

**2012 No. 1034**

**EDUCATION, ENGLAND**

**The School Governance (Constitution) (England) Regulations  
2012**

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The Secretary of State for Education makes the following Regulations in exercise of the power conferred by sections 19(1A), (2), (3), (4A) and (4B), 20(2) and (3) and 210(7) of the Education Act 2002<sup>(a)</sup>.

## PART 1

### Introduction

#### **Citation, commencement and application**

1. These Regulations may be cited as the School Governance (Constitution) (England) Regulations 2012 and come into force on 1st September 2012.

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(a) 2002 c.32. Section 19 was amended by S.I. 2010/1198 and subsections (1A), (4A) and (4B) of section 19 were inserted by section 38 of the Education Act 2011 (c 21).

2. These Regulations apply to a governing body if—
- (a) the governing body are constituted under an instrument of government that takes effect on or after 1st September 2012; or
  - (b) where the governing body are constituted under an instrument of government that takes effect before 1st September 2012, the governing body or local authority decide under regulation 32(2) of the School Governance (Constitution) (England) Regulations 2007(a) (“the Constitution Regulations 2007”) that the instrument of government should be varied.
3. These Regulations apply only in relation to maintained schools in England(b).

### **Revocation of Constitution Regulations 2007, saving and transitional provisions**

- 4.—(1) The Constitution Regulations 2007 are revoked subject to paragraph (2).
- (2) The Constitution Regulations 2007 continue to apply to a governing body constituted under an instrument of government that takes effect before 1st September 2012 unless and until these Regulations apply to the governing body by virtue of regulation 2(b).
- (3) A decision by a governing body under regulation 32(2) of the Constitution Regulations 2007 is to be treated for the purposes of these Regulations as a decision of the governing body under regulation 30(2) of these Regulations.

### **Interpretation**

- 5.—(1) In these Regulations—
- “EA 1996” means the Education Act 1996(c);
  - “SSFA 1998” means the School Standards and Framework Act 1998(d);
  - “EA 2002” means the Education Act 2002;
  - “parent” includes any individual who has or has had parental responsibility for, or cares or has cared for, a child or young person under the age of 19;
  - “nominating body” means any person who nominated the governor in question; and
  - “qualifying foundation school” means a foundation or a foundation special school which has a foundation which meets any one or more of the conditions in section 23A(2),(3) and (4) of the SSFA 1998(e).
- (2) Any reference in these Regulations to—
- (a) “a governor” is a reference to a member of a governing body of any school to which the provision applies;
  - (b) “the local authority” is a reference to the local authority who maintain the school; and
  - (c) “a foundation” or to “a school having a foundation” is to be read in accordance with section 21 of SSFA 1998.

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(a) S.I. 2007/957, as amended by S.I. 2009/1924, S.I. 2010/1172 and S.I. 2010/2582

(b) By virtue of the definition of “regulations” in section 212(1) of EA 2002, these Regulations made by the Secretary of State apply only in relation to England.

(c) 1996 c.56.

(d) 1998 c.31.

(e) Section 23A was inserted by section 33(1) of the Education and Inspections Act 2006 (c.40) and has been amended by S.I. 2010/1158 and S.I. 2011/1396.

## PART 2

### Categories of governor

#### **Parent governor**

- 6.—(1) In these Regulations “parent governor” means—
- (a) a person who—
    - (i) is elected in accordance with paragraphs 4 to 8 of Schedule 1 as a governor by parents of registered pupils<sup>(a)</sup> at the school, and
    - (ii) is such a parent at the time of election;
  - (b) where the school is a maintained nursery school, a person who is elected in accordance with paragraphs 4 to 8 of Schedule 1 as a governor by—
    - (i) parents of registered pupils at the school, or
    - (ii) parents of children for whom educational or other provision is made on the premises of the school (including any such provision made by the governing body under section 27 of EA 2002),and is such a parent at the time of election; or
  - (c) a person who is appointed as a parent governor in accordance with paragraphs 9 to 11 of Schedule 1.

#### **Staff governor**

7. In these Regulations “staff governor” means a person who—
- (a) is elected in accordance with Schedule 2 as a governor by persons who are employed by either the governing body or the local authority under a contract of employment providing for those persons to work at the school, and
  - (b) is so employed at the time of election.

#### **Local authority governor**

8. In these Regulations “local authority governor” means a person who—
- (a) is nominated by the local authority; and
  - (b) is appointed as a governor by the governing body having, in the opinion of the governing body, met any eligibility criteria that they have set.

