

CSN POLICY BRIEFING

DfE consultation – constitution of maintained school governing bodies

Date 30 January 2014

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Summary

The DfE is consulting (until 14 March) on proposed changes to the regulations and guidance on the constitution of governing bodies in maintained schools and federations of maintained schools in England (Academies are not affected). The main aim is to 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.

Overview

The DfE is consulting (until 14 March) on proposed changes to the regulations and guidance on the constitution of governing bodies in maintained schools and federations of maintained schools in England (Academies are not affected). The aim is to simplify the legislative framework by ensuring a single consistent approach across all maintained schools, and to 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.

The principles underpinning most of the proposed changes were subject to a short targeted consultation with the DfE's Advisory Group on Governance (AGOG), in response to which a number of the proposals are for changes to statutory guidance rather than to regulations. The draft statutory guidance is published alongside the consultation document. It is the DfE's intention to lay amendments to regulations in the spring of 2014 to come into effect on 1 September 2014.

Briefing in full

The proposals in the consultation document are in three sections: proposed changes to the School Governance (Constitution)(England) Regulations 2012 ("the 2012 Constitution Regulations"); proposed changes to the Statutory Guidance on the 2012 Constitution Regulations; and proposed changes to the School Governance (Federations)(England) Regulations 2012 ("the 2012 Federations Regulations"). The consultation is accompanied by the draft amended statutory guidance and by the draft amended 2012 Constitution Regulations and draft amended 2012 Federations Regulations (see [External link](#)).

Proposed changes to the School Governance (Constitution) (England) Regulations 2012

It is proposed to amend the Regulations (8, 9, Schedule 1 and Schedule 3 – relating to LA, Foundation, appointed Parent and Partnership governors respectively) to require that any newly appointed governor has, in the opinion of the person making the appointment, ‘the skills required to contribute to the effective governance and success of the school’.

A school may have more governors in a particular category than is provided for in its instrument of government (eg. if a governing body has decided to reconstitute and reduce in size, but insufficient resignations are forthcoming for the remaining governors to fit within the new structure). Currently, regulations require that governors must cease to hold office on the basis of their ‘juniority’ (ie. ‘last in, first out’). The Education Select Committee has recommended, and the Minister has agreed, that this should be amended to provide greater local discretion to identify which existing governors should continue to hold office, on the basis of skills. The DfE proposes that any surplus in the number of foundation governors should be resolved by the person responsible for appointing foundation governors, and that the governing body should be responsible for resolving any surplus in any other category, with a separate vote on each category in which there is a surplus; that governors should not be permitted to vote on their own category; and that governors declared surplus should not cease to hold office until votes are cast on all categories in which there is a surplus.

Regulation 4 of the 2012 Constitution Regulations currently provides for the 2007 Constitution Regulations to continue to apply to a governing body constituted under an instrument of government that takes effect before 1st September 2012 unless it chooses to reconstitute under the 2012 Constitution Regulations. It is now proposed to amend this to require all governing bodies to be constituted under the 2012 Constitution Regulations by September 2015. The DfE believes that ‘this will provide a helpful stimulus for governing bodies to review and evaluate their effectiveness and ensure their constitution and membership is fit for purpose’, whilst the flexibility of the regulations, particularly the ability to co-opt governors, means that all the individuals currently serving on a governing body could be retained as long as the governing body believed they had the skills to contribute to effective governance.

It is intended to also amend the School Governance (New Schools) Regulations 2007 so that the temporary governing bodies of all new schools will be constituted according to a model akin to the 2012 Constitution Regulations, and to make this change by September 2015 – so that all governing bodies will by then be constituted according to the 2012 regulations.

Proposed changes to Statutory Guidance on the School Governance (Constitution) (England) Regulations 2012

The DfE is consulting on the draft revised statutory guidance which accompanies the consultation document. In addition to taking account of and explaining the proposed changes to the 2012 Constitution Regulations outlined above, it also reflects a number of additional changes to the existing guidance, as follows:

- governing bodies should be no bigger than they need to be to have the skills necessary to carry out their functions (the minimum permitted number is seven)

