



Department
for Education

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Respond by 14 March 2014

Ref: Department for Education

Constitution of governing bodies of maintained schools - proposed changes to regulations

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This consultation sets out proposed changes to the regulations and guidance that govern the constitution of governing bodies in maintained schools and federations of maintained schools in England.

To Governing Bodies, Local Authorities, School leaders in England, Governor Organisations, and other organisations with an interest

Issued 13 January 2014

Enquiries To If your enquiry is related to the policy content of the consultation you can contact the Department on 0370 000 2288

e-mail:

SchoolGovernance.CONULTATION@education.gsi.gov.uk

Contact Details

If your enquiry is related to the DfE e-consultation website or the consultation process in general, you can contact the Ministerial and Public Communications Division by e-mail: consultation.unit@education.gsi.gov.uk or by telephone: 0370 000 2288 or via the Department's '[Contact Us](#)' page.

1 Overview

1.1 *Introduction*

This consultation document sets out the changes that we propose to make to the regulations and guidance that govern the constitution of governing bodies in maintained schools and federations of maintained schools in England.

The principles underpinning the majority of the proposed changes were subject to a short targeted consultation with members of the Department's Advisory Group on Governance (AGOG) in July 2013. A list of AGOG members can be found at Section 5. In response to this targeted consultation, a number of the Department's current proposals are for amendments to statutory guidance rather than changes to regulations.

Policy Context

Governing bodies have a vital and demanding role as the strategic leaders of our schools. No matter what constituency governors are recruited from, all governors must govern in the best interest of pupils, and need to have or develop the skills governing bodies need to be effective. The overall purpose of the proposed changes set out in Sections B to D of this document is to:

- simplify the overall legislative framework by ensuring that there is a single consistent approach across all maintained schools; and
- enable more effective governance by ensuring that the primary consideration in decisions about the constitution and membership of governing bodies is the skills that they require to be effective.

Our intention is that the proposed changes prompt governing bodies to think more explicitly and more regularly about whether their constitution and membership is fit for purpose.

Timelines

This consultation was launched on 13 January 2014, and will close on 14 March 2014. Our intention is to lay amendments to regulations in the spring of 2014 to come into force on 1 September 2014.

Responses

Responses to this consultation should be made using the response form attached at the end of this document and sent to SchoolGovernance.CONULTATION@education.gsi.gov.uk by 14 March 2014. We will publish a summary of responses to the consultation.

Structure of this document

The following sections of this document set out our specific proposals as follows:

- Section 2: Proposed changes to the School Governance (Constitution) (England) Regulations 2012 (“the 2012 Constitution Regulations”)
- Section 3: Proposed changes to the Statutory Guidance on the School Governance (Constitution) (England) Regulations 2012
- Section 4: Proposed changes to the School Governance (Federations) (England) Regulations 2012 (“the 2012 Federations Regulations”).

2 Proposed changes to the School Governance (Constitution) (England) Regulations 2012

2.1 New skills-based eligibility criteria for appointed governors

Governing bodies have a vital role to play as the non-executive leaders of our schools. It is their role to set the strategic direction of the school and hold the headteacher to account for its educational and financial performance.

This is a demanding task, and we think that anyone appointed to the governing body should therefore have the skills to contribute to effective governance and the success of the school. To embed skills as a fundamental consideration in all governor appointments we propose to bring the eligibility criteria of all categories of appointed governor in line with the current skills-focused definition of co-opted governors.

We propose to change the 2012 Constitution Regulations to 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.

While effective governing bodies and other appointing persons will already think carefully about the governors they appoint, we think these changes are necessary to emphasise to all governing bodies and appointing persons the importance of governors' skills.

We propose to amend the regulations:

- *at regulation 8 in respect of LA governors.*
- *at regulation 9 in respect of Foundation governors.*
- *at Schedule 1 in respect of appointed Parent governors; and*
- *at Schedule 3 paragraph 4 in respect of Partnership governors.*

We do not propose any changes to the eligibility criteria for elected parent governors or staff governors.

Surplus governors

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, regulation 15 requires at present that governors must cease to hold office on the basis of their juniority.

The Education Select Committee has recommended, and the Parliamentary Under Secretary of State for Schools has agreed, that the current 'juniority principal' for removing surplus governors is unhelpful. We believe that the current regulation 15 is unnecessarily prescriptive and should be amended to provide greater local discretion to identify which existing governors should continue to hold office, on the basis of skills.

We propose that any surplus in the number of foundation governors should be resolved by the person responsible for appointing foundation governors. They would need to decide who should continue to hold office on the basis of which foundation governors are best skilled to contribute to the effective governance and success of the school, and to secure the purposes for which they were appointed

as a foundation governor.

We propose that the governing body should be responsible for resolving any surplus in any other category of governor. We propose that there should be a separate vote of the governing body on each category in which there is a surplus. Through an amendment to the School Governance (Roles, Procedures and Allowances) (England) Regulations 2013, this vote would need to be specified as an item on the agenda issued seven days in advance of the meeting. We think governors should not be permitted to vote on their own category; and that governors declared surplus should not cease to hold office until votes are cast on all categories in which there is a surplus.