#### **Foundation governor**

9. In these Regulations—
- (a) “foundation governor” means a person who—
    - (i) is appointed as a governor by any person other than the local authority,
    - (ii) is appointed for the purpose of securing that the character of the school including, where the school has a particular religious character<sup>(b)</sup> such religious character, is preserved and developed,
    - (iii) where the school has a foundation, is appointed for the purpose of securing that the school is conducted in accordance with the foundation’s governing documents, including, where appropriate, any trust deed relating to the school, and

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(a) Within the meaning of section 434(5) of EA 1996.

(b) As designated by order of the Secretary of State under section 69(3) of SSFA 1998.

- (iv) would, in the opinion of the person entitled to appoint the foundation governor, be capable of achieving the purposes for which they would be appointed as a foundation governor;
- (b) “ex officio foundation governor” means a person who is a foundation governor by virtue of an office held by the person;
- (c) “substitute governor” means a foundation governor appointed to act in the place of an ex officio foundation governor who is unwilling or unable to act as a governor or has been removed from office under regulation 21(1).

### **Partnership governor**

**10.**—(1) In these Regulations “partnership governor” means a person who is appointed as such in accordance with Schedule 3.

(2) Where the school has a religious character, “partnership governor” means a person who is appointed for the purpose of securing that such religious character is preserved and developed.

### **Co-opted governor**

**11.** In these Regulations “co-opted governor” means a person who is appointed as a governor by the governing body and who, in the opinion of the governing body, has the skills required to contribute to the effective governance and success of the school.

### **Associate members**

**12.** In these Regulations “associate member” means a person who is appointed by the governing body as a member of any committee established by them but who is not a governor.

## **PART 3**

### **Constitution of governing bodies**

#### **Requirements for all maintained schools**

**13.**—(1) The governing body of every maintained school must be constituted in accordance with this regulation.

(2) The total membership of the governing body of a maintained school must be no fewer than seven governors.

(3) The governing body of a maintained school must include the following—

- (a) at least two parent governors;
- (b) the head teacher unless the head teacher resigns the office of governor in accordance with regulation 19;
- (c) one staff governor; and
- (d) one local authority governor.

(4) The governing body may in addition appoint such number of co-opted governors as they consider necessary provided that the requirements in regulation 14 are met in respect of governing bodies of foundation and voluntary schools.

(5) The total number of co-opted governors who are also eligible to be elected as staff governors under Schedule 2, when counted with the staff governor and the head teacher, must not exceed one third of the total membership of the governing body.

### **Additional requirements for foundation and voluntary schools**

14.—(1) The governing body of a foundation school or a foundation special school(a) which, in either case, does not have a foundation, must also include at least two (but no more than one quarter of the total) partnership governors.

(2) The governing body of a foundation school or a foundation special school which, in either case, has a foundation but which is not a qualifying foundation school, must also include at least two (but no more than 45 per cent of the total) foundation governors.

(3) The governing body of a qualifying foundation school must also include such number of foundation governors as to outnumber all the other governors by up to two.

(4) The governing body of a voluntary aided school(b) must also include such number of foundation governors as to outnumber all the other governors by two.

(5) The governing body of a voluntary controlled school(c) must also include at least two (but no more than one quarter of the total) foundation governors.

(6) In calculating the number of governors required in order to comply with this regulation, the number is to be rounded up or down to the nearest whole number.

### **Surplus governors**

15.—(1) Where—

- (a) a maintained school has more governors of a particular category than are provided for by the instrument of government for the school, and
- (b) the excess is not eliminated by the required number of governors resigning,
- (c) such number of that category as is required to eliminate the excess must cease to hold office in accordance with paragraphs (2) and (3).

(2) Governors must cease to hold office on the basis of juniority, the governor whose period of continuous service (whether as a governor of one or more than one category) is the shortest being the first who must cease to hold office.

(3) Where governors have held office for an equal length of time, the selection of those who must cease to hold office must be done by drawing lots.

(4) Any procedure set out in the instrument of government for the removal of excess foundation governors does not apply in the circumstances set out in paragraph (1).

## **PART 4**

### **Notification of appointments, term of office, removal and disqualification**

#### **Notification of appointments**

16. Where any person makes an appointment or nominates a person to be appointed to the governing body, that person must give written notice of the appointment or the nomination to the clerk to the governing body specifying the name and usual place of residence of the person appointed or nominated.

#### **Qualifications and disqualifications**

17. Schedule 4 sets out the circumstances in which a person is qualified for or disqualified from holding or continuing in office as a governor.

