
STATUTORY INSTRUMENTS

2012 No. 1034

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

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⁽¹⁾ 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;

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

- (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 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.