



Statutory Guidance on the School Governance (Constitution) (England) Regulations 2003 -

Maintained Nursery schools version

Overview

All maintained nursery schools (MNS) are required to have governing bodies from 1 September 2003. This statutory guidance seeks to explain the framework for governing body constitution to enable MNS and LEAs to implement the new arrangements effectively. The size of the governing body can range from a minimum of 9 to a maximum of 20. Within this range each MNS can adopt the model of their choice, provided it complies with the guiding principles for maintained nursery schools.

Action required:

LEAs will need to ensure that maintained nursery schools in their area have a governing body under an instrument of government on 1 September 2003.

For further copies of this publication please see details on back page.

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Governors

LEAs and headteachers of maintained nursery schools

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STATUTORY GUIDANCE ON THE CONSTITUTION OF SCHOOL GOVERNING BODIES

Maintained Nursery Schools version

CONTENTS		Page
Section 1	Executive Summary	3
1.1	Introduction	
1.2	A flexible framework	
1.3	The guiding principles	
1.4	The instrument of government	
1.5	Timing and implementation	
1.6	Legislative basis	
Section 2	Categories of governor	5
Section 3	Composition of the governing body	7
Section 4	Terms of office and removal from office	8
Section 5	Instrument of government	10
Section 6	Qualifications and disqualifications	12
Annex A	Examples of constitutional models	13
Annex B	Model instrument of government	14

STATUTORY GUIDANCE ON THE SCHOOL GOVERNANCE (CONSTITUTION) (ENGLAND) REGULATIONS 2003

MAINTAINED NURSERY SCHOOLS VERSION

1. **EXECUTIVE SUMMARY**

1.1 Introduction

Maintained nursery schools (MNS) are required to have governing bodies from 1 September 2003. The aim of this statutory guidance is to explain the framework for governing body constitution to enable MNS and LEAs to implement the new arrangements effectively. This guidance refers to the School Governance (Constitution)(England) Regulations 2003¹ (Si 2003/348) as the 'Constitutions regulations'. Additional guidance may be put on DfES GovernorNet in due course (address: <http://www.governor.net.co.uk>).

1.2 A flexible framework

The size of the governing body can range from a minimum of 9 to a maximum of 20². Within this range each MNS can adopt the model of their choice, provided it complies with the guiding principles for maintained nursery schools.

1.3 The guiding principles

The guiding principles prescribe which categories of governor must be represented on the governing body and what the level of representation is for each of the categories. There are four compulsory stakeholder groups for maintained nursery schools: parents, school staff, the Local Education Authority (LEA) and the community. Sponsors form a fifth, optional group. (See sections 2 and 3 for more detail). The proportions of places on the governing body that must be reserved for the different categories of governor in maintained nursery schools are as follows:

- Parent governors: at least one- third
- Staff governors: at least two places, but no more than one- third, including the head teacher
- LEA appointed governors: one-fifth
- Community governors: at least one-fifth.

Examples of constitutional models that comply with these principles are set out in annex A.

1.4 The instrument of government

Each school must have an instrument of government. This document records the name of the school and the constitution of the governing body. It is the LEA's responsibility to choose the constitutional model and draft the first instrument of government of maintained

¹ Governing bodies of maintained nursery schools that intend to federate should consult any separate guidance on governance federations.

² In addition to this one or two sponsor governors can be appointed by the governing body.

nursery schools in their area. If a maintained nursery school has a governing body, management committee or similar body then the Secretary of State considers that, as a matter of good practice, the LEA should consult it on the constitutional model they propose and on the draft instrument. Once the first instrument has been made the governing body or LEA can review and vary the instrument (and the constitutional model) at any time. (See section 5 for more detail). A model instrument of government is attached at annex B.

1.5 Timing and implementation

The Regulations came into force on 20 March 2003. This will give LEAs and MNS time to choose a new constitutional model and formally adopt this by having a new instrument of government in place by 1 September 2003. The implementation stages and timescales are:

- **20 March 2003:** new Regulations into force.
- **May 2003:** guidance published.
- **1 September:** all MNS have an instrument of government under the Constitution Regulations.