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(a) Within the meaning of section 20 of and Schedule 2 to SSFA 1998.  
(b) Within the meaning of section 20 of and Schedule 2 to SSFA 1998.  
(c) Within the meaning of section 20 of and Schedule 2 to SSFA 1998.

## **Term of office**

**18.**—(1) Subject to paragraphs (2) to (5), a governor holds office for a fixed period of four years from the date of that governor’s election or appointment.

(2) A person who is a governor by virtue of being head teacher of the school or who is an ex officio foundation governor may not hold office for longer than the position from which the governorship derives is held by that person.

(3) Any additional governor or additional foundation governor appointed under Part 4 of the Education and Inspections Act 2006(a) may hold office for such period up to a maximum of four years as is determined at the time of appointment by the person making the appointment .

(4) The instrument of government may specify a shorter term of office for a particular category of governor, not being less than one year.

(5) A substitute governor holds office until the earlier of the following—

- (a) the expiry of four years from the date when the appointment of the substitute governor takes effect;
- (b) the date when the original governor (“O”), not having been removed from office under regulation 21, gives written notice to the clerk to the governing body to the effect that O is able and willing to act as a foundation governor; or
- (c) the date when a person other than the original governor takes the office by virtue of which the ex officio foundation governorship exists.

(6) This regulation does not prevent a governor from—

- (a) being elected or appointed for a further term, save as otherwise provided in these Regulations;
- (b) resigning from the office of governor in accordance with regulation 19(1);
- (c) being removed from office under regulations 20 to 25; or
- (d) being disqualified, by virtue of any provision of these Regulations, from holding or continuing to hold office.

(7) An associate member may hold office for a period of four years, or such shorter period (not being less than one year) as may be determined by the governing body at the date of the appointment.

(8) Nothing in this regulation prevents an associate member from being reappointed at the expiry of the associate member’s term of office.

(9) In this regulation “the original governor” means the ex officio foundation governor in whose place the substitute governor is appointed to act.

## **Resignation**

**19.**—(1) A governor may at any time resign from the office of governor by giving written notice to the clerk to the governing body.

(2) The head teacher’s resignation may be withdrawn at any time by the head teacher giving written notice to the clerk to the governing body.

## **Removal of foundation governors**

**20.**—(1) Any foundation governor other than an ex officio foundation governor may be removed from office by the person who appointed the foundation governor.

(2) The person referred to in paragraph (1) must give written notice of the removal from office to the clerk to the governing body and to the foundation governor who is being removed.

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(a) 2006 c.40.

### **Removal of ex officio foundation governors**

**21.**—(1) The governing body may, in accordance with the procedure set out in regulation 25, remove any ex officio foundation governor at the request of the person named in the instrument of government as the person entitled to make such a request.

(2) A person requesting the removal of an ex officio foundation governor must give written reasons for the request to the clerk to the governing body and the governor in question.

### **Removal of local authority governors**

**22.**—(1) Any local authority governor may be removed from office by the local authority who nominated the local authority governor under regulation 8(a).

(2) The local authority must give written notice of the removal from office to the clerk to the governing body and to the local authority governor who is being removed.

### **Removal of co-opted governors and partnership governors**

**23.**—(1) Any co-opted governor or partnership governor may be removed from office by the governing body in accordance with the procedure set out in regulation 25(2)(b).

(2) A partnership governor may also be removed from office by the governing body at the request of the nominating body in accordance with regulation 25(2)(a).

(3) A nominating body requesting the removal of a partnership governor must give written reasons for the request to the clerk to the governing body and the governor in question.

### **Removal of appointed parent governors**

**24.** Any parent governor appointed by the governing body under paragraphs 9 to 11 of Schedule 1 may be removed by the governing body in accordance with the procedure set out in regulation 25.

### **Procedure for removal of governors by the governing body**

**25.**—(1) This regulation applies in relation to the removal of a governor from office in accordance with regulations 21(1), 23 or 24.

(2) A resolution to remove a governor from office which is passed at a meeting of the governing body will not have effect unless—

- (a) in relation to the removal of a governor under regulation 21(1) and 23(2), the governing body has considered the reasons for removal and the governor whom it is proposed to remove has been given an opportunity to make a statement in response;
- (b) in relation to the removal of a governor (“P”) who is a co-opted governor or partnership governor under regulation 23(1) or a parent governor under regulation 24, the governor proposing P’s removal has at that meeting given reasons for doing so and P has been given an opportunity to make a statement in response;
- (c) it is confirmed by a resolution passed at a second meeting of the governing body held not less than fourteen days after the first meeting; and
- (d) the matter of the governor’s removal from office is specified as an item on the agenda for each of those meetings.



