

**EXPLANATORY MEMORANDUM TO
THE SCHOOL GOVERNANCE (MISCELLANEOUS AMENDMENTS)
(ENGLAND) REGULATIONS 2015**

2015 No. 883

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

2. **Purpose of the instrument**

2.1 These Regulations amend the constitution requirements of temporary and shadow governing bodies of maintained schools in England to bring them into line with the categories and eligibility criteria of governors in normally constituted governing bodies. The Regulations also amend the procedures of these bodies as well as of joint committees to align them with those of normally constituted governing bodies. Finally, the Regulations make amendments to allow governing bodies to delegate certain of their functions relating to staffing to committees and to allow them to decide whether individual governors of a particular category could hold a term of office of less than four years, if those making the appointment so decide.

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

3.1 None

4. **Legislative context**

4.1 The School Governance (Constitution) (England) Regulations 2012 (“the 2012 Regulations”) set out the arrangements for the constitution of governing bodies of maintained schools in England. The School Governance (Roles, Procedures and Allowances) (England) Regulations 2013 (“the 2013 Regulations”) set out the procedures to be adopted by governing bodies of all such schools.

4.2 The School Governance (Collaboration) (England) Regulations 2003 (“the 2003 Regulations”) deal with the establishment, membership and proceedings of joint committees: i.e. committees established by two or more governing bodies collaborating with each other in order to discharge their functions jointly. Regulation 2 of these Regulations amends the 2003 Regulations to align the procedures required to appoint clerks, chairs and associate members to joint committees with the procedures required by the 2013 Regulations to appoint such persons to governing bodies. Regulation 2 also amends the 2003 Regulations to allow joint committees to approve alternative arrangements for their members to participate and vote at meetings, including by telephone and video conference.

4.3 The School Governance (New School) (England) Regulations 2007 (“the 2007 Regulations”) make provision relating to the governance of new maintained schools in England by temporary governing bodies prior to a new maintained school opening. They describe the categories of governors required within temporary governing bodies, the procedures for their appointment, suspension and disqualification, the composition required of those bodies and the requirements relating to the election of the chair and vice-chair. Regulation 3 amends the 2007 Regulations so that these requirements in relation to temporary governing bodies are aligned with the 2012 and 2013 Regulations. Regulation 3 also amends the 2007 Regulations to allow temporary governing bodies to approve alternative arrangements for their members to participate and vote at meetings.

4.4 The Collaboration Arrangements (Maintained Schools and Further Education Bodies) (England) Regulations 2007 make provision enabling governing bodies of maintained schools and further education bodies to exercise their functions jointly through joint committees. Regulation 4 of these Regulations aligns the procedures required to appoint clerks, chairs and associate members to joint committees with the procedures required by the 2013 Regulations to appoint such persons to governing bodies. Regulation 4 also makes amendments to allow joint committees to approve alternative arrangements for their members to participate and vote at meetings.

4.5 The School Governance (Transition from an Interim Executive Board) (England) Regulations 2010 (“the 2010 Regulations”) make provision in relation to the transition of a governing body constituted as an interim executive board, to a normally constituted governing body. Parts 4 and 5 of the 2010 Regulations make provision allowing a local authority to establish a shadow governing body at least six months before the interim executive board is to become a normally constituted governing body, they set out the composition required in a shadow governing body and the categories of shadow governor required within it. Regulation 6 of these Regulations amends the 2010 Regulations to align these requirements in the 2010 Regulations with the requirements in relation to governing bodies in the 2012 Regulations.

4.6 These Regulations also amend the School Staffing (England) Regulations 2009 to allow governing bodies to delegate certain functions in relation to members of their staff to committees (which can also include associate members).

4.7 Finally, these Regulations amend the 2012 Regulations to give governing bodies of maintained schools greater flexibility in respect of the appointment of individual governors. Regulation 7 amends regulation 18 of the 2012 Regulations to grant governing bodies the power to decide whether individual governors within a particular category could be appointed for a term of office of less than four years.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

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

7. Policy background

7.1 The Department's aim is to improve the regulatory framework for maintained school governance by simplifying arrangements, removing unnecessary burdens or constraints, and by ensuring governing bodies have all the powers they need to be effective.

