



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

## Voluntary Controlled schools version

### Overview

The statutory guidance sets out a new framework for the constitution of school governing bodies. The size of the governing body ranges from a minimum of 9 to a maximum of 20. Within this range each governing body can adopt the model of their choice, provided it complies with the guiding principles for Voluntary Controlled schools.

### Action required:

All governing bodies will have to choose and adopt a new model for the size and membership of their governing body by 31 August 2006.

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

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# STATUTORY GUIDANCE ON THE CONSTITUTION OF SCHOOL GOVERNING BODIES

Voluntary controlled schools version

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

## VOLUNTARY CONTROLLED SCHOOLS VERSION

### 1. EXECUTIVE SUMMARY

#### 1.1 Introduction

The aim of this statutory guidance is to explain the new framework for governing body constitution to enable governing bodies and LEAs to operate the new arrangements effectively. This guidance refers to the School Governance (Constitution)(England) Regulations 2003<sup>1</sup>. Additional guidance may be put on DfES GovernorNet in due course (address: <http://www.governor.net.co.uk>).

#### 1.2 A flexible framework

All governing bodies will have to choose and adopt a new model for the size and membership of their governing body by 31 August 2006. The size of the governing body ranges from a minimum of 9 to a maximum of 20<sup>2</sup>. Within this range each governing body can adopt the model of their choice, provided it complies with the guiding principles for voluntary controlled 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 five compulsory stakeholder groups for voluntary controlled schools: parents, school staff, the Local Education Authority (LEA), the community and foundation governors. Sponsors form a sixth, 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 voluntary controlled 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: at least one but no more than one-fifth
- Community governors: at least one-tenth
- Foundation governors: at least two but no more than one quarter.

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 governing body's responsibility to prepare a draft instrument and submit it to the LEA. (See section 5 for more detail). A model instrument of government is attached at annex B.

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1. Federated governing bodies and governing bodies that intend to federate should consult any separate guidance on governance federations.

2. In addition the governing body can appoint one or two sponsor governors.

## 1.5 Timing and implementation

The Regulations came into force on 20 March 2003. This will enable governing bodies to choose a new constitutional model and formally adopt this by having a new instrument of government in place by 1 September 2003, the start of the 2003/04 academic year, if they so choose. All governing bodies will have until 31 August 2006 to comply with the new framework. From 1 September 2006 all governing bodies must have new style instruments of government in place. The implementation stages and timescales are:

- **20 March 2003:** new Regulations come into force.
- **1 September:** earliest date governing bodies can have an instrument of government under the Constitution Regulations.
- **March 2003 – August 2006:** governing bodies choose a new constitutional model and, from 1 September 2003, have a new instrument of government.
- **1 September 2006:** all governing bodies comply with the new Regulations on governing body constitution and have a new instrument of government in place.

## 1.6 Legislative basis

From 20 March 2003 a new framework for the constitution of governing bodies came into effect. The legislative basis for this is the School Governance (Constitution) (England) Regulations 2003 which replace schedules 9 and 12 of the School Standards and Framework Act 1998 and parts of the School Government Regulations 1999.

## 1.7 Transitional arrangements

All governors elected or appointed on or before 1 September 2003 serve out their term of office until it ends, or up to 31 August 2006, whichever is the earlier. Individual governors may, of course, resign before their term ends or before 31 August 2006 if they so choose. See section 7 for more detail.

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

2.1 Parent governors. 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
<b>2 (minimum)</b>	1	1	0
<b>3 or more</b>	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 and be governors at another school. 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 a business or professional background and minor authority representatives 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.

2.4.2. Foundation governors (regulation 8) Foundation governors are appointed by the school's founding body, church or other organisation named in the school's instrument of government or may hold the governorship ex officio, as the holder of an office specified in the Instrument of Government. If the school has a religious character the foundation governors must preserve and develop this. They must also ensure compliance with the trust deed, if there is one.

2.4.3. If there is more than one body that has the right to appoint foundation governors, the instrument of government shall specify the bodies concerned and the basis on which appointments are made.

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, including other schools, who offer advice and support to the school to be represented on the governing body.