1.6 Legislative basis

The Education Act 2002 requires maintained nursery schools to have governing bodies from 1 September 2003. From 20 March 2003 a new framework for the constitution of governing bodies, including maintained nursery schools, came into effect. The legislative basis for this is the School Governance (Constitution) (England) Regulations 2003.

CATEGORIES OF GOVERNOR (Part 2 and Schedules 1 – 5 of the Constitution Regulations)

2.1. Parent governors (regulation 4 and Schedule 1). Parents, including carers, of registered pupils at the school are eligible to stand for election for parent governorship at the school. Parent governors are elected by other parents at the school. If insufficient parents stand for election, the governing body can appoint parent governors.

2.1.1. Schools must make every reasonable effort to fill parent governor vacancies through elections. Only if insufficient parents stand for election can the governing body appoint:

- (a) a parent of a registered pupil at the school, or if that is not possible,
- (b) a parent of a former pupil at the school, or if that is not possible,
- (c) a parent of a child of or under compulsory school age.

2.1.2. A person is disqualified from election or appointment as a parent governor of a school if they are an elected member of the LEA or if they work at the school for more than 500 hours (i.e. for more than one-third of the hours of a full-time equivalent) in a school year (at the time of election or appointment).

2.2. Staff governors (regulation 3 and Schedule 2). Both teaching and support staff paid to work at the school are eligible for staff governorship. Staff governors are elected by the school staff and must be paid to work at the school; volunteers are not eligible. Any election which is contested must be held by ballot.

2.2.1. At least one staff governor must be a teacher (in addition to the head teacher – see below), but if no teacher stands for election a member of the support staff can be elected to take that place. If a governing body has three or more staff governor places, at least one staff governor must be a member of the support staff, but if no member of the support staff stands for election a teacher can be elected to take that place.

2.2.2. The head teacher is a member of the governing body by virtue of their office and counts as a member of the staff category. If the head teacher decides not to be a governor they must inform the clerk of that decision in writing, and we recommend that the head teacher does so before circulation of the agenda of the governing body's first meeting after the head teacher's appointment. The head teacher's place remains reserved for them and cannot be taken by anyone else.

2.2.3. The places that must be reserved for the head teacher, a teacher and a member of the support staff on the governing body are set out in the table below:

Reserved places for staff governors			
Total number of staff governor places on the governing body	Place reserved for the head teacher	Place reserved for a teacher	Place reserved for a member of support staff
2 (minimum)	1	1	0
3 or more	1	1	1

2.2.4. School staff who are eligible for election as staff governors (i.e. who are paid to work at the school) are not eligible to serve as LEA governors or community governors at their school. If they are paid to work at the school for more than 500 hours in a school year they are not eligible for election or appointment as parent governors. Staff can, however, vote in parent governor elections if they are parents. Their employment status will not affect their qualification for governorships in these categories at another school.

2.3. LEA governors (regulation 6) are appointed by the LEA. LEAs can appoint any eligible person as an LEA governor. LEAs are encouraged to appoint high calibre governor candidates to schools that need most support and to appoint candidates irrespective of any political affiliation or preferences. LEAs may appoint minor authority representatives as LEA governors.

2.3.1. A person is disqualified from appointment as a LEA governor if they are eligible to be a staff governor of the school.

2.4. Community governors (regulation 7 and Schedule 3) are appointed by the governing body to represent community interests. Community governors can be persons who live or work in the community served by the school, or persons who do not work or live close to the school but are committed to the good governance and success of the school. The definition of community governor is wide and people from for instance a business or professional background and people with experience of early years provision can be appointed as community governors.

2.4.1. A person is disqualified from appointment as a community governor if they are a registered pupil at the school, eligible to be a staff governor at the school, or if they are an elected member of the LEA.

