[More information](#) on regulatory obligations, including frequently asked questions about the School Information Regulations, is available online.

8.6.2 Publishing School Performance Information

Schools must publish whole-school results from key stages 1–3¹¹¹. We also publish national analyses of the results.

The headteacher must send the Early Years Foundation Stage Profile (EYFSP) results to the LA. The governing body must send teacher assessment results for key stage 1 to the LA (or, in the case of academies, the LA or another accredited provider). We will also expect the results of the phonics screening check to be sent to the LA. Key stages 2 and 3 results must be sent to the STA. The LA collects the EYFSP, phonics screening check and key stage 1 results and sends them on to us.

¹⁰⁹ The School Information (England) Regulations 2008.

¹¹⁰ The School Information (England) (Amendment) Regulations 2012.

¹¹¹ The School Information (England) Regulations 2008 as amended by the School Information (England) (Amendment) Regulations 2012.

8.6.3 The Home-School Agreement

All governing bodies of maintained schools and academies should reassure themselves that a written home-school agreement is in place¹¹². Schools should consider the [statutory guidance](#) on GOV.UK when drafting their agreements.

8.7 Pupils' information

The governing body of a maintained school should reassure itself that its school¹¹³:

- keeps pupils' curricular and educational records;
- provides access to these records to parents;
- reports at least annually on their pupils' progress and educational achievements;
- provides a report to school leavers; and
- makes sure that the pupils' educational records and common transfer file (CTF) is transferred securely.¹¹⁴

[Further information](#) and guidance on each of these responsibilities is available online.

The statutory duties described in the Pupil Information Regulations, such as those to provide parents with access to their child's educational records, do not apply to mainstream academies.

In an academy, the Data Protection Act 1998 (DPA) gives pupils the right to a copy of their own educational information. In certain circumstances, requests for this information may be made by a parent on behalf of their child. The DPA's subject access rights only give parents the right to see personal information about their child when the child is unable to act on their own behalf, or gives their consent.

The academy's funding agreement itself does not place any statutory requirements on academy trusts about providing information to parents for individual pupils. Academy trusts must, however, meet the Education (Independent School Standards) (England) Regulations (SI 2010/1997). Paragraph 24(1) (f) in Part 6 of Schedule 1 requires them to issue an annual written report of a pupil's progress and attainment in the main subject areas.

The provision in the Pupil Information Regulations for the secure transfer of educational records applies to all schools throughout the United Kingdom. This includes transfers from maintained schools to academies, free schools and independent schools. However,

¹¹² Sections 110 and 111 of the School Standards and Framework Act 1998.

¹¹³ The Education (Pupil Information)(England) Regulations 2005.

¹¹⁴ For example, by using our 'school 2 school' system (DfE's S2S) as pupils change schools.

the Pupil Information Regulations and the need to transfer educational records and CTF do not apply where a child changes schools between an academy and free school, or from an academy or free school to a maintained school.

8.8 Retention of pupil educational records

All schools as independent public bodies are directly responsible under the DPA for the collation, retention, storage and security of all information they produce and hold. This includes educational records, headteacher's reports and any other personal information of individuals - pupils, staff and parents. As such, many schools should consult their legal advisers and develop a data retention policy in accordance with the DPA.

8.9 Data Protection Act (DPA) 1998

We do not advise schools on data protection policy. Schools have direct responsibility for ensuring that they comply with the DPA and handle personal data in line with it.

The DPA places certain statutory obligations on schools. These include:

- notifying the Information Commissioner's Office (ICO) of the school's register entry (name and address of the data controller and a general description of how personal information is processed);
- providing a statement or 'privacy notice' to individuals, such as pupils and parents, whose personal data is being processed or held; and
- responding to requests for personal data or 'subject access requests' within 40 calendar days.

Schools should also consider:

- obtaining their own data protection and/or legal advice;
- formulating their own data protection or data handling policies;
- making sure that staff understand or follow policy when handling personal data.

Data protection advice for schools is on the [ICO website](#).

8.10 Freedom of Information Act 2000

Since 1 January 2005, there has been a legal right under the Freedom of Information Act 2000 (FOIA) for any person to make a request to a public authority for access to information held by that authority. This includes governing bodies of maintained schools and academies. Governing bodies are responsible for making sure that a school complies with the FOIA. They should also reassure themselves that the school has in place a Freedom of Information publication scheme. The legal presumption of openness makes it more important that a school decides its policies and conducts its day-to-day

operations in a way that stands up to public scrutiny.

As requests for information can be directed to the school through anyone who works there, the governing body should make sure that all members of staff are aware of the FOIA and how the school handles requests for information. Governing bodies may choose to charge a fee, which must be calculated according to the Freedom of Information and Data Protection (Appropriate Limits and Fees) Regulations 2004. The ICO publishes [guidance](#) on charging a fee on its website.

