

EXPLANATORY MEMORANDUM TO THE GOVERNMENT AND STAFFING OF MAINTAINED SCHOOLS (WALES) REGULATIONS 2017.

This Explanatory Memorandum has been prepared by the Department for Education and Public Services and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

CABINET SECRETARY'S DECLARATION

In my view, this Explanatory Memorandum gives a fair and reasonable assessment of the expected impact of the Government and Staffing of Maintained Schools (Wales) Regulations 2017.

I am satisfied that the benefits justify the likely costs.

Kirsty Williams

Cabinet Secretary for Education

DATE [To be completed following consultation]

DESCRIPTION

1. The Government and Staffing of Maintained Schools (Wales) Regulations 2017 (“the New Regulations”) revise and consolidate the school governance regulatory framework for all maintained schools in Wales, including governance requirements regarding the staffing of those schools.

2. This involves the revocation and re-making of the following regulations, which are together known as the “Existing Regulations”:

- The School Government (Terms of Reference)(Wales) Regulations 2000¹
- The New Maintained Schools (Wales) Regulations 2005²
- The Government of Maintained Schools (Wales) Regulations 2005³
- The Governor Allowances (Wales) Regulations 2005⁴
- The Staffing of Maintained Schools (Wales) Regulations 2006⁵
- The Changing of School Session Times (Wales) Regulations 2009⁶
- The Federation of Maintained Schools (Wales) Regulations 2014⁷.

3. All of the Existing Regulations have been updated and consolidated into the New Regulations.

4. These legislative changes are being made to enable better governance and more successful schools, which in turn leads to better outcomes for pupils.

5. Governing bodies will be more flexible and have greater freedom to make decisions about their constitution and membership, so that they meet the individual needs of their schools. There is also a focus on the skills which governors need in order to carry out their role effectively.

6. The New Regulations simplify the current school governance legislative framework by ensuring that there is a single consistent approach across all maintained schools, and update staffing requirements to help ensure amongst other matters that staff disciplinary hearings are impartial and that the best candidates are picked to become head and deputy head teachers.

¹ S.I.2000/3027 (W.195).

² S.I.2005/2912 (W.209).

³ S.I.2005/2914 (W.211).

⁴ S.I.2005/2915 (W.212).

⁵ S.I.2006/873 (W.81).

⁶ S.I.2009/572 (W.54).

⁷ S.I.2014/1132 (W.111).

7. All maintained school governing bodies are within scope, including federated governing bodies and the temporary governing bodies of new schools.

8. Community, voluntary controlled, community special and maintained nursery schools - as well as local authorities – will be able to make changes to the start and finish times of the school day at the beginning of a school term instead of having to wait until the beginning of a school year. This is provided appropriate consultation takes place, and 3 months' notice of the changes is given.

9. The Collaboration Between Education Bodies (Wales) Regulations 2012⁸ are amended to enable electronic methods of record keeping and communication⁹ by any joint committee which is established as a result of collaboration arrangements between governing bodies, further education institutions and local authorities. The opportunity has also been taken to clarify that collaboration may take place on the appointment of teachers and other school staff, but not on head or deputy head teacher appointments. Disciplinary and dismissal matters continue to be excluded from any collaboration arrangements.

10. The regulations make consequential amendments to The Education (Pupil Referral Units) (Application of Enactments) (Wales) Regulations 2007¹⁰ and the Education (Pupil Referral Units) (Management Committees etc.) (Wales) Regulations 2014¹¹. However, these changes give no additional responsibilities in respect of the management of a PRU, nor do these changes confer additional financial obligations. The ability to produce meeting notes electronically may even result in a small saving.

11. There are also a number of modifications to the School Councils (Wales) Regulations 2005, and consequential amendments to all of the following Regulations:

- The School Councils (Wales) Regulations 2005¹²
- The School Governance (Transition from an Interim Executive Board) (Wales) Regulations 2012¹³
- The Government of Maintained Schools (Training Requirements for Governors)(Wales) Regulations 2013¹⁴
- The Government of Maintained Schools (Clerk to a Governing Body)(Wales) Regulations 2013¹⁵
- The Education (School Development Plans) (Wales) Regulations 2014¹⁶
- The Government of Maintained Schools (Change of Category) (Wales) Regulations 2015.¹⁷

⁸ S.I. 2012/2655 (W.287).

⁹ As for the committees of school governing bodies, this does not include video conferencing.

¹⁰ S.I. 2007/1069 (W.109).

¹¹ S.I. 2014/2709 (W.270).

¹² S.I. 2005/3200 (W.236)

¹³ S.I.2012/1643(W.212)

¹⁴ S.I.2013/2124 (W.207)

¹⁵ S.I.2013/2127 (W.208)

¹⁶ S.I. 2014/2677 (W.265)

12. All school governing bodies will be constituted in accordance with the New Regulations¹⁸ - which will include having a suitably revised Instrument of Government – at one calendar year after the date on which the Regulations come into force. However, these Regulations are being made and laid 6 calendar months before the coming into force date to give governing bodies and local authorities 18 months in which to prepare for this change.

13. In cases where a staff disciplinary/dismissal process or a head/deputy head appointment process is underway before a governing body begins to operate under the New Regulations, a further 6 months will be given to complete these processes using the Existing Regulations.

MATTERS OF SPECIAL INTEREST TO THE CONSTITUTIONAL AND LEGISLATIVE AFFAIRS COMMITTEE

To be completed post consultation

LEGISLATIVE BACKGROUND

To be completed post consultation

PURPOSE & INTENDED EFFECT OF THE LEGISLATION

Background

14. Governing bodies have a vital and demanding role to play in the success of their schools. This is because they set the strategic direction of their school, and hold the head teacher to account for the school's educational and financial performance.

15. We believe that skills must be a fundamental consideration when all categories of governor are being appointed, and that governing bodies must have the flexibility to ensure that they have the full range of skills required to enable successful governance of their schools.

16. In his report on the *Future Delivery of Education Services in Wales*¹⁹ Robert Hill described the quality and skills of governing bodies as variable. This was consistent with the Welsh Government's Schools Challenge Cymru initiative which also raised concerns about the quality of school governors.

¹⁷ S.I. 2015/1521 (W.178)

¹⁸ There are some circumstances where this could happen sooner. For example, when a school or federation of schools change their instrument of government after the coming into force date of the Regulations - or when a new school with a temporary governing body becomes an established school after that date.

¹⁹ <http://gov.wales/docs/dcells/consultation/130621-delivery-of-education-report-en.pdf>

17. Successive annual Estyn reports have also found school governance to be variable, although the latest reports show some general improvement in the level of challenge offered by governing bodies. However, this may be due to the recent introduction of mandatory training for school governors.

18. In its report “*Step Change – A new approach for schools in Wales*”²⁰ the CBI stressed that “*the focus for composition of governing bodies must be skills - ensuring the right people with the right skills are in place is the key to effectiveness*”. The Report concluded “*More freedom should be given to governing bodies to determine composition based on skills, rather than representative roles such as parent governor, LA governor or staff governor*”.

19. The CBI recommended therefore that the restrictions on representation on governing bodies should be relaxed and action should be taken to ensure more volunteers from the business community can serve as governors.

20. The Task and Finish Group on school governance, which was established by the previous Minister for Education and Skills considered²¹ the fitness for purpose of the school governance framework in Wales. It concluded that governing bodies needed to be more skilled in their governance role, and also needed to be able to recruit more widely so that the very best individuals participate in governing schools.

21. The Group also recommended a shift from the current stakeholder model to a “Stakeholder Plus” approach to school governance. This approach would retain the valuable contribution made by the variety of stakeholders in the current school governance model, but the ‘Plus’ aspect would allow governing bodies the flexibility and freedom to recruit additional governors on the basis of skills needed.