2.5. Sponsor governors (regulation 10 and Schedule 5) are appointed by the governing body. It is at the governing body's discretion whether they choose to appoint sponsor governors or not. If the governing body wants to appoint one or two sponsor governors it must seek nominations from the sponsor(s). The governing body can appoint a maximum of two persons as sponsor governors.

2.5.1. Persons who give substantial assistance to the school, financially or in kind, or who provide services to the school can be appointed by the governing body as sponsor governors. This definition allows for a wide range of partners to be appointed to a governing body, including representatives from other schools, early excellence centres and others who offer advice and support to the school.

2.6. Associate members (regulation 11) Governing bodies can benefit from being able to draw on expertise and experience from outside their formal governor membership. The governing body can appoint associate members to serve on one or more governing body committees and attend full governing body meetings. The definition of associate member is wide and school staff, early years providers and people who want to contribute specifically on issues related to their area of expertise (for instance finance) can be appointed as associate members.

2.6.1. Associate members are appointed as members of any committees established by the governing body. They are appointed for a period between one and four years and can be reappointed at the end of their term of office. Associate members are not governors and they are not recorded on the instrument.

3. COMPOSITION OF THE GOVERNING BODY (Part 3 of the Constitution Regulations)

3.1. The number of governors must be no fewer than 9 and no more than 20, excluding sponsor governors (regulation 12). The guiding principles that determine the level of representation prescribe that the proportions of places taken by each of the categories are as follows (regulation 13):

- Parent governors: at least one-third.
- Staff governors: at least two but no more than one-third, including the head teacher.
- LEA governors: one-fifth.
- Community governors: at least one-fifth.
- In addition the governing body may appoint one or two sponsor governors.

3.2 Proportions and percentages must be rounded to the nearest whole number. Annex A gives examples of models that comply with the principles. These examples are not exhaustive and governing bodies are free to adopt alternative models that comply with the guiding principles.

3.3 Surplus governors (regulation 19) If there are more governors in a particular category than are recorded in the instrument of government, the governor(s) of that category may serve out their term of office. This would apply if the instrument of government of a school is varied and the size of the governing body, or a particular category of governor, is reduced. It will also apply on reconstitution of the governing body under the Constitution Regulations.

4. TERMS OF OFFICE AND REMOVAL FROM OFFICE (Part 4 and Schedule 6 of the Constitution Regulations)

4.1. The term of office (regulation 21) for all categories of governor is four years, but the governing body can decide to set a shorter term of office for one or more categories of governor. For instance, some governing bodies of maintained nursery schools may want to set a shorter term of office for parent governors. This provision does not apply to the head teacher or to any additional governors appointed by the LEA or by the Secretary of State. If the term of office is shorter than four years this has to be recorded in the instrument of government. The term of office cannot be shorter than one year and cannot be varied for individual governors.

4.2. Any governor may at any time resign by giving written notice to the clerk. We recommend that the bodies responsible for elections and appointments make it clear to prospective governors that they can resign before their term of office ends, and that not being able to serve the full term should not discourage them from becoming a governor.

4.3. Removal from office (regulations 23 -25)

4.3.1. The governing body may remove from office community governors.

4.3.2. The governing body may also remove any parent governor who has been appointed, but they may not remove an elected parent governor. (A parent governor is considered to be elected if they stood for election for parent governorship; whether or not a ballot took place is irrelevant for this purpose).

4.3.3. LEA governors may be removed from office by the LEA that appointed them. The person who appointed the LEA governor must give written notice to the clerk to the governing body and the governor in question of their removal.

4.3.4. The governing body may remove from office any sponsor governors and it may also do so at the request of the nominating body.

4.3.5. The governing body may not remove any staff governor or elected parent governor.

4.3.6. Procedure for removal (regulation 26)

4.3.7. In the case of the removal of any community governor, appointed parent governor, or sponsor governor whose removal is requested by the governing body, the governor(s) proposing the removal must give the reasons for the proposed removal and the governor in question must be given the opportunity to make a statement in response before a vote is taken on a resolution to remove the governor in question.