7.2 The 2012 Regulations and the 2013 Regulations, and the amendments recently made to those Regulations, have updated the requirements relating to the constitution and the roles, procedures and allowances of normally constituted governing bodies. There are four additional sets of governance Regulations which cater for the governance arrangements of schools in other, specific circumstances. These are listed in paragraphs 4.2 to 4.5 above.

7.3 The amendments made by these Regulations are necessary to ensure that the constitution of the temporary and shadow governing bodies reflect the constitution of the governing bodies they will adopt when they transition to be normally constituted. They also ensure that appointments to the temporary and shadow governing bodies are based on the skills people have to contribute to the effective governance and success of the school. This was a key change that the Government made in 2014 to the 2012 Regulations.

7.4 The 2013 Regulations provided a simplified and more flexible set of procedures, including the introduction of the ability of governing bodies to meet and vote electronically. One of our aims in amending the Regulations listed in paragraphs 4.2 to 4.5 above is to enable governing bodies in these circumstances to also benefit from simpler and more flexible procedures.

7.5 At this stage, we do not intend to publish consolidated versions of the Regulations being amended.

8. Consultation Outcome

8.1 The principles underpinning the changes to the 2012 Regulations were subject to full public consultation in 2014. The changes being made in these Regulations reflect those changes for new schools and those transferring from interim executive boards. The principles being introduced in these Regulations reflect the policy following the 2014 consultation which was fully debated with the Department for Education's Advisory Group on Governance (AGOG). A further full public consultation was therefore not considered necessary. The detailed proposals were subject to a targeted consultation with the AGOG, and through them, their members, from 17 December 2014 to 19 February 2015. The 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

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

8.2 30 responses were received, broken down as follows:-

15 responses from LAs

2 responses from chairs of governors

3 responses from school email addresses, no position identified

2 responses from companies/consultancy services

8 responses from AGOG members:

- Institute of School and College Governors (ISCG)
- National Governors' Association (NGA)
- Catholic Education Service (CES)
- SGOSS
- National Association of Head Teachers (NAHT)
- Association of School and College Leaders (ASCL)
- National Co-ordinators of Governor Services (NCOGS)
- Association of Directors of Children's Services (ADCS)

8.3 The proposals to update the Regulations in the manner proposed received unanimous support. The proposal to provide greater flexibility on terms of office for individual governors generated the most comments. Most members of AGOG are in agreement with the proposal. However, NCOGS fear it may lead to inequality within the governing body and do not see a need for it. The CES does not agree that the decision should be for the governing body in a voluntary aided school. Others expressed some concern about the potential disruption to the governing body and the difficulties for the clerk to maintain an accurate record of terms of office. The Government thinks that governing bodies are best placed to decide whether to utilise this flexibility, in the same way that they currently do in relation to setting different terms of office for different categories of governor. The decision on whether to operate the flexibility in relation to an individual governor is for the appointing body.

8.4 The proposal relating to the appointment of associate members to consider staffing matters was also favourably received, but the NAHT highlighted the importance that an associate member has the right expertise, and indicated that the decision to appoint an associate member should be for the whole governing body. This is something which we have considered and dealt with in these in Regulations.

8.5 The Department for Education intends to make a report of the consultation available to members of AGOG.

9. Guidance

9.1 An explanation of these legislative changes will be added at the earliest opportunity to the Governors' Handbook provides guidance to governors, clerks and head teachers on the roles, functions and legal duties of governing bodies.

10. Impact

10.1 An Impact Assessment has not been prepared for this instrument since it will not impose any additional cost or increase the workload for schools or local authorities.

11. Regulating small business

11.1 This legislation does not apply to small business.

12. Monitoring & review

12.1 We will monitor the operation of these Regulations through regular meetings with the relevant representative bodies: the National Governors' Association, the National Co-ordinators of Governor Services, and through the termly discussions with the Advisory Group on Governance.

13. Contact

13.1 Iain Campbell at the Department of Education Tel: 01325 340569 or e-mail: iain.campbell@Education.gsi.gov.uk can answer any queries regarding the instrument.