22. In its response to the Hill report the Group concluded that there needed to be, amongst other matters, more of an emphasis on the skills governors need to discharge their duties rather than who they represent as well as greater clarity about the role and accountability of governing bodies.

23. We are seeking to revise the legislative framework within which school governance operates to provide school governing bodies with the flexibility they require to be effective, and to constitute themselves to meet the particular needs of their schools. There is a focus on appointing suitably skilled school governors.

24. Governance requirements relating to school staffing and disciplinary matters also need to be updated so that, for example, governing bodies may draw on the expertise of suitably skilled individuals when making decisions on matters of importance such as the appointment of head teachers.

Purpose

²⁰ <http://www.cbi.org.uk/cbi-prod/assets/File/pdf/step-change-a-new-approach-to-schools-in-wales.pdf>

²¹ <http://gov.wales/docs/dcells/publications/140919-school-governance-report-en.pdf>

25. The primary purpose of these New Regulations is to revise the school governance regulatory and staffing framework so that all maintained school governing bodies in Wales are best placed to ensure the effective governance and success of their schools. This is expected to result in better outcomes for pupils.

26. In addition, the Regulations aim to simplify and consolidate the current legislative framework by ensuring that there is a single, consistent approach to school governance across all maintained schools in Wales.

Effects

27. The intended effects of these New Regulations include placing an emphasis on appointed governors being recruited on the basis of their skills, so that governing bodies may have the full range of skills needed for successful school governance within their membership. A new non-governor category of associate member is also introduced, to give governing bodies the ability to appoint individuals with appropriate skills to committees of the governing body.

28. There are changes to the categories and terms of office of school governors, and governing bodies will be allowed to be smaller and have greater flexibility to decide for themselves how they should be constituted and operate. This will enable governing bodies to better meet the often unique requirements of their individual schools.

29. We expect these changes to result in governing bodies regularly considering whether their constitution and membership is the best “fit” for their respective schools.

30. There are also intended effects in relation to school staffing which will:

- Help ensure that staff disciplinary hearings are impartial
- Help ensure that the best candidates are picked to become head and deputy head teachers, and that head and deputy head appointment panels are not too large and unwieldy
- end the situation whereby some schools are without a head teacher for many months by making it mandatory for vacant headship posts to be advertised promptly and not less than twice in a school year until a suitable candidate is found.

31. The respective roles of governing bodies and head teachers are revised and clarified, electronic communication & record keeping are enabled and there are updates to how governors’ allowances are calculated.

32. There are also revisions to how governing bodies may make changes to the timings of the start and finish of the school day for community, voluntary controlled, community special and maintained nursery schools, so that such changes may take place at the beginning of a school term instead of having to wait until the beginning of a school year. Similar revisions are introduced to enable local authorities to change school start and finish times for all categories of school.

33. These effects apply - whenever possible – in the same way to the governing bodies of federations of schools and the temporary governing bodies of new schools as they apply to the governing bodies of “single”, established schools. For example, the governing body of a federation of voluntary aided schools will be constituted and function very much in the same way as the governing body of a “single” voluntary aided school.

34. However, there are some differences which are due to the nature of some forms of governing body. For example, there are no elected parent governors on the temporary governing bodies of new schools as there are no parents of pupils to elect them.

35. As the New Regulations consolidate all of the matters provided for in the Existing Regulations into a single set, provisions which do not directly relate to the revision of school governance are simply restated in the New Regulations. For example, provisions on establishing or joining a federation are not altered by the New Regulations, but are restated as part of the consolidation exercise.

36. The Collaboration between Education Bodies (Wales) Regulations 2012 (“the Collaboration Regulations”) are amended to enable electronic record and minute keeping by joint committees of education bodies, and to clarify that governing bodies may delegate their functions in respect of appointment of school staff – other than the appointment of head and deputy head teachers – to joint committees. Consequential amendments are also being made to update references to the Existing Regulations, so that they refer to the appropriate provisions in the New Regulations.

37. The School Councils (Wales) Regulations 2005 are modified so that they apply to the governing body of a federation and its members.

38. Consequential amendments are also being made to update references to the Existing Regulations in the following regulations:

- i. The School Councils (Wales) Regulations 2005
- ii. The School Governance (Transition from an Interim Executive Board) (Wales) Regulations 2012
- iii. The Government of Maintained Schools (Training Requirements for Governors) (Wales) Regulations 2013
- iv. The Government of Maintained Schools (Clerk to a Governing Body) (Wales) Regulations 2013
- v. The Education (School Development Plans) (Wales) Regulations 2014
- vi. The Government of Maintained Schools (Change of Category) (Wales) Regulations 2015.

39. The New Regulations seek to bring about these intended effects in the following ways.

- a. Altering the categories of governor and eligibility criteria to become a governor, so that there is a greater focus on governors' skills.
 - In the case of appointed governors, there is a requirement that the person or body who appoints the governor believes that the governor has the right skills to contribute to the effective governance and success of the school (the "Skills Criteria").
 - Also central to this focus on skills is the introduction of co-opted governors who are appointed solely because of the skills they offer, rather than having any direct connection with a school. Such governors will be appointed by the governing body and must fulfil the Skills Criteria as well as having – in the opinion of the governing body – the primary aim of wanting the school to secure the best possible outcomes for its pupils.
 - This category of "co-opted governor" will address the recommendation in the CBI's report "*Step Change – A new approach for schools in Wales*" in which the CBI recommended that the restrictions on representation on governing bodies should be relaxed and action should be taken to ensure more volunteers from the business community serve as governors.
 - There are no longer sponsor, representative or additional community governors; the categories of teacher and staff governor are amalgamated into a single category of elected staff governor and governing bodies must have appointed parent governors as well as elected parent governors. The number of elected parent governors must not outnumber appointed parent governors.
- b. Introducing a category of non-governors to be known as "associate members".
 - Associate members will be appointed on the basis of their skills and expertise to sit on a specific committee or committees of the governing body.
 - Associate members may be appointed for between 1 and 4 years, but may be removed at any time by the governing body. There is no official procedure for their removal.
 - Associate members are not governors, and are not automatically entitled to vote on the committees to which they are appointed unless the governing body gives them voting rights. The only exception is

where an associate member is asked to become and appointed as an independent person on either a staff disciplinary committee or a head teacher/deputy head teacher appointment panel, in which case the associate member will automatically have the right to vote due to their status as an “independent person”.

- Having associate members will benefit governing bodies by allowing them to have individuals with specialised skills appointed on a permanent basis to appropriate committees, such as an accountant associate member on a finance committee. As much of a governing body’s work is carried out by committees, it is another way of giving governing bodies the flexibility to ensure that they have all necessary skills needed to carry out their governance roles effectively without having to appoint another governor. It also allows the governing body to have greater stability of membership on such committees, as they will not need to recruit specialists on an “ad hoc” basis for each committee meeting.
 - Governing bodies will still have the option of inviting persons with appropriate skills and expertise to their committees on an “ad hoc” basis. However, these persons are not “settled” committee members and so - unlike associate members - governing bodies would need to issue an invitation to attend each individual committee meeting.
- c. Where there is a surplus of governors - perhaps because a governing body changes its membership numbers - the decision on which governors are to be retained also will be based on an assessment of governors’ skills, rather than the former principle of “first in, last out”.
- d. Giving governing bodies greater choice over their size and membership, so that they have the flexibility to be smaller and more agile while still being able to meet the changing requirements of their schools.
- These changes include allowing most governing bodies to be as small as 7 members; there will be no upper limit on governor numbers to allow governing bodies to decide for themselves how large they should be.
 - Due to the legal requirements for foundation and voluntary schools to have foundation or partnership governors, governing bodies of foundation and voluntary controlled schools will be no smaller than 9 members while the governing bodies of voluntary aided schools will be no smaller than 14 members. Once again, there is no upper limit on governor numbers.
 - The constitution of federated governing bodies will be the same as for the equivalent “single” maintained school. For example, the governing body of a federation of voluntary aided schools will be constituted in the same way as the governing body of a “single” voluntary aided

school. In the case of a federated governing body containing both voluntary controlled and voluntary aided schools, legal requirements mean that the federated governing body will be no smaller than 16 members.