## PART 5

### Instruments of government

#### **Interpretation of “appropriate diocesan authority” and “appropriate religious body”**

**26.** In this Part—

“appropriate diocesan authority” has the meaning given by section 142(1) and (4) of SSFA 1998; and

“appropriate religious body”, in relation to a school designated under section 69(3) of SSFA 1998 as having a religious character that is not a Church of England school or a Roman Catholic Church school, means the body or person, if any, that represents the specified religion or religious denomination and that is prescribed by regulations made under section 88F(3)(e) of SSFA 1998.

#### **Duty to have regard to guidance**

**27.** In respect of the making of instruments of government, and the review and variation of such instruments, governing bodies and local authorities must have regard to any guidance given from time to time by the Secretary of State.

#### **Contents and form of instrument of government**

**28.—**(1) The instrument of government for a maintained school must set out—

- (a) the name of the school;
- (b) the category of school<sup>(a)</sup> to which the school belongs, and—
  - (i) whether the school has a foundation, and
  - (ii) whether the school is a qualifying foundation school;
- (c) the name of the governing body of the school;
- (d) the manner in which the governing body is to be constituted in accordance with Part 3 of these Regulations, specifying—
  - (i) the number of governors in each category of governor, and
  - (ii) the total membership of the governing body;
- (e) where the term of office for a category of governor is to be less than four years, the length of that term of office;
- (f) where the school has foundation governors—
  - (i) the name of any person who is entitled to appoint such governors and, if there is more than one such person, the basis upon which such appointments are made,
  - (ii) details of any foundation governorship to be held ex officio, and
  - (iii) the name of any person who is entitled to request the removal of any ex officio foundation governor and to appoint any substitute governor;
- (g) where the school is a foundation or a voluntary school designated under section 69(3) of SSFA 1998 as having a religious character, a description of the religious ethos of the school; and
- (h) the date on which the instrument of government takes effect.

(2) The manner in which the governing body is to be constituted, as set out in accordance with sub-paragraph (1)(d), must accord with the provisions of these Regulations as they apply to a school

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(a) Within the meaning of section 20(1) of SSFA 1998.

of the category to which the school belongs and, where appropriate, the nature of the school as specified in accordance with sub-paragraph (1)(b).

(3) Where the school has a foundation, the instrument of government must (subject to any statutory provision) comply with the foundation's governing documents, including any trust deed relating to the school.

### **Procedure for making the instrument**

**29.**—(1) The governing body must prepare a draft of the instrument of government and submit it to the local authority.

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

- (a) the foundation governors;
- (b) the trustees of any foundation relating to the school;
- (c) in the case of a Church of England school or Roman Catholic Church school, the appropriate diocesan authority; and
- (d) in the case of any other school designated under section 69(3) of SSFA 1998 as having a religious character, the appropriate religious body.

(3) On receiving the draft, the local authority must consider whether it complies with all applicable legislative provisions, and if—

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

they must make the instrument of government in the form of the draft or (as the case may be) in the form of the revised draft.

(4) If neither of sub-paragraphs (a) or (b) of paragraph (3) applies in the case of a school which does not have foundation governors, the local authority must—

- (a) inform the governing body of the reasons why they are not content with the draft instrument of government, and
- (b) give the governing body a reasonable opportunity to reach agreement with them on revising the draft,

and must make the instrument of government either in the form of a revised draft agreed between them and the governing body or (in the absence of such agreement) in such form as they think fit having regard, in particular, to the category of school to which the school belongs and, where the school has a foundation, to the school's relationship with its foundation as specified in accordance with regulation 28(1)(b).

### **Review of instrument of government**

**30.**—(1) The governing body or the local authority may review the instrument of government at any time after it is made.

(2) Where, on any review, the governing body or the local authority decide that the instrument of government should be varied, the governing body or (as the case may be) the local authority must notify the other of their proposed variation together with their reasons for proposing such a variation.

(3) Where the governing body have received notification under paragraph (2), they must inform the local authority as to whether or not they are content with the proposed variation and, if not content, their reasons.

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

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

unless the persons listed in regulation 29(2) have approved the proposed variation.

(5) If—

- (a) the recipient of a notification under paragraph (2) agrees with the proposed variation, or
- (b) there is agreement between the local authority, the governing body and (if the school has foundation governors) the other persons listed in regulation 29(2) that some other variation should be made instead,

the local authority must vary the instrument of government accordingly.

