

EXPLANATORY MEMORANDUM TO

THE SCHOOL GOVERNANCE (CONSTITUTION AND FEDERATIONS) (ENGLAND) (AMENDMENT) REGULATIONS 2014

2014 No. 1257

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

These Regulations amend the School Governance (Constitution) (England) Regulations 2012 (“the Constitution Regulations 2012”), the School Governance (Federations) (England) Regulations 2012 (“the Federations Regulations 2012”) and the School Governance (Roles, Procedures and Allowances) (England) Regulations 2013 (“the Roles, Procedures and Allowances Regulations 2013”). They also revoke the School Governance (Constitution) (England) Regulations 2007 (“the Constitution Regulations 2007”) and the School Governance (Federations) (England) Regulations 2007 (“the Federations Regulations 2007”), to the extent that those Regulations remain in force. The purpose is to:

- revoke the Constitution Regulations 2007 and the Federations Regulations 2007 so that, by 1 September 2015, all maintained school governing bodies in England will have to be constituted under the 2012 regulatory framework;
- ensure that governors have the skills required to contribute to the effective governance and success of schools or federations of schools;
- introduce a new procedure for removing surplus governors, replacing the ‘first in last out’ rule; and
- ensure that a person subject to a direction of the Secretary of State under section 128 of the Education and Skills Act 2008 is disqualified from holding office as a governor of a maintained school.

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

None

4. Legislative Context

The Constitution Regulations 2007 and the Constitution Regulations 2012 set out the arrangements for the constitution of governing bodies of maintained schools in England.

The Federations Regulations 2007 and the Federations Regulations 2012 set out a number of procedural and constitutional arrangements for federations of maintained schools in England and those considering or establishing a federation. The Roles, Procedures and Allowances Regulations 2013 make provision for the role and core functions of the governing bodies of maintained schools in England, and their procedures, including the removal of excess governors.

5. Territorial Extent and Application

This instrument applies to England.

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

- Governing bodies have a vital and demanding role as the strategic leaders of 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 to contribute to effective governance . The overall purpose of the changes 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.

- Consolidation

Subject to clearance, we will publish consolidated versions of the regulations on the Government's website.

8. Consultation outcome

8.1 The principles underpinning the proposed changes were subject to a short targeted consultation with members of the department's Advisory Group on Governance (AGOG) in July 2013. AGOG includes representatives of the Catholic Church, the Church of England, the National Governors' Association, the head teacher associations, Freedom

and Autonomy for Schools National Association, Information for School and College Governors, National Co-ordinators of Governor Services, Ofsted and SGOSS (Governors for Schools).

8.2 The proposals were then subject to a 9 week public consultation targeted at local authorities, governing bodies, governance organisations and other interested parties. The consultation was available on the DfE and GOV.UK websites. The public consultation elicited 235 responses, from chairs of governors, individual governors, local authorities and governor organisations. A majority of responses supported the proposals and agreed with the principles underpinning the changes.

8.3 While concerns were raised about the practicalities of having a small governing body, most respondents supported the principle that governing bodies should be no bigger than they need to be and have all the skills necessary to carry out their functions. Some concern was also expressed that, whilst they supported the aim that all governors have the necessary skills to fulfill their role, some governing bodies had difficulty with governor recruitment. A full report of the consultation, including the Government's response, will be published on the GOV.UK website.

9. Guidance

Statutory guidance on the Constitution Regulations 2012 and the Federation Regulations 2012 will be published on GOV.UK website. The Governors' Handbook, which provides governors with all the information they need to know about their roles and responsibilities, will also be amended to reflect the changes being made by these regulations. The amendment to the Roles, Procedures and Allowance Regulations 2013 will be reflected in amendments to the non-statutory departmental advice note on these regulations which also appears on the GOV.UK website.

10. Impact

An impact Assessment has not been prepared for this instrument. Our consultation with the key organisations representing governors indicates that any additional work to be undertaken by governing bodies needing to reconstitute and by local authorities needing to make new instruments of government will be feasible within the required timeframes.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

We will monitor the operation of these regulations through regular meeting with representative organisations on the Advisory Group on Governance.

13. Contact

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