- The constitution of temporary governing bodies of new schools will reflect, as far as possible, the constitution of the equivalent category of “established” school governing body. There are some differences such as the lack of elected parent and staff governors which are mainly due to the temporary nature of the governing body.
 - Changes also mean that governing bodies may choose to have maximum and minimum total membership numbers, as well as maximum and minimum numbers of all categories of governor except local authority, community and pupil governors. This will give governing bodies the flexibility to adapt their size without necessarily needing to change their instrument of government.
- e. Relaxing requirements on terms of office for governors and chair persons, so that governing bodies may choose to tailor their membership and the membership of their committees to “fit” the requirements of their schools.
- This change permits governing bodies to appoint governors for between 1 and 4 years, and to appoint governors from within the same category for differing terms provided their instrument of government allows this.
 - The chair (and vice chair) may be appointed for up to 4 years, provided the term of appointment as chair is no greater than the term remaining of the chair’s appointment as a governor.
 - In the case of federated governing bodies the “disqualification period” during which a person may not be elected as a staff governor if he or she - or another member of staff at the same school in which he or she works - has previously been elected to that governing body will be 1 year. This is a year less than the previous equivalent disqualification period for teacher and staff governors.
- f. Enabling electronic communication and allowing all record keeping by a governing body to be carried out electronically. For example, there no longer will be a requirement for governing bodies to keep signed paper copies of the minutes of their meetings, and the clerk to the governing body will be able to convene meetings and send out agendas electronically. Governing bodies will be able to use video conferencing if some of their members are unable to attend a meeting of the governing body, perhaps due to travel difficulties caused by bad weather. However, a meeting will still need to take place; fully virtual meeting are not allowed.

- g. Making it a requirement for there to be at least one independent person on all staff disciplinary committees, whether or not the harm²² of registered pupils is under consideration. This is so that there is always an objective perspective on disciplinary committees to counter balance any possible bias, however unintentional.
- Under the Existing Regulations a person will be regarded as independent if he or she fulfils the following criteria:
 - They are not a member of the governing body making the appointment
 - They are not the parent of a current or former pupil of the school
 - They are not a current or former member of staff at the school
 - They are not a member or employee of the local authority that maintains the school
 - They are not a trustee of the school
 - They are not a member of the appropriate diocesan authority for the school
 - They do not have the right to appoint foundation governors to the governing body.
 - Given the importance of ensuring that independent persons are truly independent, the criteria by which a person is deemed to be independent is extended by the New Regulations so that the governing body must also be of the opinion that the individual who they wish to appoint as the independent person will:
 - Act fairly and impartially
 - May be reasonably perceived as being able to act fairly and impartially.

This same extended “independence criteria” must also be satisfied by independent investigators, who will continue to be appointed only in certain circumstances where there are allegations of harm to a pupil.

- Provided an associate member is deemed “independent” using the above criteria, he or she may be appointed as the “go to” individual whenever an independent person is required for the staff disciplinary and dismissal committee. However, associate members may not be independent investigators.
- The ability to appoint an associate member as an independent person does not stop governing bodies from appointing independent persons who are not associate members. Such persons would be invited to

²² Regulation 5(1) of the New Regulations defines “harm” as “physical, sexual or emotional abuse”.

attend staff disciplinary panels as the independent person on a case by case basis.

- h. Ensuring that schools are without a head teacher for as short a time as possible by making it mandatory for vacant headship posts to be advertised promptly and not less than twice in a school year until a suitable candidate is found. While it may be that some schools wish to give temporary head teachers time to pass the head teacher examinations we believe that the role of head teacher is crucial to the success of schools, and that headship vacancies should be filled as quickly as possible.
- i. Making the appointment process for a head or deputy teacher more rigorous by requiring there to be at least one independent person on all head and deputy head teacher appointment panels, and for such persons to automatically have voting rights.
 - Our anecdotal evidence is that some governing bodies are daunted by the prospect of appointing head and deputy head teachers, and may not have the required skills to make the selection and interview process as rigorous as it ought to be. Therefore, the New Regulations alter the constitution of appointment panels so that they must include at least one independent person with the right to vote.
 - For example, a long standing head teacher from a successful school in another town or area should have the right skills to appropriately interview candidates and draw out their strengths and weaknesses.
 - Similarly to the appointment of independent persons on staff disciplinary committees as discussed in sub-paragraph (g) above, the independent person on a head teacher appointment panel may be either an associate member or a person who is invited by the governing body to attend on a “one off” basis provided they are indeed “independent” and fulfil the same independence criteria as independent persons on staff disciplinary and dismissal committees.
 - In addition, the Chief Education Officer of the relevant local authority – or his or her representative – is to be given the right to attend and vote on head and deputy head teacher appointment panels.
 - In the case of voluntary aided schools - and voluntary controlled schools and certain foundation schools should they so wish – the diocesan authority officer also been given a right to attend and vote on head and deputy head teacher appointment panels.
 - The ability for some schools to have to have large, unwieldy selection panels for head and deputy head teacher posts is ended. The maximum size of all selection panels is now limited to between 7 and 9 members to allow for the panel to be appropriately focussed and robust when considering such important appointments.

j. Clarifying and strengthening the role of the governing body to enable better governance, including holding the head teacher to account for the success - or otherwise of the school. Playing the part of a “critical friend” to the head teacher, and being able to offer only “constructive criticism” is no longer appropriate.

- The Existing Regulations provide that a governing body has a “broadly strategic” role in the running of their school and is responsible for setting the school’s policies, aims and objectives. The new Regulations strengthen this so that a governing body’s role will include:
 - Setting the strategic direction and ethos of their school
 - Ensuring that the head teacher performs his or her responsibilities for the educational performance of the school
 - Ensuring the sound, proper and effective use of the school’s financial resources.
- As a result of these changes, the role of the head teacher is also clarified so that:
 - The head teacher’s responsibilities include-
 - The internal organisation, management and control of the school
 - the educational performance of the school
 - The head teacher is directly accountable to the governing body for the performance of all his or her responsibilities
 - The head teacher must comply with any reasonable direction of the governing body
- These changes are required if the flexible and well-skilled governing bodies introduced by these New Regulations are to be able to successfully govern their schools.

k. Providing a technical update on the way in which maximum payments for travel and subsistence payable by a governing body to its governors and other members are calculated, so that they are set in accordance with Part 8 of the Local Government (Wales) Measure 2011²³.

l. Revising the procedure by which the governing bodies of community, voluntary controlled, community special and maintained nursery schools - as well as local authorities for all categories of school – implement changes to the start and finish of

²³ 2011 nawm 4.

the school day so that such changes may take place at the beginning of a school term instead of having to wait until the beginning of a school year. This is provided that 3 months' notice is given to parents of registered pupils and other interested parties of the changes to start and finish times.

m. Consolidating all of the matters provided for in the Existing Regulations into a single set so that - even where provisions are not being revised by the New Regulations because they do not directly involve the revision of school governance – they are restated as part of the consolidation exercise.

n. Amending the Collaboration between Education Bodies (Wales) Regulations 2012 to enable electronic communication and record keeping, and make all necessary consequential amendments.

o. Making all necessary modifications and consequential amendments to other regulations.