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- every governor should actively contribute relevant skills and experience
- governing bodies should conduct regular skills audits and use the process of filling vacancies to address any skills gaps
- it is for governing bodies to decide what skills they need and whether prospective governors have the skills to contribute to the effective governance and success of the schools, but (based on the targeted consultation with AGOG) guidance is offered on skills that all governors need and that governing bodies as a whole need to be effective:
 - all governors need a strong commitment to the role, the inquisitiveness to question and analyse, and the willingness to learn. They need good inter-personal skills, a basic level of literacy in English (unless a governing body is prepared to make special arrangements), and sufficient numeracy skills to understand basic data
 - governing bodies seek to secure or develop within their membership as a whole expertise and experience in analysing performance data, in budgeting and driving financial efficiency, and in performance management and employment issues, including grievances. They seek to recruit and/or develop governors with the skills to work constructively in committees, chair meetings and to lead the governing body. They set aside a budget to fund appropriate and necessary continuing professional development for their members
- elected parent and staff governors are chosen by the relevant electorate, and governing bodies have a role in informing elections – including by setting out for potential candidates what they expect of governors, publishing information for the electorate on the type of person they ideally require and ensuring that good information is published about candidates standing for election to inform the electorate's choice.

Proposed changes to the School Governance (Federations) (England) Regulations 2012

The 2012 Federation Regulations mirror the categories of governor in the 2012 Constitution Regulations. It is proposed to amend the eligibility criteria of the categories in the Federations Regulations in line with the changes proposed to the categories defined in the Constitution Regulations, which means that the eligibility criteria for all categories of appointed governor are in line with the current definition of co-opted governors ('people who in the opinion of the governing body have the skills required to contribute to the effective governance and success of the school').

It is proposed to amend Regulation 21(5) to make clear that the total number of co-opted governors who are also eligible to be elected or appointed as staff governors (when counted with the staff governor and the head teacher) must not exceed one third of the total membership of the governing body of the federation. A matching change will be made to Schedule 1 paragraph 3 in respect of temporary co-opted governors in new schools intending to federate.

It is proposed to amend the 2012 Federations Regulations to add the same provisions as are proposed for the 2012 Constitution Regulations in respect of surplus governors and in respect of 2007 Regulations, to require all governing bodies of Federations to be constituted under the 2012 Federations Regulations by September 2015.

Comment

The proposals on which the DfE is consulting seem fairly straightforward and uncontentious – thanks in part, no doubt, to the ‘short, targeted consultation’ with AGOG on the underlying principles (see final paragraph below). The Education Select Committee published a report in June 2013 on its inquiry into the role of school governing bodies (see [‘Related briefings’](#)). This broadly supported the government’s direction of travel on governance – though not its support for significantly smaller governing bodies, observing that ‘there is no evidence base to prove that smaller governing bodies are more effective than larger ones’ – so it is not surprising that some of the Committee’s findings, conclusions and recommendations are reflected in these proposed changes; in particular, the removal of the ‘juniority’ principle for removal of surplus governors. The new requirement for newly appointed governors to have (in the opinion of the person appointing them) the skills required to be an effective governor are an important step in the government’s direction of travel (anticipated in the 2010 schools White Paper), but the permissive nature of the changes in the 2012 Constitution Regulations means that governing bodies retain a lot of discretion in ‘sourcing’ these skilled individuals; the problem many face is finding an adequate supply of potential appointees. The proposed requirement that all governing bodies should be constituted under the 2012 Constitution Regulations by September 2015 seems likely to generate a lot of activity on this front, as it appears that most governing bodies have yet to ‘take advantage’ of this opportunity.

An attempt to find some information on the ‘short, targeted consultation’ with AGOG was only partially successful: searching for ‘targeted consultation with AGOG’ offered no link to the consultation on the DfE’s website (merely to the current consultation document, which includes the phrase), but it did offer a link to an interesting and informative [blog](#) on school governance by Ruth Agnew – who is eminently well-qualified to be blogging on the subject. And her blog *does* carry a link to the targeted consultation paper. Coincidentally, it appears that Ms Agnew was provoked into starting her blog as a direct consequence of a previous ‘targeted’ (or ‘secret’, as she termed it in that first blog) consultation with AGOG.

External link

[Constitution of governing bodies of maintained schools – DfE consultation](#)

Related briefing

[The Role of School Governing Bodies: Commons Education Committee Report](#) (August 2013)

For further information, please visit www.lgiu.org.uk or email john.fowler@lgiu.org.uk