Transition from 2007 Regulations

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

This creates a complex regulatory regime which we now consider unnecessary. 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. We therefore propose to amend regulations to require all governing bodies to be constituted under the 2012 Constitution Regulations by September 2015. We think this will provide a helpful stimulus for governing bodies 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 believed all existing members had 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.

In due course, we intend to also amend The School Governance (New Schools) (England) Regulations 2007 so that the temporary governing bodies of all new maintained schools will be constituted according to a model akin to the 2012 Constitution Regulations, rather than the 2007 Constitution Regulations as at present. Our intention is to make this change by September 2015 – the date by which we are proposing all governing bodies must be constituted according to the

2012 Constitution Regulations.

Draft Consolidated Regulations

A draft of how the amended 2012 Constitution Regulations would appear in the light of our proposed changes is attached to this consultation.

3 Proposed changes to Statutory Guidance on the School Governance (Constitution) (England) Regulations 2012

3.1 Introduction

In response to feedback from the Department's Advisory Group on Governance (AGOG) following a short targeted consultation in July 2013, we propose to take forward a number of ideas through changes to statutory guidance, rather than regulatory change. This means that rather than becoming new mandatory requirements, governing bodies and local authorities would need to have regard to them in exercising their duties under the regulations.

We are consulting on the draft revised statutory guidance attached to this consultation. This has been drafted to take account of and explain the proposed changes to the 2012 Constitution Regulations outlined in Section B. It also reflects a number of additional changes to the [existing guidance](#) as set out below.

Size and membership

We propose to provide guidance that governing bodies should be no bigger than they need to be to have all the skills necessary to carry out their functions. We think every member should actively contribute relevant skills and experience. Governing bodies should conduct regular skills audits and use the process of filling governor vacancies as an opportunity to address any skills gaps.

Skills

It is for governing bodies to decide what skills they need and whether prospective governors have the skills to contribute to the effective governance and success of the school. But we think it would help to provide guidance on the key skills that all governors need, and the skills that governing bodies as a whole need to be effective. We have identified these skills through the targeted consultation with

AGOG members. These can be found at paragraphs 15 to 17 of draft statutory guidance which accompanies this consultation document.

Governor elections

Elected parent governors and staff governors are chosen by the relevant electorate – the governing body has no role in the decision. However, we think that governing bodies have an important role in informing elections. This includes setting out for potential candidates what they expect of governors and publishing information for the electorate on the type of person or skills they ideally require. Ensuring that good information is published about candidates standing for election will further inform the electorate's choice of governor.

Draft Statutory Guidance

A draft of the revised statutory guidance on the proposed amended 2012 Constitution Regulations is attached to this consultation.

4 Proposed changes to the School Governance (Federations) (England) Regulations 2012

4.1 Skills-based eligibility criteria

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

We propose to amend the eligibility criteria of the categories in the 2012 Federations Regulations in line with the changes we propose 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. We propose to amend Regulation 21 (5) to make clear 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.

We propose to make an analogous change 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 propose to amend 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 proposed to the 2012 Constitution Regulations, we propose to amend the 2012 Federations Regulations, to require all governing bodies of Federations to be constituted under the 2012 Federations Regulations by September 2015.

Draft Consolidated Regulations

A draft of how the amended 2012 Federations regulations would appear in the light of our proposed changes is attached to this consultation.

5 Members of the DfE Advisory Group on Governance

(AGOG)

5.1 The organisations represented on the Department's Advisory Group on Governance (AGOG) include:

Association of Directors of Children's Services (ADCS)

Association of Governing Bodies of Independent Schools (AGBIS)

Association of School and College Leaders (ASCL)

Catholic Education Service (CES)

Church of England Board of Education (CEBE)

Freedom and Autonomy for Schools National Association (FASNA)

Information for School and College Governors (ISCG)

Independent Academies Association (IAA)

Local Government Association (LGA)

National Association of Headteachers (NAHT)

National College for Teaching and Leadership (NCTL)

National Co-ordinators of Governor Services (NCOGS)

National Governors' Association (NGA)

A National Leader of Governance

Office for Standards in Education (OFSTED)

School Governors' One-Stop Shop (SGOSS)

Specialist Schools and Academies Trust (SSAT)

6 Draft Revised Statutory Guidance on the 2012 Constitution Regulations

- 6.1 Draft statutory guidance on the 2012 Constitution Regulations as amended under these proposals.

7 How To Respond

- 7.1 Consultation responses can be completed online at www.education.gov.uk/consultations

by emailing SchoolGovernance.CONSULTATION@education.gsi.gov.uk or

by downloading a response form which should be completed and sent to:

School Governance Unit

Department for Education
Area F Ground Floor
Mowden Hall
Staindrop Road
Darlington
DL3 9BG

8 Additional Copies

- 8.1 Additional copies are available electronically and can be downloaded from the Department for Education e-consultation website at: www.education.gov.uk/consultations

9 Plans for making results public

- 9.1 Our intention is to lay amendments to regulations in the spring of 2014 to come into force on 1 September 2014.