(6) If neither sub-paragraph (a) nor (b) of paragraph (5) applies in the case of a school which does not have foundation governors, the local authority must—

- (a) inform the governing body of the reasons why they are not content with the governing body's proposed variation, or as the case may be, why they wish to proceed with their own variation, and
- (b) give the governing body a reasonable opportunity to reach agreement with them with regard to the variation, and

the local authority must vary the instrument of government either in the manner agreed between them and the governing body or (in the absence of such agreement) in such manner as they think fit, having regard, in particular, to the category of school to which the school belongs and, where appropriate, to the school's relationship with its foundation as specified in accordance with regulation 28(1)(b).

(7) The requirement under regulation 29(3) for the local authority to consider compliance with all applicable statutory provisions applies in relation to a proposed variation of an instrument of government as it applies in relation to a draft of such an instrument.

(8) Where the instrument of government is varied under this regulation the instrument must set out the date on which the variation takes effect

### **Copies of instruments of government**

**31.**—(1) The local authority must ensure that the persons set out in paragraph (2) are provided (free of charge) with a copy of—

- (a) the school's instrument of government as varied if relevant;
- (b) where any variation is made to the school's instrument of government, a copy of the instrument of government incorporating all variations (other than variations which have ceased to have effect).

(2) The persons who are to be provided with the information referred to in paragraph (1) are—

- (a) every governor and associate member of the governing body of the school;
- (b) the head teacher;
- (c) where the school has a foundation, the trustees of the foundation;
- (d) in the case of a Church of England school or a Roman Catholic Church school, the appropriate diocesan authority; and
- (e) in the case of any other school designated under section 69(3) of SSFA 1998 as having a religious character, the appropriate religious body.

## PART 6

### Amendments to the School Governance (New Schools) (England) Regulations 2007

#### **Amendments to the School Governance (New Schools) (England) Regulations 2007**

**32.**—(1) The School Governance (New Schools) (England) Regulations 2007(a) are amended as follows.

(2) In regulation 3(1), for “the School Governance (Constitution) (England) Regulations 2007” substitute “the School Governance (Constitution) (England) Regulations 2012”.

(3) In regulation 52(1), for “29 to 31” substitute “27 to 29”.

(4) In regulation 54(3)(a), for “regulation 5” substitute “regulation 7”.

(5) In regulation 54(3)(b), for “regulation 9 of and Schedule 4” substitute “regulation 10 of and Schedule 3”.

14th April 2012

*Jonathan Hill*  
Parliamentary Under Secretary of State  
Department for Education

## SCHEDULE 1

Regulation 6

### Election and appointment of parent governors

1. “Appropriate authority” means—

- (a) in relation to a community school, a community special school(b), a maintained nursery school or a voluntary controlled school, the local authority; and
- (b) in relation to a voluntary aided school, foundation school or foundation special school, the governing body.

2. Where a local authority are the appropriate authority in relation to a school, they may delegate to the head teacher of the school any of their functions under this Schedule.

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

4. The appropriate authority must make all the necessary arrangements for the election of parent governors.

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

6. Any election which is contested must be held by ballot.

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

(2) For the purposes of sub-paragraph (1), “post” includes delivery by hand.

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

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(a) S.I. 2007/958, as amended by S.I. 2007/3464, S.I. 2009/1924, S.I. 2010/1172 and S.I. 2010/2582.

(b) Within the meaning of section 20 of and Schedule 2 to SSFA 1998 and section 39(1) of EA 2002.

**8.** Where a vacancy for a parent governor arises, the appropriate authority must take such steps as are reasonably practicable to secure that every person who is known to them to be a parent of a registered pupil at the school, and where the school is a maintained nursery school, a parent of a child for whom educational or other provision is made on the premises of the school (including any such provision made by the governing body under section 27 of EA 2002(a)), is—

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

**9.** The number of parent governors required must be made up by parent governors appointed by the governing body, if one or more vacancies for parent governors arises and either—

- (a) the number of parents standing for election is less than the number of vacancies;
- (b) at least 50 per cent of the registered pupils at the school are boarders and the appropriate authority thinks it would not be reasonably practicable for there to be an election of parent governors; or
- (c) in the case of a school which is a community special or foundation special school established in a hospital, it would, in the opinion of the appropriate authority, be impractical for there to be an election of parent governors.

