

**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 and Procedures 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. Section 128 is a power of the Secretary of State to direct that a person may not take part in the management of an independent school, on grounds connected with the person’s suitability to take part in the management of an independent school. The Department intends to bring this provision (and associated regulations) into force later in the year.

### **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 power to suspend a governor in specific limited circumstances.

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

This instrument applies to England.

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

As the instrument is subject to the 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 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. Through the introduction of these changes, governing bodies of all maintained schools will operate to the same legislative framework when choosing the membership of the governing body. The changes also require those who nominate or appoint governors of maintained schools, to do so on the basis of the skills the governor possesses to add to the effective governance and success of the school. This will ensure that governing bodies and those appointing governors emphasise the importance of governors' skills. The

changes also remove the ‘juniority’ rule for removing surplus governors. The changes provide greater local discretion to identify, on the basis of skills, which existing governors should continue to hold office.

- 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 8 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 fulfil their role, some governing bodies had difficulty with governor recruitment. A full report of the consultation, including the Government’s response, can be found on the GOV.UK website at <https://www.gov.uk/government/consultations/maintained-school-governing-body-constitution-regulation-changes>.

## **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 2012 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. The requirement for governing bodies to reconstitute has no cost implications for governing bodies or local authorities.

## **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 meetings with representative organisations on the Advisor Group on Governance.

## **13. Contact**

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