CONSULTATION

To be completed post consultation.

PART 2 – REGULATORY IMPACT ASSESSMENT OPTIONS

Option 1: Do nothing

1. Under this option there would be no revision of the school governance regulatory framework; school governing bodies would continue to be subject to the current regime under the Existing Regulations and the related statutory guidance²⁴.
2. As a result, maintained school governing bodies in Wales would not be best placed to ensure the effective governance and success of their schools.
3. For example, categories of school governor would remain unchanged as would the composition of governing bodies and governors' terms of office. As a result governing bodies would not be given the flexibility to be smaller and to "tailor" themselves to meet the individual requirements of their schools.
4. There would not be a focus on appointed governors having the right skills to contribute to the effective governance and success of their school. Governing bodies would not be able to ensure that they have the full range of skills needed to enable appropriate school governance within their membership.
5. Where there were surplus governors the decision on which governors should be retained would continue to be based on the "first in, last out" principle, rather than those governors with the skills most likely to contribute to the effective governance and success of a school being retained.
6. As a further example, there would be no updating of school staffing requirements to help ensure that staff disciplinary hearings are impartial and that the best candidates are picked to become head and deputy head teachers. There would not be a duty on governing bodies to advertise for headship vacancies in a timely manner and so ensure that their schools are without a head teacher for as short a period as possible.
7. Nor could governing bodies solely keep electronic records of meetings or communicate with governors or committee members by electronic means such as email; "paper" methods would have to continue to be used.
8. The role of the governing body would not be clarified and strengthened, and governors' allowances would continue to be calculated in an outdated way.
9. Community, voluntary controlled, community special and maintained nursery schools as well as local authorities would have to wait until the beginning of the school year to implement changes to the start and finish of the school day – even if those changes had been consulted upon and agreed many months earlier.

²⁴ A Governors' Guide to the Law available at:
<http://gov.wales/topics/educationandskills/schoolshome/fundingschools/school-governance/schoolgovguide/?lang=en>

10. All of the matters provided for in the Existing Regulations would not be consolidated into a single, accessible set.

11. For the reasons stated above, option 1 is not the preferred option.

Option 2: Do minimum - update existing statutory guidance²⁵

12. Under this option the Existing Regulations would not be revised but related statutory guidance would, where possible, be amended.

13. This is not the preferred option, as revision of guidance is not able to make up for there being no revision of the Existing Regulations. This is because:

- Guidance cannot contradict or alter the requirements in the Existing Regulations
- Governing bodies need only “have regard” to statutory guidance, whereas requirements in regulations are mandatory.

14. For example, guidance would not be able to revise the requirements surrounding the categories and terms of office of governors which are set out in the Existing Regulations, or requirements regarding the composition of governing bodies. As a result governing bodies would lack the flexibility to be smaller and to “tailor” themselves to meet the individual requirements of their schools.

15. While guidance may say that appointed governors should - in the opinion of the person or body appointing them - have the skills necessary to contribute to the effective governance and success of their school this could not be made a requirement. Governing bodies must have regard to statutory guidance and have good reasons for departing from it, but unlike regulatory requirements it is not mandatory that guidance is always followed.

16. Where there were surplus governors the decision on which governors should be retained would continue to be based on the “first in, last out” principle, rather than those governors with the skills most likely to contribute to the effective governance and success of a school being retained. This is because guidance could not override the provisions of the Existing Regulations.

17. There would be no mandatory changes to school staffing requirements to help ensure that staff disciplinary hearings are impartial and that the best candidates are picked to become head and deputy head teachers. This is because guidance could not make a requirement for there to be at least one independent person on all staff disciplinary committees and head teacher appointment panels.

²⁵ A Governors’ Guide to the Law available at:
<http://gov.wales/topics/educationandskills/schoolshome/fundingschools/school-governance/schoolgovguide/?lang=en>

18. “Paper” methods of record keeping and communication would have to continue to be used, the role of the governing body could not be appropriately clarified and strengthened, and the necessary technical amendment to the way in which governors’ allowances are calculated would not be made.

19. Nor could the revision of guidance alter the existing regulatory requirement for changes to the times of the start and finish of the school day to be implemented only at the beginning of the school year.

20. Also, the matters provided for in the Existing Regulations would not be consolidated into a single, accessible set.

21. For the reasons stated above, option 2 is not the preferred option.

Option 3: Make the new Regulations

22. By making the legislation we will enable effective school governance and more successful schools by:

- Placing an emphasis on school governors being recruited, appointed and retained on the basis of their skills and whether they can contribute to the effective governance and success of their schools
- Giving governing bodies the ability to ensure for themselves that they have the full range of skills needed for successful school governance within their membership at governing body and committee level
- Giving governing bodies the flexibility to be smaller and to have more of a say in how they should be constituted and operate, so that they may better meet the individual requirements of their schools. As a result, governing bodies will be encouraged to regularly consider whether their constitution and membership is fit for purpose
- Enabling electronic communication and record-keeping by governing bodies
- Revising school staff disciplinary and dismissal requirements to help ensure that hearings are impartial
- Revising school staffing requirements so that the best candidates are picked to become head and deputy head teachers; and ending the situation whereby some schools are without a head teacher for many months by making it mandatory for vacant headship posts to be advertised promptly and not less than twice in a school year until a suitable candidate is found
- Strengthening and clarifying the role of governing bodies and updating how governors’ allowances are calculated
- Allowing community, voluntary controlled, community special and maintained nursery schools - as well as local authorities – to implement changes to the

start and finish times of the school day at the beginning of a school term provided 3 months' notice is given

- Consolidating all of the Existing Regulations into a single, accessible set
- Enabling joint committees of collaborating governing bodies to use electronic means of communication and record keeping.

23. For these reasons option 3 is the preferred option.

COSTS AND BENEFITS

Option 1: Do nothing

24. This option maintains the current policy and as such, there are no additional costs or benefits associated with this option.

25. However, there are potential disadvantages to not improving the current system.

26. Most importantly, maintained school governing bodies in Wales would not be best placed to ensure the effective governance and success of their schools. As robust governance is integral to schools achieving the best for their pupils, this probably would result in poorer outcomes for pupils.

27. Also the opportunity would be lost to consolidate and generally update the existing regulatory framework to, for example, enable electronic communication and record keeping. Having to use paper would mean that the potential savings set out in paragraph 125 of option 3 below are lost.

28. More examples of the disadvantages of doing nothing are set out under “Option 1” of the Regulatory Impact Assessment Options above from paragraphs 3 to 10.

Option 2: Update existing Statutory Guidance²⁶

29. In this option the Existing Regulations would not be revised, but related statutory guidance would – as far as possible - be amended.

30. Guidance could be updated to say that governing bodies and others with the responsibility of appointing governors should consider whether a prospective governor has the necessary skills to contribute to the effective governance and success of the school before the appointment is made.

31. However, as is discussed in “Option 2” of the Regulatory Impact Assessment Options above, updating guidance could not make such considerations mandatory in

²⁶ A Governors' Guide to the Law available at:
<http://gov.wales/topics/educationandskills/schoolshome/fundingschools/school-governance/schoolgovguide/?lang=en>

the same way as revision of the Existing Regulations. Nor could changes to guidance alter any regulatory requirements such as those on the membership and terms of office etc. of governing bodies which are set out in the Existing Regulations. This is a major disadvantage of this option.