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 pupils, school staff 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: at least one but no more than one-fifth.
- Community governors: at least one-tenth.
- Foundation governors: at least two but no more than one quarter.
- 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. This does not apply to the head teacher, any ex officio foundation governor or to any additional governors appointed by the LEA or 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 and foundation governors may be removed from office by the person who appointed them. The person who appointed the governor must give written notice to the clerk to the governing body and the governor in question of their removal. The governing body may remove any ex officio foundation governor at the request of the person named in the instrument of government entitled to make such a request. A person proposing the removal of an ex officio foundation governor must inform the clerk of the governing body and the governor in question of the reasons for proposing the 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 or 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 the governing body resolve to remove the governor in question.

4.3.8. In the case of the removal of a community governor nominated by a voluntary organisation, primary care trust or NHS trust, or sponsor governor 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 the governing body resolve to remove the governor in question. The same procedure applies to the removal of an ex officio foundation governor, except that it is the person requesting the removal of the ex officio foundation governor who must inform the clerk and the governor in question.

4.3.9. A governing body's decision to remove any community, sponsor, appointed parent governor or ex officio foundation 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 governing body drafts the instrument and submits it to the LEA. Before the governing body submits the draft instrument to the LEA it has to be approved by the foundation governors, any trustees, and the appropriate religious body. The LEA will check if the instrument complies with the statutory requirements, including the relevant guiding principles for the constitution of governing bodies. If the instrument complies with the legal requirements the LEA will make the instrument. The governing body and the LEA can review and change the instrument at any time. The same procedures will be followed each time any detail on the instrument is to change, including the name of the school.

### 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.

5.2.2 The instrument should also record:

- the name of the foundation body or person (if any) who is entitled to appoint foundation governors and if there is more than one, the basis upon which appointments are made;
- details of any foundation governorship to be held ex-officio;
- the name of the person entitled to request the removal of any ex-officio foundation governor and to appoint any substitute governor;
- the name of any sponsor entitled to nominate sponsor governors, and ;
- the fact that there is a trust relating to the school, if any;
- if the school has a religious character, a description of the ethos of the school.

### 5.3 Making the instrument (regulation 30)

5.3.1 The governing body must prepare a draft instrument, which needs to be approved by the foundation governors, any trustees and the appropriate religious body before it is submitted to the LEA. The LEA must approve the draft if it complies with the relevant legal requirements.

5.3.2 If there is disagreement about the draft, a variation can be proposed by any party, either solely or in conjunction with another, and all parties should seek to reach an agreement on the revised draft. Once agreement has been reached, the LEA will make the instrument. If the parties involved cannot reach agreement, the foundation governors, trustees, appropriate religious body can refer the draft to the Secretary of State for direction.

#### 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:

- the proposing party should inform the other of the proposed variation giving reasons, and expect responses from them with reasons;
- if there is disagreement, some other variation can be proposed by any party either solely or in conjunction with another;
- any proposed variation (original or revised) should have the approval of all parties, i.e. trustees, appropriate religious body, and foundation governors, before the governing body can submit the draft instrument to the LEA;
- a proposed variation from the LEA (original or revised) should be approved by the trustees, appropriate religious body and foundation governors before a governing body can indicate to the LEA whether or not they are content;
- once all parties have agreed to a proposed variation, the LEA will vary the instrument;
- if there is disagreement among trustees, appropriate religious body, or foundation governors about any revised proposal, any party can refer the proposed variation to the Secretary of State for direction;
- the directed variation will then be passed on to the LEA for making;
- each 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), any trustees, and to the appropriate religious body.

5.5.2 Local education authorities are responsible for ensuring that their schools have instruments of government in place that comply with the School Governance (Constitution)(England) Regulations 2003 by 1 September 2006.

#### 5.6 Model instrument of government

5.6.1 A model instrument is attached as annex B.

## **6. QUALIFICATIONS AND DISQUALIFICATIONS (Schedule 6 of the 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;

## **7. TRANSITIONAL ARRANGEMENTS (regulation 34 and Schedule 7 of the Constitution Regulations)**

7.1 Governors appointed or elected on or before 1 September 2003 – to be referred to as ‘current governors’ - will continue their term of office when the governing body reconstitutes under the Constitution Regulations.

7.2. Current governors will continue to serve in the corresponding category of governor:

<b>Category of current governor</b>	<b>Category of governor under the Constitution Regulations</b>
Co-opted governor	Community governor
LEA governor	LEA governor
Parent governor	Parent governor
Staff governor	Staff governor
Teacher governor	Staff governor
Head teacher	Staff governor
Foundation governor (including ex officio foundation governors)	Foundation governor

7.3. A current governor will continue to hold office until 31 August 2006, or until one of the following if these occur earlier:

- a) the term of office that applied at the time of election or appointment runs out;
- b) he/she resigns;
- c) he/she becomes disqualified from continuing to hold office under the Constitution Regulations.

