

**EXPLANATORY MEMORANDUM TO  
THE SCHOOL GOVERNANCE (TRANSITION FROM AN INTERIM  
EXECUTIVE BOARD) (ENGLAND) REGULATIONS 2010**

**2010 No. 1918**

1. This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 The Regulations concern the means by which a governing body of a maintained school makes the transition from an Interim Executive Board (“IEB”) to a normally-constituted governing body.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 These Regulations update the School Governance (Transition from an Interim Executive Board) (England) Regulations 2004 to keep pace with changes made to the School Governance (Constitution) (England) Regulations 2007 and changes made by the Education and Inspections Act 2006 concerning the intervention powers of local authorities and the Secretary of State.

- 3.2 In addition, these Regulations replace the existing duty on local authorities to put in place a shadow governing body, with a power, meaning that local authorities can determine in each individual case, whether or not it is appropriate to put in place a shadow governing body or move straight to establishing a normally-constituted governing body.

- 3.3 The previous Department for Children, Schools and Families carried out a public consultation on the proposed changes from 3 February to 17 March 2010 in order to seek the views on the proposed amendments. The consultation specifically targeted local authorities, school head teachers, school governors and nationally representative bodies and organisations.

4. **Legislative Context**

- 4.1 The instrument revokes the School Governance (Transition from an Interim Executive Board) (England) Regulations 2004 (SI 2004/530) and is made under powers conferred by paragraph 19(2) and (3) of Schedule 6 to the Education and Inspections Act 2006.

## **5. Territorial Extent and Application**

5.1 This instrument applies to England only.

## **6. European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

7.1 A local authority may apply to the Secretary of State for consent to appoint an IEB to replace the governing body of a school where a school is eligible for intervention. This is where a school has failed to comply with a warning notice given by a local authority where there are concerns relating to performance, standards or safety at the school, or where a school has failed to comply with teachers' pay and conditions. This may also be where a school has been judged to require Special Measures or judged to require Significant Improvement by Ofsted.

7.2 The purpose of an IEB is to secure a sound basis for future improvement in the school and to promote high standards of educational achievement. An IEB may be a small body, typically consisting of between three and six members. Members of the IEB are chosen by the local authority on the basis of the particular skills needed in an individual school to secure improvement in the school's performance.

7.3 The notice which establishes an IEB, may specify the date when the IEB will cease to operate; if not, a further notice may be given specifying a date when the IEB will come to an end.

7.4 IEBs normally operate for between 12 to 24 months. The transition from an IEB to normal governance arrangements currently begins with the establishment of a shadow governing body by the local authority which works alongside the IEB for a minimum period of 6 months. After the IEB ceases to operate, the shadow governing body acts alone as the governing body of the school for a minimum period of 6 months but no longer than 13 months before it vacates office and is replaced by the normally-constituted governing body.

7.5 These Regulations no longer require local authorities to appoint a shadow governing body when transitioning from an IEB to a normally-constituted governing body, but replace this duty with a power.

7.6 Shadow governing bodies, like normally-constituted governing bodies, may be comprised of parent, staff, local authority and community governors and foundation governors. The shadow governing body must be constituted in accordance with the requirements set out in the Regulations. The School Governance (Transition from an Interim Executive Board) (England) Regulations 2004 required updating to recognise additional categories of and numbers of governors who would make up a governing body if it were a

normally-constituted governing body, as set out in the School Governance (Constitution) (England) Regulations 2007.

7.7 All shadow governors are appointed by the local authority in all categories of school but the local authority must first consult the body entitled to appoint foundation governors and partnership governors under the instrument of governance of the school if the governing body were a normally-constituted governing body.

7.8 A local authority can determine whether the circumstances of an individual case make it appropriate to appoint a shadow governing body as part of a school's transition back to normally-constituted governance, or to move straight to establishing a normally-constituted governing body more swiftly if the circumstances allow.

7.9 These Regulations also set out the proportion of each category of governor on the shadow governing body. The Regulations amend the 2004 Regulations to allow the shadow governing body of a qualifying foundation school to be formed with a majority of governors selected to represent the school's foundation.

## **8. Consultation outcome**

8.1 The Department carried out an e-consultation on its consultation website, asking for returns by 17 March 2010. The consultation posed two questions, the first on the policy change to replace the duty on local authorities to appoint a shadow governing body, with a power; and the second on the technical amendments to the categories of school governors which were made to bring these Regulations into line with the School Governance (Constitution) (England) Regulations 2007.

8.2 The Department 24 responses of which 15 were from local authorities, one from a school head teacher and three from bodies responsible for maintaining schools with a religious character.

8.3. There was overall support for the proposal to replace the duty on local authorities to appoint a shadow governing body with a power. A majority of respondents welcomed the proposal as bringing about a welcome reduction in burdens, and also an increased flexibility for local authorities in managing the transition from governance by an IEB to a normally-constituted governing body.

8.5 There was broad support for the proposal to make technical amendments to the categories of school governors included in parts 2 and 4 of the Regulations which would bring them into line with the School Governance (Constitution) (England) Regulations 2007. The majority of respondents welcomed the increase in clarity made by the proposals. A concern was raised over whether the Regulations adequately reflected the role played by the Diocesan authority in relation to faith schools, which had been recognised in

the School 2004 Regulations. The 2010 Regulations have been redrafted to address this point.

## **9. Guidance**

9.1 Guidance on Interim Executive Boards is currently contained within the Statutory Guidance on Schools Causing Concern 2008, made under s.72 of the Education and Inspections Act 2006 which can be accessed at [http://www.opsi.gov.uk/acts/acts2006/ukpga\\_20060040\\_en\\_1](http://www.opsi.gov.uk/acts/acts2006/ukpga_20060040_en_1).

## **10. Impact**

10.1 An Impact Assessment has not been prepared for this instrument, as the policy has no impact on the private sector or businesses. The policy will reduce burdens on local authorities who will no longer be required to set up a shadow governing body as this will now be at their discretion.

## **11. Regulating small business**

11.1 The legislation does not apply to small businesses.

## **12. Monitoring & review**

12.1 The Department for Education will monitor the effectiveness of this legislation by seeking views from a sample of local authorities who have managed Interim Executive Boards in schools within their areas. This will be done within 12 months of these Regulations coming in to force.

## **13. Contact**

For queries regarding the School Governance (Transition from an Interim Executive Board) (England) Regulations 2010, please contact the Department for Education: telephone 0870 000 2288; or email [causingconcern.schools@education.gsi.gov.uk](mailto:causingconcern.schools@education.gsi.gov.uk).