32. Also, the opportunity to consolidate the Existing Regulations into a single, accessible set would be lost.

Costs

33. There would be a cost to the Welsh Government to update the guidance. We estimate that it would take a higher executive officer around a week to update the guidance in electronic and hard copy format, get those changes notified to local authorities and answer any immediate queries regarding those changes.

34. Given the median cost of a higher executive office of £42,270²⁷ p.a., this works out as a cost of approximately £800 to the Welsh Government. We would expect such costs to be absorbed within the day-to-day running of the Department for Education and Public Services.

Benefits

35. There would be a limited benefit under this option because - provided the amendments to the guidance were appropriately actioned by governing bodies and local authorities - a stronger focus could be placed on appointing governors on the basis of their skills.

36. As discussed in paragraphs 13-19 in “Option 2” of the Regulatory Impact Assessment Options above, amendments to guidance could not make such considerations mandatory. Nor could changes to guidance alter any regulatory requirements such as those on the membership and terms of office etc.

Option 3: Make the legislation

Costs to Local Authorities

Instruments of Government etc.

37. Making the legislation will mean that all maintained school governing bodies, including federated governing bodies and temporary governing bodies of new schools, will operate under the revised school governance framework at one calendar year after the date on which the Regulations come into force.

38. However, there are some circumstances which will “trigger” a governing body needing to be constituted under the New Regulations before this one year period has elapsed, provided that the “triggering” circumstances take place on or after the coming into force date of the New Regulations.

²⁷ Inclusive of employer’s pension and national insurance contributions as at November 2015.

39. For example, when the governing body of a school or federation of schools change their instrument of government - or when a new school with a temporary governing body becomes an established school - the corresponding school governing bodies will be constituted under the New Regulations from the date of the change or the date of incorporation of the new school.

40. One of the consequences of school governing bodies needing to be constituted under the New Regulations at one year after the coming into force date is that all of these bodies will need to have revised instruments of government drawn up which reflect the New Regulations. This will need to be done for all maintained schools in readiness for when they must begin to operate under the new regulatory regime.

41. It will be the primary responsibility of the governing body to prepare the revised draft instrument of government. However, before all such instruments can be made they must first be submitted in draft to the local authority for consideration of whether the draft complies with all relevant legislative provisions.

42. This means that local authorities have to effectively approve revised instruments of government for all schools within their areas; all such instruments will take effect 1 year after the coming into force date of the Regulations unless one of the “triggering” circumstances discussed in paragraphs 38 and 39 above occur.

43. By contrast, if the New Regulations had not been made then local authorities would only have to deal with effectively approving revised instruments under the Existing Regulations whenever a change was made to the constitution of a governing body, or a new school or federation was formed. For the most part, these are the same circumstances which will “trigger” a governing body needing to operate under the New Regulations and revise their instrument of government described in paragraphs 38 and 39 above.

44. The table below shows how many maintained schools there are in each local authority area²⁸.

Local Authority	Number of schools
Isle of Anglesey	53
Gwynedd	111
Conwy	63
Denbighshire	56
Flintshire	81
Wrexham	70
Powys	99
Ceredigion	54
Pembrokeshire	70
Carmarthenshire	116

²⁸ As at November 2015. Not including Pupil Referral Units

Swansea	95
Neath Port Talbot	71
Bridgend	59
The Vale of Glamorgan	57
Rhondda Cynon Taf	126
Merthyr Tydfil	28
Caerphilly	90
Blaenau Gwent	28
Torfaen	34
Monmouthshire	36
Newport	55
Cardiff	126
Total for Wales	1,578

45. We realise that approving draft instruments for all maintained schools in their areas may seem a daunting task for Governor Support Officers (GSOs), particularly for GSOs working within local authorities with large numbers of schools.

46. We also appreciate that GSOs will need to devote time to providing advice and support to all governing bodies within their areas to help them prepare for being constituted under the New Regulations from one year after the coming into force date of those Regulations.

47. However, we will effectively give 18 months notice of the need to revise all instruments of government. This is because we intend to make and lay the New Regulations 6 months before the coming into force date, and require all school governing bodies to be constituted “en masse” in accordance with these Regulations - which will include having a suitably revised instrument of government – one calendar year after the date on which the New Regulations come into force.

48. This means that even in the case of the local authorities with the most maintained schools and therefore the greatest number of school governing bodies – namely Rhondda Cynon Taf and Cardiff at 126 each²⁹ - only 7 revised instruments of government need be prepared each month in anticipation of the change to all maintained schools being constituted under the New Regulations.

49. Similarly, an average of only 7 governing bodies per month will need to be advised about the changes which are being introduced by the New Regulations.

50. Even if the New Regulations were not being made, some schools would have altered their instrument of government anyway in the ordinary course of their day-to-day activities. This could happen, for example, when a school changes its name.

²⁹ The actual number of governing bodies will be less if there are federations within a local authority’s area. Please see paragraph 53 below.

51. If a school makes such a change after the coming into force date of the New Regulations but before the one year period has elapsed it will operate under the New Regulations from the date of that change, so that there is no need for a second instrument of government to be prepared.

52. The Welsh Government does not hold information on how often governing bodies revise their instruments of government, and therefore the extent to which GSOs are involved in advising on and approving revised instruments of government in the course of their ordinary business. However, even if it is a small number it decreases the impact made by these Regulations on GSOs having to revise instruments of government for all maintained schools.

53. In addition, some schools have chosen to federate and so only have one governing body for all of the schools within their federation. There are currently 21 federations in Wales made up from 49 schools³⁰, which will also help to reduce the work of GSOs advising on and approving revised instruments of government.

54. It is estimated that the time required for a GSO to advise governing bodies on the changes made by the New Regulations and then approve the revised instruments of government will average 2 hours per school. The median cost to a Local Authority for a GSO is assumed to be £30,800 per annum (including on costs)³¹. Given that there are 1,576 schools in Wales, the cost to Local Authorities is therefore estimated to be approximately £56,200. The impact on individual Local Authorities will vary according to the number of schools in their area, with the cost ranging from approximately £1,000 to £4,500 per Local Authority.

55. It is worth reiterating that this work can be spread over the 18 month 'notice period'. This is intended to help minimise the burden on Local Authorities. As stated above, even in the Local Authorities containing the highest number of schools, the average number of instruments of government that would need to be revised each month to meet the deadline is 7. On the basis that each instrument of government will require an average of 2 hours input, this represents no more than 2 working days each month during the notice period.

56. Assuming that the cost is spread evenly over the notice period, the cost to Local Authorities is estimated to be £31,220 in 2017-18 and £24,980 in 2018-19.

Other costs to local authorities

57. We do not envisage any further costs to local authorities as a result of these Regulations. This is because many of the changes brought about by the New Regulations are to give school governing bodies the flexibility they need to effectively govern their school, and so do not directly impact on local authorities.

58. Even those changes which directly effect local authorities should not have a pecuniary impact. For example, the Chief Education Officer of the local authority – or their representative – already has the right under the Existing Regulations to attend

³⁰ As at November 2015.

³¹ As at November 2015.

head and deputy head selection panels and to offer advice. While the New Regulations go further by making CEOs a mandatory part of the selection panel and giving them automatic voting rights, anecdotal evidence is that CEOs usually already choose to attend these panels anyway so their will be no additional costs of attendance.

59. We do not believe that allowing local authorities to change the start and finish times of the school day at the beginning of a school term will lead to any further costs being incurred. These changes simply enable alterations to start and finish times to come into effect more quickly; they do not add to the procedural burden of local authorities when making these changes.

60. The main estimated costs of Option 3 to local authorities over the financial years 2016-17 to 2019-20 are summarised in the table at paragraph 147.