7.4 A current governor who continues after an instrument of government made under the Constitution Regulations becomes effective must be included in calculating the number of governors required in each category of governor.

7.4.1. The instrument of government must record the number of governors as determined by the governing body when choosing a new constitutional model. As current governors serve out their term of office there may therefore be more governors on the governing body than are recorded on the instrument of government.

7.5 A current governor can be re-elected or re-appointed for a further term under the Constitution Regulations.

## 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.*

Voluntary controlled 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 no more than one third	LEA	principle: up to and including one fifth	Community	principle: at least one tenth	Foundation	principle: at least 2 and no more than one quarter
9	3	(33%)	2	(22%)	1	(11%)	1	(11%)	2	(22%)
10	4	(40%)	2	(20%)	1	(10%)	1	(10%)	2	(20%)
11	4	(36%)	2	(18%)	1	(9%)	2	(18%)	2	(18%)
12	4	(33%)	2	(17%)	2	(17%)	2	(17%)	2	(17%)
13	5	(38%)	2	(15%)	1	(8%)	2	(15%)	3	(23%)
13	5	(38%)	2	(15%)	2	(15%)	2	(15%)	2	(15%)
14	5	(36%)	3	(21%)	2	(14%)	2	(14%)	2	(14%)
14	5	(36%)	3	(21%)	1	(7%)	2	(14%)	3	(21%)
15	5	(33%)	3	(20%)	1	(7%)	3	(20%)	3	(20%)
15	5	(33%)	3	(20%)	2	(13%)	2	(13%)	3	(20%)
16	6	(38%)	3	(19%)	1	(6%)	2	(13%)	4	(25%)
16	6	(38%)	3	(19%)	2	(13%)	2	(13%)	3	(19%)
17	6	(35%)	3	(18%)	2	(12%)	2	(12%)	4	(24%)
17	6	(35%)	3	(18%)	2	(12%)	3	(18%)	3	(18%)
18	6	(33%)	3	(17%)	2	(11%)	3	(17%)	4	(22%)
18	6	(33%)	4	(22%)	2	(11%)	2	(11%)	4	(22%)
19	7	(37%)	3	(16%)	2	(11%)	3	(16%)	4	(21%)
19	7	(37%)	4	(21%)	2	(11%)	2	(11%)	4	(21%)
20	7	(35%)	3	(15%)	2	(10%)	3	(15%)	5	(25%)
20	7	(35%)	4	(20%)	2	(10%)	2	(10%)	5	(25%)

**Note: figures have been rounded up or down to the nearest whole number. 0.5 has been rounded up.**

## ANNEX B: MODEL INSTRUMENT OF GOVERNMENT

### INSTRUMENT OF GOVERNMENT: VOLUNTARY CONTROLLED SCHOOLS

1. The name of the school is.....
2. The school is a voluntary controlled 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 *[up to and including 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 tenth of the places];*
  - e. X foundation governors *[at least two but no more than one quarter 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. Foundation governors - set out the name of any foundation body or person entitled to appoint foundation governors. If this is more than one person set out the basis on which appointments are made.
8. *[where applicable]*
  - (a) the holder of the following office shall be a foundation governor ex-officio:  
  
*[name of office]*
  - (b) The foundation body or person named in paragraph 8 shall be entitled to appoint a foundation governor to act in the place of the ex-officio foundation governor whose governorship derives from the office named in (a) above, in the event that that ex-officio foundation governor is unable or unwilling to act as a foundation governor, or has been removed from office under regulation 23 (2) of the Regulations.

*[Repeat 9(a) and (b) as necessary where there is more than one ex-officio foundation governorship].*

- 10.** Set out the name of any person entitled to request the removal of any ex-officio foundation governor and to appoint any substitute governor.
- 11.** *[Where the school has a trust]* the fact that a trust exists.
- 12.** If the school has a religious character, a description of the ethos of the school.
- 13.** *[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]*.
- 14.** This instrument of government comes into effect on *[insert a date on or from 1 September 2003]*
- 15.** This instrument was made by order of ..... Local Education Authority on .....
- 16.** A copy of the instrument must be supplied to every member of the governor body (and the head teacher if not a governor), any trustees and to the appropriate religious body.

\* delete as appropriate





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