

GOVERNORS' BRIEFING NOTE ON THE CHANGES IN THE CONSTITUTION OF THE GOVERNING BODY

Introduction

The Education Act 2011, Section 38, introduced changes to the constitution of governing bodies which will come into force on 1 September 2012.

The changes are set out in: *The School Governance (Constitution) (England) Regulations 2012*.

The changes only apply to maintained schools (not academies).

Application

The changes apply:

- (i) to new governing bodies constituted under an instrument of government which takes effect on or after 1 September 2012;

or

- (ii) an existing governing body which decides to change the composition of the governing body (known as a variation to the instrument of government).

Variations to the instrument of government also include a change to the name of the school and is therefore included in point (ii) above.

Schools which continue with their existing composition after 1 September 2012 are not affected by these new Regulations. However, after 1 September, should the governing body decide to change their composition, these new Regulations will apply.

Governing Body Membership

The total membership of the governing body must be no fewer than seven governors.

- (a) at least two parent governors (*can have more than two*);
- (b) the headteacher;
- (c) one staff governor (*only one staff governor allowed*);
- (d) one local authority governor.

The governing body may, in addition to the governors above, appoint any number of co-opted governors (*no maximum specified*). Members of staff may be appointed as co-opted governors. Where staff are appointed as co-opted governors, then, counted with the staff governor and the headteacher, must not exceed one third of the total membership of the governing body.

For foundation and voluntary aided schools, the governing body must include foundation governors so as to outnumber all the other governors by two.

Voluntary controlled schools must include at least two foundation governors. No more than one quarter of the governing body can comprise of foundation governors.

To comply with the requirements for foundation governors, calculating the number of governors is rounded up or down to the nearest whole number.

Surplus Governors

Where a school re-constitutes the governing body and there are more governors in a category than set out in the instrument of government, the excess will be eliminated by:

- (a) in the first instance by resignations;
- (b) if the number of surplus governors is not eliminated by resignations, governors must cease to hold office on the basis of juniority.

The governor whose period of continuous service is the shortest being the first who must cease to hold office.

Where a governor is on a second or third appointment the length of service is counted from the date of the first appointment as long as they are continuous. If there was a break in service it would only count from the latest date of appointment.

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

In the case of community governors they will be removed from the governing body. Co-opted governors are a new category of governor and therefore existing community governors would need to be re-appointed as co-opted governors. There is no transfer from community to co-opted governor.

Category of Governor

Parent governors

Elected parent governors – elected by parents of the pupils registered at the school.

Appointed parent governors – a parent appointed by the governing body. This is where the number of parents standing for election is fewer than the number of vacancies. The unfilled vacancy can be filled by the governing body making their own appointment.

Where the governing body appoint a parent governor they must appoint:

- (a) a parent of a registered pupil at the school;

if it is not reasonably practicable to do so, the governing body can appoint:

- (b) a parent of a former registered pupil at the school;

and if this cannot be achieved:

- (c) a parent of a child under or of compulsory school age.

Different categories of appointed parents apply to special school governing bodies.

A parent may continue to hold office when their child leaves school, upto their expiry date.

Staff governor

A person elected as a governor by persons who are employed by either the governing body or a local authority under a contract of employment to work at the school.

(The Regulations do not specify whether the person is a teacher or non-teacher).

A staff governor would cease to hold office if they left the school.

Local authority governor

This is a person who is nominated by the local authority and appointed by the governing body.

The governing body may specify eligibility criteria that the nominated person must meet.

A person eligible to be a staff governor at the school cannot be appointed as a local authority governor.

Foundation governor

This is a person who is appointed:

- (a) other than by the local authority;
- (b) to secure the character of the school where it has a particular religious character;
- (c) where the school has a foundation to ensure that the school is conducted in accordance with the foundation's governing documents or any trust deed.

Partnership governor

A person appointed to a school with a religious character to secure that character is preserved and developed.

Co-opted governor

A person appointed by the governing body as a governor who has the skills required to contribute to the effective governance and success of the school.

Associate members

A person appointed by the governing body as a member of any committee but who is not a governor. They can attend governing body meetings.

Qualifications and Disqualifications

Registered pupils at a school cannot be a governor at that school.

A person must be aged 18 to be a governor.

Any person disqualified from holding office as a governor at a school is likewise disqualified from being appointed or continuing to serve as an associate member.

Parent Governor

Disqualified from election or appointment if the person:

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

Local authority governor

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

Failure to Attend Meetings

A governor who, without the consent of the governing body (accepting their apologies), has failed to attend meetings for a continuous period of six months beginning with the date of the first meeting the governor failed to attend, will be disqualified (excluded).

This does not apply to ex-officio governors.

A foundation governor, authority governor, co-opted governor or partnership governor, who if disqualified for failing to attend meetings cannot be nominated, elected or appointed in any category to that school for a period of twelve months.

Other disqualifications:

- bankruptcy
- disqualification of company directors
- disqualification of charity trustees
- persons whose employment is prohibited or restricted
- criminal convictions
- refusal to make an application for a criminal records certificate

Terms of Office

The term of office is four years for governors and between one to four years for associate members.

Headteachers and ex-officio governors hold office as a governor until such time as they cease to hold their appointment in that post.

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

A governor may resign at any time by giving written notice to the Clerk.

Removal from Office

Foundation governors

Any foundation governor other than an ex-officio foundation governor can be removed by the person who appointed them. An 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.

Local authority governors

Any local authority governor may be removed from office by the local authority who nominated them.

Co-opted governors and partnership governors

These two categories of governor may be removed from office by the governing body.

Appointed parent governors

Appointed parent governors may be removed by the governing body.

Procedure for Removal of Governors by the Governing Body

This procedure applies to co-opted, partnership and appointed parent governors.

- 1 The governor's removal is a specified item on the agenda of the governing body meetings.
- 2 Where the removal relates to a foundation governor or partnership governor the governing body must consider the reasons for the removal and the governor whom it is proposed to remove is given the opportunity to make a statement in response.
- 3 Where the removal relates to a co-opted or appointed parent governor the governor proposing the removal must give their reasons for doing so and the governor given the opportunity to make a statement in response.
- 4 At a second governing body meeting held not less than 14 days after the first meeting the governors must confirm by resolution that the governor is removed from the governing body.

Notes

- (a) The Regulations do not make provision for the removal of elected parent governors or staff governors.
- (b) The governing body can also remove partnership governors under point (3) above.

Instrument of Government

The Regulations make provisions in relation to:

- (i) contents and form of the instrument of government;
- (ii) provision for making the instrument;
- (iii) review of the instrument of government;
- (iv) copies of the instrument of government.

Where a governing body intend to change the constitution of the governing body they must contact Governor Services.

Elections

The election of parent governors can be carried out by the school in accordance with the Local Authority's procedure document.

Similarly the election of staff governors can be undertaken by the school.

In either case there is no minimum of votes which must be cast.

Steve Brailsford
6 August 2012