Benefits to Local Authorities

61. Many of the changes brought about by the New Regulations will not bring advantages for local authorities which are quantifiable in monetary terms, but will instead have the benefit of enabling effective school governance and more successful schools which achieve better outcomes for their pupils.

62. Specific examples of these changes and how they are expected to lead to effective school governance and successful schools are set out at paragraphs 121-122 below in the section on “Benefits to governing bodies”.

63. More effectively governed, successful schools will in turn lead to less work for local authorities in supporting those schools. There will also be the benefit of pupils achieving better outcomes, and more of a chance of parents being content with the education provided by the local authority for their children.

Costs to School Governing Bodies

A Focus on Skills

64. We do not expect placing an emphasis on school governors being recruited, appointed and retained on the basis of their skills - and whether they will contribute to the effective governance and success of their schools - to have any costs implications for school governing bodies.

65. We have anecdotal evidence that governors' skills are already assessed by some governing bodies as part of their internal process of ensuring they have the full range of skills needed to govern successfully. Giving governing bodies greater flexibility to ensure for themselves that they have the full range of skills needed for successful school governance within their membership should not mean there are extra costs.

66. Nor should the removal of the categories of additional community, representative and sponsor governors and the introduction of co-opted governors bring costs implications. If existing governors are sufficiently skilled, they may be retained as co-opted governors.

67. Similarly, the introduction of non-governor “associate members” should not bring any extra costs. Allowing governing bodies to have these members with specialised skills - who are appointed on a permanent basis to committees - is another way of helping governing bodies to have all skills necessary to carrying out their governance role effectively.

68. It is not expected that these members will be paid to attend committee meetings, although they will be able to claim travel and subsistence in the same way as governors. However, our anecdotal evidence is that most governing bodies do not routinely reimburse travel expenses to governors anyway.

Smaller, more flexible governing bodies

69. Changing constitutional requirements for governing bodies to give them the flexibility to be smaller and more agile - and to have greater choice about their size and membership - is not expected to have any costs implications.

70. For example, allowing most³² governing bodies to be as small as 7 members - but with no upper limit on governor numbers to allow governing bodies to decide their size themselves - is not expected to result in increased expenditure.

71. Similarly, relaxing requirements on terms of office for governors and chair persons and allowing governing bodies to have maximum and minimum numbers of governors in certain categories should not affect costs.

72. The requirement to draw up a revised instrument of government is not expected to have costs implications for governing bodies which, unlike local authorities, only have to deal with one instrument and should be already keeping that instrument under review and making necessary amendments to it as a matter of course. Indeed, if governing bodies choose to be smaller there may be savings due to fewer travel and subsistence claims.

Electronic communication and record keeping

73. Under the Existing Regulations there is a requirement for record-keeping and communication by governing bodies to be carried out in “traditional” or “paper” form.

74. For example, paper copies of minutes of governing body meetings must be kept in a book (usually loose-leaf) which is signed on every page by the chair. Similar requirements apply to minutes of committee meetings of governing bodies.

³² Governing bodies of foundation and voluntary schools will be larger; please see paragraph 38(d) of the Explanatory Memorandum for an explanation.

75. Also, the clerk to the governing body has to send out paper copies of notices of meetings, copies of agendas and any supporting paperwork to governors and other committee members.

76. In addition the agenda, minutes and supporting documentation of meetings must be made available at the school in paper form for inspection by any interested person.

77. Changing these requirements to allow electronic record-keeping and the supply of information by electronic means of communication should not have any negative cost implications for school governing bodies.

78. Instead, there should be a positive impact in terms of saving time - especially for the clerk - and on the cost of producing of paper copies of minutes etc. Possible savings from no longer requiring paper copies of documents are explored as a benefit in paragraphs 123-125 below.

Independent Persons on staff disciplinary panels

79. Under the Existing Regulations an independent person must be appointed to a staff disciplinary committee whenever the matter under consideration involves an issue of harm to a pupil and it is necessary to appoint an independent investigator³³ to investigate the issue.

80. The New Regulations require all staff disciplinary committees – not just those involving issues of harm to pupils – to have at least one independent person on the committee who is not a governor. This will lead to an increase in the instances in which an independent person is required.

81. Under the New Regulations independent persons may be recruited to disciplinary committees either on a “settled” basis by using associate members (provided they are independent, as discussed in paragraph 38(g) of the Explanatory Memorandum) or by appointing an independent person on a “case by case” basis whenever a disciplinary committee is required.

82. We would expect that associate members, like school governors, would never be paid for their time and at most would be reimbursed their travel expenses. However, for the purposes of this costing exercise, we have taken a “worst case scenario” and assumed that independent persons are not associate members and therefore may in theory be paid for their time.

83. Welsh Government does not hold statistics for the number of all staff disciplinary cases in a year, nor does it hold statistics for the number of staff disciplinary cases involving pupils. It only holds statistics for the number of staff disciplinary cases which involve allegations of harm to pupils and for which it was necessary to appoint an independent investigator.

³³ Even where there are allegations of harm to a pupil it is not always necessary to appoint an investigator; for example, where the member of staff admits to harming the pupil or is found guilty of a criminal offence.

84. Between July 2014 and December 2015 there were 36 staff disciplinary cases which involved harm to pupils for which an independent investigator was appointed. This equates to approximately 24 cases a year.

85. Our best estimate is that there would be double that number of staff disciplinary cases which either do not involve the harm of pupils or for which an independent investigator would not be required. As the New Regulations now require an independent person to be appointed to every staff disciplinary committee, this would mean that a further 48 independent persons would be needed (to be known as “newly required independent persons”).

86. The Welsh Government carried out an informal survey of local authorities to find out whether independent persons are currently paid for their time or if, like governors, independent persons usually volunteer and receive no recompense.

87. Of the 8 responses received, 5 said that independent persons were always volunteers who received neither payment nor expenses. 1 response said that the situation was “mixed” with some schools paying independent persons although no examples of the size of a typical payment were given.

88. The final 2 responses both said that independent persons would currently only receive their travel expenses. However, one of these responses went on to say that they were exploring the possibility of using a commercial consultancy to provide independent persons. A figure of £250 for a full day or £125 for a half day was given.

89. As the majority of the respondents were of the opinion that independent persons would continue to be volunteers and would receive no recompense, in most cases the requirement to have newly required independent persons is unlikely to have cost implications.

90. A couple of respondents mentioned that their schools reimbursed independent persons their travel expenses. The maximum payments which currently may be made to governors for travel expenses is reimbursement of exact public transfer costs, or 45p per mile if a private car is used. Assuming that these same rates are used for independent persons and that travel was by private car with an average distance of a 10 mile “round trip”, this would mean a cost of £4.50 for every independent person who has his or her travel costs reimbursed.

91. If all newly required independent persons across Wales were to have these average travel costs reimbursed, then using our estimate of an increase in the numbers of independent persons required for staff disciplinary committees of 48 this would equate to a £216 total increase in costs a year. Averaged out across 22 local authorities this equates to just under £10 per local authority area.

92. If these newly required independent persons were to be paid for their time and not just given their travel expenses, then costs will undoubtedly be higher.

93. Using the rates mentioned by one respondent for the supply of independent persons at a rate of £250 for a full day or £125 for half a day, and assuming that an

average of a full day is required for the independent person to carry out their role on a staff disciplinary committee this could mean an extra cost of £250 for each independent person.

94. If all newly required independent persons across Wales were to be paid in this way, then using our best estimate of an increase in numbers of independent persons required as a result of the new Regulations of 48, this would mean an extra total yearly cost of £12,000.