**10.—(1)** Except where paragraph 11 applies, the governing body must appoint as a parent governor—

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

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

**11.—(1)** Where the school is a community special school or a foundation special school, the governing body must appoint—

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

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

## SCHEDULE 2

Regulation 7

### Election of staff governors

**1.** In this Schedule “appropriate authority” has the same meaning as in Schedule 1.

**2.** Where a local authority are the appropriate authority in relation to a school, they may delegate to the head teacher of the school any of their functions under this Schedule.

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(a) An amendment to section 27 of EA 2002 was made by the Children, Schools and Families Act 2010 (c. 26) but this is not yet in force.

3. The appropriate authority must make all the necessary arrangements for the election of staff governors.

4. The power conferred by paragraph 3 does not include power to impose any requirements as to the minimum number of votes required to be cast for a candidate to be elected.

5. Any election which is contested must be held by ballot.

## SCHEDULE 3

Regulation 10

### Appointment of partnership governors

1. Where a partnership governor is required in relation to a school which is designated under section 69(3) of SSFA 1998 as having a religious character, the governing body must seek nominations from—

- (a) in the case of a Church of England school or a Roman Catholic Church school, the appropriate diocesan authority; and
- (b) in any other case, the appropriate religious body.

2. Where a partnership governor is required in relation to a school which does not have a religious character, the governing body must seek nominations from parents of registered pupils at the school, and from such other persons in the community served by the school as they consider appropriate.

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

4. No person is eligible to be nominated for appointment, or to be appointed, as a partnership governor unless that person has the skills required to contribute to the effective governance and success of the school.

5. No governor may nominate a person for appointment as a partnership governor except in accordance with paragraph 6(2).

6.—(1) The governing body must appoint such number of partnership governors as is required by the instrument of government from the eligible nominees.

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

7. Where the governing body makes an appointment under paragraph 6(2), having rejected any person nominated under paragraphs 1 or 2 as ineligible, they must give written reasons for their decision to—

- (a) the local authority;
- (b) the person or body who nominated the person rejected; and
- (c) the person rejected.

8. For the purposes of this Schedule, “appropriate diocesan authority” and “appropriate religious body” have the meanings given by regulation 26.

## Qualifications and disqualifications

### General

1. A person is disqualified from holding or from continuing to hold office as a governor of a school at any time when the person is a registered pupil at the school.

2. A person is disqualified from being elected or appointed as a governor unless the person is aged 18 or over.

3. Save as otherwise provided in these Regulations, the fact that a person is qualified to be elected or appointed as a governor of a particular category at a school does not disqualify the person from election or appointment or from continuing as a governor of any other category at that school, but no person may at any time hold the office of more than one governor of the same school.

4. Any person who is disqualified from holding office as a governor of a school under this Schedule is likewise disqualified from holding or continuing to hold office as an associate member of the governing body unless the disqualification is under paragraphs 1 or 2 of this Schedule.

### Disqualification criteria for categories of governor

5.—(1) A person is disqualified from election or appointment as a parent governor of a school if the person—

- (a) is an elected member of the local authority; or
- (b) is paid to work at the school for more than 500 hours in any twelve consecutive months.

(2) A person (“P”) is not disqualified from continuing to hold office as a parent governor because P ceases to be a parent of a registered pupil at the school or to fulfil any of the requirements set out in paragraphs 10 and 11 of Schedule 1 (as the case may be) .

6. A person is disqualified from appointment as a local authority governor if the person is eligible to be a staff governor of the school.

7.—(1) A person is disqualified from nomination or appointment as a partnership governor of a school if the person is—

- (a) a parent of a registered pupil at the school;
- (b) eligible to be a staff governor of the school;
- (c) an elected member of the local authority; or
- (d) employed by the local authority in connection with their education functions.

(2) The disqualification criterion in paragraph 7(1)(d) does not apply in the case of a person who is employed by a local authority in England under a contract of employment providing for the person to work wholly at a school or schools maintained by the local authority.

8. Upon ceasing to work at the school, a staff governor of a school is disqualified from continuing to hold office as such a governor.

### Failure to attend meetings

9.—(1) This paragraph applies to every governor, other than governors who are governors by virtue of the office that they hold.

(2) A governor who, without the consent of the governing body, has failed to attend their meetings for a continuous period of six months beginning with the date of the first such meeting the governor fails to attend, is, on the expiry of that period, disqualified from continuing to hold office as a governor of that school.

(3) A foundation governor, authority governor, co-opted governor or partnership governor who has been disqualified as a governor of a school under sub-paragraph (2) is not qualified for election, nomination or appointment as a governor of any category at that school for twelve months starting on the date on which they are so disqualified.