Schools are under a duty to provide advice and assistance to anyone requesting information and must respond to the enquiry promptly, and in any event, within 20 working days of receipt (not including school holidays ¹¹⁵).

¹¹⁵ The Freedom of Information (Time for Compliance with Request) Regulations 2004, 2009 and 2010 exclude days that are not school days from the 20 working day period.

Annex A

Summary of changes – May 2014 edition

Reference Number	Section of Handbook	Details of change
Section 1 - The role of governing bodies		
1	1.3	A more detailed explanation of what it means for governors to play a strategic role.
2	1.4	More detailed explanation of governing body involvement in operational matters.
3	1.4.3	New information on the Department's 'Need to know' timelines.
4	1.7.1	Updated information on External Reviews of Governance
Section 2 - Constitution and procedures		
6	2.2	More detailed explanation of members and trustees in standalone converter academies and free schools.
7	2.3.1	New section on changes to the School Governance (Constitution) (England) Regulations 2012
8	2.5.4	New section on changes to the School Governance (Federations) (England) Regulations 2012
9	2.5.5	Updated text on notifying the Secretary of State of the intention to federate
Section 3 – Education and Inspection		
10	3.2	Updated content on careers guidance
11	3.8.5	Updated link to 'schools causing concern' statutory guidance.
Section 7 - School finance		
14	7.2.4	Updated text on whistleblowing.

Summary of changes – January 2014 edition

Reference Number	Section of Handbook	Details of change
Section 1 - The role of governing bodies		
1	1.2	Acknowledgement of the benefits of governing more than one school
2	1.3	A more detailed explanation of what it means for governors to play a strategic role
3	1.4	The importance of verbal references in recruiting a headteacher
4	1.4.2	The expectation that governors should determine the scope and format of headteachers' reports
5	1.4.3	Updated text on Ofsted's School performance dashboard
6	1.4.3	Updated information on RAISEonline summary reports
7	1.4.3	Clearer expectations around governors' school visits
8	1.6	New explanation of role of academy trustees as charity trustees and company directors
9	1.7.1	Updated Ofsted inspection criteria
10	1.7.3	New section on governors' personal liability
11	1.8.2	More detail on support to governors from NCTL
12	1.8.2	Further details of support available to governors
Section 2 - Constitution and procedures		
13	2.1	More detail on key considerations in determining the structure and membership of the governing body
14	2.1.1	More detailed explanation of the constitution of academy trust boards
15	2.1.2	More detailed explanation of academy governance models
16	2.1.3	Details of proposed changes to constitution regulations
17	2.1.4	A summary of the benefits to employers of supporting staff to volunteer as a governor
18	2.2.2	New link to joint statement on the principles for the working relationship between governing bodies and school leaders
19	2.2.3	Updated to reflect new Roles, Procedures and Allowances regulations

20	2.2.5	Details of constitution requirements in a new Federation of maintained schools
Section 3 - Education and inspection		
21	3.1	Updated section on the National Curriculum
22	3.1.4	New text on disapplication of the National Curriculum
23	3.1.5	New text on National Curriculum policy
24	3.8.2	New text on Ofsted inspection feedback sessions
Section 4 - Pupil wellbeing		
25	4.2	New text on Pupil Voice and United Nations Conventions on the Rights of the Child (UNCRC)
26	4.6	Link to updated School Uniform guidance
27	4.9.2	New text on governing bodies' responsibility for safeguarding, child protection and Working Together 2013
Section 5 - Teachers and support staff		
28	5.2	Updated text on appointing staff including link to NCTL recruitment toolkit
29	5.2.1	New text on discrimination in appointments and during service
30	5.7.1	New content on trade unions and disputes with staff
31	5.9.3	New context on premature retirement
Section 6 - Organisational changes and the use of school premises		
32	6.1	New text on conversion to academy status
33	6.1.1	New text on support for another school
34	6.2	New text on other organisational changes
35	6.5.2	New link on admission appeals from Information for School and College Governors (ISCG)
Section 7 - School finance		
36	7.1	Updated text on financial requirements for academies
37	7.1.1	Updated text on governors' liabilities
38	7.1.2	Updated text on whistleblowing policies
39	7.3.2	Updated text on governing body responsibility on Schools Financial Value Standard (SFVS)
40	7.3.3	New text on NCTL workshops for governors
41	7.3.3	New link to academy benchmarking data
42	7.3.4	New text on Financial Notice to Improve (FNtI)

43	7.5	Updated text on charging for school activities
44	7.6	New section on payments to governors
45	7.7	New section on responsibilities of charity trustees



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Reference: DFE-00005-2014