95. However, only 2 out of the 8 respondents (or 25%) mentioned the possibility of independent persons being paid for their time in their areas, so if this pattern were to be repeated across Wales and schools in a quarter of all local authorities decided to pay their independent persons, then we would expect the total extra cost of payment due to new requirements to be no more than £3,000.

96. We hope that even for schools within these 25% local authorities costs will in practise be £0. This is because the Welsh Government intends to set out in guidance that where possible reciprocal arrangements should be made between schools and federations - and even local authority and consortium areas - for the provision of independent persons so making payment unnecessary.

Independent persons on head and deputy head teacher appointment panels

97. Under the Existing Regulations there is no requirement for an independent person to be on a head or deputy head teacher appointment panel, or to have a vote. Instead governing bodies currently may choose to invite persons who are not governors to attend selection panels, and to decide whether these persons are to be given a vote.

98. The New Regulations make it mandatory to have at least one independent person with a vote on a head or deputy head teacher selection panel. This will lead to an increase in the instances in which an independent person is required.

99. Under the New Regulations independent persons may be recruited to head and deputy head teacher appointments panels either on a “settled” basis by using associate members (provided they are independent, as discussed in paragraph 38(g) and (i) of the Explanatory Memorandum) or by appointing independent persons as and when an appointments panel is required.

100. As with independent persons on staff disciplinary committees we would expect that associate members, like school governors, would never be paid for their time and at most would be reimbursed their travel expenses. However, for the purposes of this costing exercise, we have taken a “worst case scenario” and assumed that independent persons are not associate members and therefore may in theory be paid for their time.

101. Welsh Government does not hold statistics for the number of head and deputy head appointments which are made within a year, so we carried out an informal

survey of local authorities to find out how many head and deputy head teacher selection panels they had in the school year 2014/15.

102. 10 local authorities replied to the survey to give us the numbers of head and deputy head appointments panels within their areas. The highest total number of panels in a local authority area was 30, and the lowest just 4.

103. The total number of such panels for all 10 respondents was 136. If these numbers were to be repeated across all 22 local authorities in Wales it would mean that a total of approximately 300 head and deputy head teacher selection panels took place in 2014/15. This in turn would mean that a further 300 independent persons may be required for such appointments panels as a result of the New Regulations (to be known as “newly required independent persons”).

104. However, we have anecdotal evidence that as many as half of all governing bodies make use of the power in Existing Regulations and already choose to appoint an independent person to a head or deputy head teacher appointment panel.

105. Therefore, our best estimate is that the real number of newly required independent persons is likely to be substantially smaller at 150.

106. The results of the informal survey carried out by the Welsh Government on payment of independent persons - which we discuss in relation to appointment of independent persons on staff disciplinary committees at paragraphs 86-89 above – also apply to use of independent persons on head teacher appointment panels.

107. As most of the respondents to the survey were of the opinion that independent persons would continue to be volunteers and would receive no recompense, in the majority of instances the requirement for newly required independent persons will not have cost implications. Should this situation change, we have analysed potential travel and payment costs below.

108. The maximum payment which currently may be made to governors for travel expenses is reimbursement of exact public transfer costs, or 45p per mile if a private car is used. Assuming that these same rates are used for independent persons and that travel was by private car with an average distance of a 10 mile “round trip”, this would mean a cost of £4.50 for every independent person who has his or her travel costs reimbursed.

109. If all newly required independent persons across Wales were to have these average travel costs reimbursed, then using our estimate of 150 this would mean a £675 p.a. increase in costs across Wales.

110. If these newly required independent persons were to be paid for their time then costs will undoubtedly be higher. Using the rates mentioned by one respondent for the supply of independent persons at a rate of £250 for a full day or £125 for half a day, and assuming that an average of a full day is required for the independent person to carry out their role on an appointment panel, this would mean a cost of £250 for each independent person.

111. If school governing bodies in all 22 local authorities were to move towards paying independent persons, then using our best estimate of 150 this would mean a total extra cost of £ 37,500 p.a.

112. However, only 2 out of the 8 local authorities (or 25%) mentioned the possibility of independent persons being paid for their time in their areas. If this pattern were to be repeated across Wales and schools in a quarter of all local authority areas decided to pay their independent persons, then at worst we would expect the total extra cost of payment due to the new requirements to be in the region of £9,375 p.a.

113. Also, we hope that even for schools in these 25% of local authority areas actual costs will in practice be £0. This is because the Welsh Government intends to set out in guidance that the ideal independent person for head and deputy head teacher selection panels would be a head teacher from a successful school or federation of schools in a neighbouring area. In such circumstances we hope that reciprocal arrangements will be made between schools and federations - and even local authorities and consortium areas - so that payment is unnecessary.

A requirement to advertise promptly and not less than twice a school year to fill head teacher vacancies

114. Governing bodies should already be advertising promptly and at reasonable intervals to fill their head teacher vacancies. However, there may be some small additional costs where that is not already happening.

Clarifying and strengthening the role of governing bodies

115. Clarifying and strengthening the role of governing bodies is not expected to have any costs implications. The changes made to the role of governing bodies by the New Regulations are there to enable the successful governance of schools and are a natural consequence of having better skilled governing bodies.

116. For example, having the responsibility of ensuring that the head teacher performs his or her responsibilities for the educational performance of the school will not have a monetary cost, and should certainly be within the capabilities of a suitably skilled governing body.

Updating the way in which maximum levels of governors' expenses are calculated

117. The change to the way in which maximum levels of governors' travel and subsistence expenses are calculated is a technical update which is required due to changes in primary legislation. Therefore, the impact of this change has not been analysed.

Changing of School Session Times

118. We do not believe that allowing community, voluntary controlled, community special and maintained nursery schools to change the start and finish times of the school day at the beginning of a school term will lead to any further costs being incurred by school governing bodies.

119. These changes simply enable changes to start and finish times to come into effect more quickly; they do not add to the procedural burden on governing bodies or their schools.

120. The main estimated costs of Option 3 to governing bodies over the financial years 2016-17 to 2019-20 are summarised in the table at paragraph 147.

Benefits to governing bodies

121. Many of the changes brought about by the New Regulations will not bring advantages which are quantifiable in monetary terms, but will instead have the crucial benefit of enabling effective school governance and more successful schools which achieve better outcomes for their pupils. For example,

- placing an emphasis on school governors being recruited, appointed and retained on the basis of their skills, and whether they can contribute to the effective governance and success of their schools;
- giving governing bodies the ability to ensure for themselves that they have the full range of skills needed for successful school governance within their membership at governing body and committee level;
- giving governing bodies the flexibility to be smaller and to have more of a say in how they should be constituted and operate, so that they may better meet the individual requirements of their schools;
- strengthening and clarifying the role of governing bodies; and
- consolidating the matters provided for in the Existing Regulations into a single, accessible set

will all contribute to strong, effective school governance which in turn will lead to more successful schools which achieve better outcomes for their pupils.

122. The revision of school staffing requirements to help ensure that staff disciplinary hearings are impartial, and that the best candidates are picked to become head and deputy head teachers, will also benefit governing bodies and their schools.

123. There will be a small monetary advantage in enabling electronic communication and record-keeping by governing bodies. For example, under the Existing Regulations there is a requirement for governing bodies to keep signed paper copies of the minutes of all of their meetings; the clerk to the governing body also has to send out notices of meetings, agendas and all supporting documents on paper.

124. Changes made by the New Regulations will allow record keeping and the giving of notices of meetings etc. to be carried out electronically. Should any interested party wish to view minutes of meetings and related documents, then the new Regulations will also allow the viewing of these documents in electronic form.