### **Bankruptcy**

**10.** A person is disqualified from holding or continuing to hold office as a governor of a school if—

- (a) the person’s estate has been sequestrated and the sequestration has not been discharged, annulled or reduced; or
- (b) the person is the subject of a bankruptcy restrictions order, an interim bankruptcy restrictions order(a), a debt relief restrictions order or an interim debt relief restrictions order(b).

### **Disqualification of company directors**

**11.** A person is disqualified from holding, or from continuing to hold, office as a governor of a school at any time when the person is subject to—

- (a) a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986(c);
- (b) a disqualification order under the Company Directors Disqualification (Northern Ireland) Order 2002(d);
- (c) a disqualification undertaking accepted under the Company Directors Disqualification (Northern Ireland) Order 2002; or
- (d) an order made under section 429(2)(b) of the Insolvency Act 1986(e) (failure to pay under county court administration order).

### **Disqualification of charity trustees**

**12.** A person is disqualified from holding or from continuing to hold office as a governor of a school if—

- (a) the person (“P”) has been removed from the office of trustee for a charity by an order made by the Charity Commission or Commissioners or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity for which P was responsible or to which P was privy, or to which P contributed or which P facilitated by P’s conduct; or
- (b) the person has been removed, under section 34 of the Charities and Trustee Investment (Scotland) Act 2005(f), from being concerned in the management or control of any body.

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(a) “Bankruptcy restrictions order” means an order made under paragraph 1 of Schedule 4A to the Insolvency Act 1986 (c. 45) and “interim bankruptcy restrictions order” means an order made under paragraph 5 of that Schedule. Schedule 4A was inserted by Schedule 20 to the Enterprise Act 2002 (c. 40).

(b) “Debt relief order” means an order made under paragraph 1 of Schedule 4ZB to the Insolvency Act 1986 (c. 45) and “interim debt relief order” means an order made under paragraph 5 of that Schedule. Schedule 4ZB was inserted by Schedule 19 to the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(c) 1986 c.46.

(d) S.I. 2002/3150 (N.I. 4), as amended by the Companies Act 2006 (c.46), the Banking Act 2009 (c.1), the Debt Relief Act (Northern Ireland) 2010 (c.16) and by S.I. 2005/1454 (N.I.9), 2005/1455 (N.I.10), 2005/1967 (N.I.17), 2006/314 (N.I.3), 2006/3336 (N.I.21), 2007/2194, 2008/948, 2009/805 and 2009/1941.

(e) 1986 c.45. Section 429(2) is repealed and substituted by section 106 of and Schedule 16 to the Tribunals, Courts and Enforcement Act 2007 (c.15), which are not yet in force.

(f) 2005 asp 10.



### Persons whose employment is prohibited or restricted

13. A person is disqualified from holding or from continuing to hold office as a governor of a school at any time when the person is—

- (a) included in the list kept under section 1 of the Protection of Children Act 1999(a) (list of those considered by the Secretary of State as unsuitable to work with children);
- (b) subject to a direction of the Secretary of State under section 142 of EA 2002(b) (or any other disqualification, prohibition or restriction which takes effect as if contained in such a direction);
- (c) barred from regulated activity relating to children in accordance with section 3(2) of the Safeguarding Vulnerable Groups Act 2006(c);
- (d) disqualified from working with children under sections 28, 29 or 29A of the Criminal Justice and Court Services Act 2000(d);
- (e) disqualified from registration under Part 2 of the Children and Families (Wales) Measure 2010(e) for child minding or providing day care; or
- (f) disqualified from registration under Part 3 of the Childcare Act 2006(f).

### Criminal convictions

14.—(1) Subject to sub-paragraph (6) below, a person is disqualified from holding, or continuing to hold, office as a governor of a school where any of sub-paragraphs (2) to (4) or (6) below apply to the person.

(2) This sub-paragraph applies to a person (“P”) if—

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

P has been convicted, whether in the United Kingdom or elsewhere, of any offence and a sentence of imprisonment (whether suspended or not) has been imposed on P for a period of not less than three months without the option of a fine.

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

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

(5) For the purposes of sub-paragraphs (2) to (4) above, any conviction by or before a court outside the United Kingdom of an offence which, if the facts giving rise to the offence had taken

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(a) 1999 c.14, as amended by the Care Standards Act 2000 (2000 c.14). Section 1 is repealed by section 63 of and Schedules 9 and 10 to the Safeguarding Vulnerable Groups Act 2006 (c.47) save as provided by S.I. 2009/2611.