4.3.8. In the case of the removal of a sponsor governor who is proposed for removal at the request of the nominating body, the nominating body proposing the removal must inform the clerk to the governing body and the governor in question in writing of the reasons for proposing the removal. The clerk to the governing body must give the reasons for the proposed removal and the governor proposed for removal must be given the opportunity to make a statement in response before a vote is taken on a resolution to remove the governor in question.

4.3.9. A governing body's decision to remove any community, sponsor, or appointed parent governor must be confirmed at a second meeting not less than 14 days after the first meeting. At both meetings the removal of the governor in question must be specified as an item of business on the agenda.

5. INSTRUMENT OF GOVERNMENT (Part 5 of the Constitution Regulations)

5.1. Summary

5.1.1. The instrument of government is the document which records the name of the school and the constitution of its governing body. The LEA must draft the first instrument of government. If a maintained nursery school has a governing body, management committee or similar body then the LEA should consult them on the constitutional model they propose and on the draft instrument. Once the first instrument has been made the governing body or LEA can review and vary the instrument (and the constitutional model) at any time.

5.2. Contents and form (regulation 29)

5.2.1. The instrument should set out:

- the name and category of school;
- the name of the governing body;
- the categories of governor;
- the number of governors in each category;
- the total number of governors, including any sponsor governors;
- the term of office of any category of governor, if less than four years;
- where the school has sponsor governors, the name of the nominating body;
- the date the instrument takes effect, which cannot be before 1 September 2003.

5.2 Making the instrument (regulation 30)

5.3.1 The LEA drafts and makes the first instrument for governing bodies of maintained nursery schools, but the Secretary of State considers the authority should consult any existing governing body or management committee on the proposed constitutional model and instrument.

5.4 Reviewing and varying the instrument (regulation 31)

5.4.1 The governing body or LEA can review and vary the instrument at any time. The procedural requirements are as follows:

- each party should let the other know what item on the instrument they wish to propose to vary and give reasons;
- the other party should then respond, with any objections and give reasons;
- if there is disagreement, some other variation can be proposed by either party;
- if the LEA is not content with the governing body's revised proposal, they should:
(a) inform the governing body giving reasons, or; (b) propose their own variation giving reasons, and in each case give the governing body reasonable opportunity to reach an agreed revised draft between them.
- once an agreement has been reached, the LEA can vary the instrument;
- in the absence of an agreement, the LEA will vary the instrument as they think fit;
- the varied instrument should record the date the variation takes effect.

5.5 Other requirements relating to instruments of government (regulation 32)

5.5.1 The LEA must supply a copy of the instrument of government, or a consolidated version where there has been a variation, to each member of the governing body (and the head teacher if they are not a governor).

5.5.2 Local education authorities are responsible for ensuring that their maintained nursery schools have instruments of government in place that comply with the School Governance (Constitution)(England) Regulations 2003 by 1 September 2003.

5.6 Model instrument of government

5.6.1 A model instrument is attached as annex B.

6. QUALIFICATIONS AND DISQUALIFICATIONS (regulation 20 and Schedule 6 of the Constitution Regulations)

6.1. A governor must be aged 18 or over at the time of their election or appointment. A person cannot hold more than one governorship at the same school.

6.2. A person is disqualified from being a governor or associate member if they:

- have a mental disorder and are liable to be detained under the Mental Health Act 1983;
- have failed to attend the governing body meetings for a continuous period of six months, beginning with the date of the first meeting they failed to attend, without the consent of the governing body. This provision does not apply to the head teacher;
- are bankrupt;
- are subject to a disqualification order under the Company Directors Disqualification Act 1986 or to an order made under section 429 (2) of the Insolvency Act 1986;
- have been removed from the office of charity trustee or trustee for a charity by the Charity Commissioners or High Court on grounds of any misconduct or mismanagement, or under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 from being concerned in the management or control of any body;
- are included in the list of teachers or workers prohibited or restricted from working with children or young people;
- are disqualified from working with children;
- are disqualified from being an independent school proprietor, teacher or employee by the Secretary of State;
- have been sentenced to 3 months or more in prison (without the option of a fine) in the 5 years before becoming a governor or since becoming a governor;
- have received a prison sentence of 2½ years or more in the 20 years before becoming a governor;
- have at any time received a prison sentence of 5 years or more;
- have been fined for causing a nuisance or disturbance on school premises during the 5 years prior to or since appointment or election as a governor;
- refuse to an application being made to the Criminal Records Bureau for a criminal records certificate.