125. As governing bodies usually meet at least 3 times a year, and there will also be meetings of all of their committees during that year, we think that this would typically “generate” around 1,000 sheets of paper copies a year for a typical governing body. If we assume a cost of 5p per sheet, then the changes made by the New Regulations would lead to a saving of £50 a year.

126. There may be similar savings for the joint committees of education bodies who collaborate using the Collaboration between Education Bodies (Wales) Regulations 2012.

127. There will also be a benefit to the clerk to the governing body, as his or her task of record-keeping and convening meetings etc. will be made less time-consuming.

128. The limited use of video conferencing for meetings of the governing body where some governors are unable to attend will also be of practical benefit.

Pupil Referral Units

129. The regulations make consequential amendments to The Education (Pupil Referral Units) (Application of Enactments) (Wales) Regulations 2007 and the Education (Pupil Referral Units) (Management Committees etc.) (Wales) Regulations 2014. However, these changes give no additional responsibilities in respect of the management of a PRU, nor do these changes confer additional financial obligations. The ability to produce meeting notes electronically may even result in a small saving.

Costs and benefits to the Welsh Government and other bodies

Welsh Government

130. Welsh Government need to update their statutory guidance³⁴ on governing bodies. They may also wish to issue further “best practice” guidance for the benefit of school governing bodies and local authorities.³⁵

131. As these changes are more extensive than the changes to statutory guidance which would be required under option 2 (introducing New Regulations means greater changes to the existing statutory guidance as well as the possibility of producing new “best practice” guidance) we estimate that it would take a higher executive officer around 1 working month to update the guidance in electronic and hard copy format, get those changes notified to local authorities and answer any immediate queries regarding those changes.

132. Given the median cost of a higher executive officer of £42,270 p.a.³⁶, this works out as a cost of approximately £ 3,500 to the Welsh Government. This cost probably

³⁴ A Governors’ Guide to the Law available at: <http://gov.wales/topics/educationandskills/schoolshome/fundingschools/school-governance/schoolgovguide/?lang=en>

³⁵ This guidance is expected to be mainly non-statutory, although it could contain some statutory elements.

will be incurred in 2016-17. We would expect such costs to be absorbed within the day-to-day running of the Department for Education and Public Services.

133. More effective governing bodies and schools which achieve better outcomes for their pupils would be of benefit to the Welsh Government, as a well-educated workforce is an integral part of a prosperous and successful Wales.

134. The main estimated costs of Option 3 to the Welsh Government over the financial years 2016-17 to 2019-20 are summarised in the table at paragraph 147.

Other bodies

135. We do not think that the changes made by the New Regulations will have cost implications for other persons or bodies. This is because most of the changes brought about by the New Regulations are to give school governing bodies the flexibility they need to effectively govern their school, and so do not directly impact on organisations other than local authorities and school governing bodies.

136. Nor do we expect that by placing an emphasis on school governors being recruited, appointed and retained on the basis of their skills - and whether they will contribute to the effective governance and success of their schools – that there will be any cost implications for persons or bodies who have the responsibility to appoint or nominate school governors (for example, in the case of a voluntary aided school some foundation governors may be appointed by the persons or bodies named in the school's trust deed).

137. The “quality” of governors who are appointed should already be a major consideration for any appointing person or body. We have anecdotal evidence that prospective governors' skills sometimes are assessed as part of an internal selection process.

138. We do not believe that changes to head teacher and deputy head teacher selection panels will have a pecuniary impact on diocesan authorities. This is because the Diocesan Officer already has the right under the Existing Regulations to attend head and deputy head selection panels of voluntary aided schools to offer his or her advice. In the case of voluntary controlled schools or foundation schools with a religious basis the governing body already may invite the Diocesan Officer to attend and offer advice.

19. While the New Regulations go further by making Diocesan Officers a mandatory part of the selection panel with automatic voting rights in the case of voluntary aided schools – and give voluntary controlled schools and foundation schools with a religious basis the option of giving their Diocesan Officers voting rights if he or she is invited to attend the selection panel - this should not have costs implications. Anecdotal evidence is that Diocesan Officers often already attend the panels of

³⁶ Inclusive of employer's pension and national insurance contributions as at November 2015.

voluntary aided, voluntary controlled and relevant foundation schools anyway, so there will be no additional attendance costs.

140. There will be a benefit to diocesan authorities as Diocesan Officers will have an automatic right to vote on as well as attend head and deputy head teacher selection panels in the case of a voluntary aided school.

141. In the case of voluntary controlled schools and foundation schools with a religious basis, there will also be a benefit in that governing bodies may now agree to give Diocesan Officers voting rights.

Analysis of Other Effects and Impacts

Equality of Opportunity

142. The New Regulations have equal benefit across all maintained schools in Wales.

The Welsh Language

143. The New Regulations have no direct impact on the Welsh language. However, when carrying out their functions under the New Regulations governing bodies will continue to need to have regard to the requirements of their local authority's Welsh language scheme (until replaced by Welsh language standards introduced by the Welsh Language Commissioner over time).

Sustainable Development

144. The New Regulations have no direct impact on sustainable development. There is an indirect benefit; more effective governing bodies and schools which achieve better outcomes for their pupils should result in a well-educated workforce which contributes to a prosperous and successful Wales.

Rights of the Child

145. The New Regulations support articles 28 and 29 of the United Nations Convention on the Rights of the Child which give children a right to an education that develops their personality and talents to the full. This is because appropriately skilled and flexible governing bodies are better able to serve the needs of their school and secure the best possible outcomes for the school's pupils.

Summary

146. The main estimated costs of Option 3 to local authorities, governing bodies and the Welsh Government over the financial years 2016-17 to 2019-20 are set out in the table below.

147. The one-off cost to Local Authorities for approving revised instruments of government are spread over the 18 month implementation period following the making and laying of the new Regulations.³⁷

Table. Estimated cost of the preferred option (Option 3), £

	2016-17	2017-18	2018-19	2019-20
Welsh Government				
Guidance	3,500			
Local Authorities				
Approving instruments of government		31,220	24,980	
Governing bodies³⁸				
<ul style="list-style-type: none"> Independent persons – disciplinary panels 		0 - 12,000	0 - 12,000	0 - 12,000
<ul style="list-style-type: none"> Independent persons – appointment panels 		0 - 37,500	0 - 37,500	0 - 37,500
Total	3,500	31,220 – 80,720	24,980 – 74,480	0 – 49,500

148. In the light of this analysis of the costs and benefits of each of the 3 options above it is considered that **Option 3** - to make the new Regulations - should be adopted. This is the preferred option as it best fulfils our purpose of:

- revising and updating the school governance regulatory and staffing framework so that all maintained school governing bodies in Wales are best placed to ensure the effective governance and success of their schools; and
- simplifying the current legislative framework by ensuring that there is a single, consistent approach to school governance across all maintained schools in Wales.

149. The benefits of having more effective and successful governing bodies which achieve better outcomes for their pupils, as well as having a simplified legislative framework, are believed to outweigh the potential costs to local authorities, governing bodies and the Welsh Government of making and implementing the legislation.

³⁷ We have estimated that the new Regulations will be made and laid on 1 June 2017 and come into force on the 1 December 2017. Most governing bodies will not operate under the new Regulations until 1 December 2018.

³⁸ The figures for the financial year 2017-18 apply only to those governing bodies which operate under the new Regulations in that year. Please see paragraphs 38-39 for an explanation of when this may occur.

Competition Assessment

150. A competition filter test has been applied to the New Regulations. The result of the test suggests there is unlikely to be any detrimental or beneficial effects on competition. There is no obligation on any party, business or organisation to respond to the consultation.

Post implementation review

151. The Welsh Government will monitor the impact of the New Regulations through feedback from local authorities, governing bodies and other stakeholders.