(b) Section 142 is repealed by section 63 of and Schedule 10 to the Safeguarding Vulnerable Groups Act 2006 (which are only partly in force) save as provided by S.I. 2009/2611.

(c) 2006 c.47.

(d) 2000 c.43. Section 28 is repealed by section 63 of and Schedule 10 to the Safeguarding Vulnerable Groups Act 2006 (which are only partly in force) save as provided by S.I. 2009/2611 and S.I. 2010/1101.

(e) 2010 nawm 1.

(f) 2006 c.21. Part 3 is amended by the Education and Inspections Act 2006 (c.40), the Safeguarding Vulnerable Groups Act 2006, the Education and Skills Act 2008 (c. 25), the Apprenticeships, Skills, Children and Learning Act 2009 (c.22) and the Education Act 2011 (c.21).

place in any part of the United Kingdom, would not have constituted an offence under the law in force in that part of the United Kingdom must be disregarded.

(6) This sub-paragraph applies to a person (“R”) if—

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

R has been convicted under section 547 of EA 1996(a) (nuisance or disturbance on school premises) or under section 85A of the Further and Higher Education Act 1992(b) (nuisance or disturbance on educational premises) of an offence and has been sentenced to a fine.

### **Refusal to make an application for a criminal records certificate**

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

### **Notification to clerk**

**16.** Where a person (“P”) is, or is proposed to become, a governor and by virtue of any of paragraphs 10 to 14 P is disqualified from holding, or from continuing to hold, office as a governor, P must give notice of that fact to the clerk to the governing body.

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations set out the arrangements for the constitution of governing bodies of maintained schools, which for these purposes includes maintained nursery schools, in England.

Part 1 provides for the Regulations to come into force on 1st September 2012, and contains application, savings and transitional provisions and the interpretation provisions.

Part 2 describes the various categories of governor. Regulation 6 and Schedule 1 deal with parent governors and set out the basis on which a person may qualify to stand for election and to vote for a parent governor or to be appointed as a parent governor.

Regulation 7 deals with staff governors. This category includes both teaching and non-teaching staff. Schedule 2 deals with the election process for staff governors.

Regulation 8 deals with the appointment of local authority governors.

Regulation 9 deals with the appointment of foundation governors, including ex officio foundation governors and substitute governors.

Regulation 10 and Schedule 3 deal with the nomination process for, and the appointment of, partnership governors.

Regulation 11 makes provision for the appointment of an optional category of co-opted governor.

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(a) As amended by SSFA 1998 and by section 206 of and Schedule 20 to EA 2002 and by section 6 of and Schedule 1 to the Education and Inspections Act 2006 and by S.I. 2010/1158.

(b) 1992 c.13; section 85A was inserted by section 206 of and Schedule 20 to EA 2002 and amended by S.I. 2010/1158 and by section 54 of and Schedule 13 to the Education Act 2011.

(c) 1997 c.50; inserted by section 163 of the Serious Organised Crime and Police Act 2005 (2005 c.15) and amended by the Safeguarding Vulnerable Groups Act 2006, the Armed Forces Act 2006 (c.52), the Policing and Crime Act 2009 (c.26) and S.I.2009/203 and S.I. 2010/1146.

Regulation 12 provides for the appointment of persons who are not governors (known as associate members) to committees of the governing body.

Part 3 sets out the general principles by which the size and composition of school governing bodies are to be determined. Regulations 13 and 14 set out the specific requirements for the constitution of the governing bodies of the various categories of school.

Regulation 15 provides for the removal of surplus governors.

Part 4 deals with notification of appointments, term of office and removals and disqualifications.

Regulation 16 sets out the requirements to be observed by a person wishing to exercise the power of nominating or appointing a governor. Regulation 17 and Schedule 4 set out the circumstances in which a governor (or associate member) is disqualified from standing for election, being appointed or continuing in office as a governor.

Regulation 18 provides that (with some exceptions) a governor's term of office is a maximum of 4 years. In the event that an ex officio foundation governor is unable or unwilling to take up office, a substitute governor may be appointed. Regulation 19 sets out the procedure for resigning as a governor. Regulations 20 to 25 provide for the removal of governors who have been appointed (rather than elected) to office.

Part 5 deals with the procedure for making, reviewing and varying instruments of government and the content of instruments. Regulation 31 sets out the duty to provide copies of the instrument of government to every member of the governing body, the head teacher, the trustees of the school (if any) and the diocesan authority or other appropriate religious body (in the case of faith schools).

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