ANNEX A: EXAMPLES OF CONSTITUTIONAL MODELS

Please note that this annex gives examples. This is not an exhaustive list; governing bodies are free to adopt alternative models, provided these comply with the guiding principles set out in section 3.

Maintained Nursery Schools: examples of constitutional models									
categories of governor and compliance with principles									
Total number of governors	Parents	principle: at least one third	Staff	principle: at least 2 and up to and including one third	LEA	principle: one fifth	Community	principle: at least one fifth	
9	3	(33%)	2	(22%)	2	(22%)	2	(22%)	
10	3	(30%)	3	(30%)	2	(20%)	2	(20%)	
10	4	(40%)	2	(20%)	2	(20%)	2	(20%)	
11	4	(36%)	2	(18%)	2	(18%)	3	(27%)	
12	4	(33%)	3	(25%)	2	(17%)	3	(25%)	
12	4	(33%)	3	(25%)	2	(17%)	3	(25%)	
12	4	(33%)	2	(17%)	2	(17%)	4	(25%)	
13	5	(38%)	2	(15%)	3	(23%)	3	(23%)	
14	5	(36%)	3	(21%)	3	(21%)	3	(21%)	
14	5	(36%)	2	(14%)	3	(21%)	4	(29%)	
14	6	(42%)	2	(14%)	3	(21%)	3	(21%)	
15	5	(33%)	3	(20%)	3	(20%)	4	(27%)	
15	6	(40%)	3	(20%)	3	(20%)	3	(20%)	
16	6	(38%)	2	(13%)	3	(19%)	5	(31%)	
16	6	(38%)	3	(19%)	3	(19%)	4	(25%)	
17	6	(35%)	4	(24%)	3	(18%)	4	(24%)	
17	6	(35%)	3	(18%)	3	(18%)	5	(29%)	
18	6	(33%)	4	(22%)	4	(22%)	4	(22%)	
19	7	(37%)	3	(16%)	4	(21%)	5	(26%)	
20	7	(35%)	4	(20%)	4	(20%)	5	(25%)	

Note: figures have been rounded up or down to the nearest whole number. .5 has been rounded up.

ANNEX B: MODEL INSTRUMENT OF GOVERNMENT

INSTRUMENT OF GOVERNMENT: MAINTAINED NURSERY SCHOOLS

1. The name of the school is.....
2. The school is a maintained nursery school.
3. The name of the governing body is "The governing body of....."
[insert the name of the school as set out in paragraph 1. above].
4. The governing body shall consist of:
 - a. X parent governors *[at least one third of the places];*
 - b. X LEA governors *[one fifth of the places];*
 - c. X staff governors *[at least two, up to and including one third of the places and including the head teacher];*
 - d. X community governors *[at least one fifth of the places];*
 - f. *[where applicable]* X sponsor governors *[up to two].*
5. Total number of governors *[.....].*
6. The sponsor[s] entitled to nominate person[s] for appointment as sponsor governors under schedule 5 of the Regulations is/are *[insert name here].*
7. *[applicable if the term of office of one or more categories of governor is shorter than four years:]* The term of office of [x category of governor] is *[insert period between one and four years].*
8. This instrument of government comes into effect on 1 September 2003 (or a later date).
9. This instrument was made by order of Local Education Authority on *[insert date].*
10. A copy of the instrument must be supplied to every member of the governor body (and the head teacher if not a governor).

* delete as appropriate

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