

EXPLANATORY MEMORANDUM TO

THE SCHOOL GOVERNANCE (ROLES, PROCEDURES AND ALLOWANCES) (ENGLAND) REGULATIONS

2013 No. 1624

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**

2.1 These Regulations make provision for the core functions and procedures of governing bodies of maintained schools in England, and for the payment of allowances for out-of-pocket expenses that are incurred by school governors in connection with their duties as governors from 1 September 2013. They also amend the Education (Pupil Referral Units) (Management Committees etc) (England) Regulations 2007 and the School Governance (Federations) (England) Regulations 2012 to apply these Regulations to the management committees of Pupil Referral Units (PRUs) and governing bodies of federations.

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

3.1 None

4. **Legislative Background**

4.1 These Regulations aim to reinforce the strategic role of maintained school governing bodies and reduce the bureaucracy around maintained school governing body procedures. They revoke the School Governance (Procedures) (England) Regulations 2003 (“the 2003 Procedures Regulations”), the Education (School Government) (Terms of Reference) (England) Regulations 2000 (“the Terms of Reference Regulations”), and the Education (Governors’ Allowances) (England) Regulations 2003 (“the Allowances Regulations”) from 1 September 2013 and replace them with a single set of simplified regulations.

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 These Regulations revoke the Terms of Reference Regulations. They provide a simplified and more coherent and strategic definition of the respective roles of the governing body and the head teacher of a maintained school. This definition makes clear that governing bodies must operate at a strategic level, with the headteacher responsible and accountable to them for the day to day running of the school. In particular, the regulations set out the three core functions of maintained school governing bodies. These core functions have been introduced to highlight the most important aspects of school governance. They are consistent with the criteria that Ofsted inspectors will use to judge the effectiveness of schools' governance arrangements.

7.2 The Government is committed to reducing prescription to give governing bodies more discretion in how they exercise their functions and has not restricted delegation of the three core functions. However the Government expects all governing bodies to retain oversight of the three core functions for which the governing body is ultimately responsible in law and accountable to Ofsted.

7.3 These regulations retain the principles from the Terms of Reference Regulations that governing bodies must act with honesty, integrity and in the best interest of their school, and be open about the decisions they make.

7.4 These regulations also revoke the 2003 Procedures Regulations. They implement the Government's policy to simplify governing body procedures and bring them more in line with the freedoms of academies.

7.5 These Regulations also introduce a provision by which governing bodies can meet and vote electronically, which has been requested by the sector. They require that a clerk is appointed with a view to ensuring the efficient functioning of the governing body and place a new obligation on governing bodies to have regard to advice from the clerk on the nature of their duties and functions.

7.6 These Regulations revoke the Allowances Regulations and give governing bodies a simplified power to pay governors out-of-pocket expenses incurred in the course of carrying out governor duties.

7.7 The 2003 Procedures Regulations and the Terms of Reference Regulations currently apply in part to the management committees of PRUs. Regulation 31 and Schedule 3 of these regulations make amendments to the Education (Pupil Referral Units) (Management Committees etc) (England) Regulations

2007 and apply the relevant parts of the new regulations to management committees of PRUs. The amendments made by these Regulations apply to management committees the relevant roles and responsibilities, including to take a strategic role in managing the Pupil Referral Unit, but reduce bureaucracy around their procedures.

7.8 The 2003 Procedures Regulations currently apply, with modifications, to the governing bodies of federations, by virtue of Regulation 24 and Schedule 6 of the School Governance (Federations) (England) Regulations 2012 (“the Federations Regulations”). Regulation 4 and relevant parts of Schedule 2 to these Regulations amend the Federation Regulations, replacing references to the Procedures Regulations and applying these Regulations to the governing bodies of federations.

Consolidation

7.9 These Regulations make minor consequential amendments to the School Governance (Collaboration) (England) Regulations 2003. They also amend the Education (Pupil Referral Units) (Management Committees etc) (England) Regulations 2007, the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007 and the Federations Regulations. At this stage, we do not intend to publish consolidated versions of these Regulations. The amendments are of a minor nature and mainly affect the Federation Regulations. We plan to make an informal version of the consolidated Federation Regulations available on the Department’s website.

8. Consultation Outcome

8.1 The principles underpinning the changes being introduced in these Regulations were fully debated with the Department for Education’s Advisory Group on Governance (AGOG) prior to the regulations themselves being drafted for consultation. A full public consultation was therefore not considered necessary. The draft Regulations were subject to a targeted consultation with the Advisory Group on Governance, and through them their members, from 11 February 2013 to 11 March 2013. The Advisory Group on Governance 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 the School Governors’ One-Stop Shop.

8.2 Twenty five responses (of which twelve were substantive) were received to the targeted consultation. These were from the National Governors’ Association, the National Co-ordination of Governors Services, Information for School and College Governors, local authorities, the Catholic Education Service and governor members of the National Governors’ Association.

8.3 Respondents were generally supportive of the intention to retain the principles of the existing regulations while removing constraints on how

governing bodies exercise their functions. Some respondents were concerned about the extent of the changes while others were more supportive of cutting back the regulations.

8.4 We accepted concerns that in the draft regulations the section on the role of the governing body and head teacher had been slimmed down too far. Part 2 of the Regulations now gives a clearer statement of the strategic role of the governing body, including their core functions, and re-instates provisions to set the general principles that headteachers are accountable to the governing body for the exercise of all their functions and that the headteacher should comply with any reasonable direction of the governing body.

8.5 We accepted concerns that the regulation on the functions of the clerk needed to be strengthened. The Regulations now require the governing body to appoint a clerk for the purpose of ensuring they function efficiently, and to have regard to advice from the clerk on the nature of their functions, including their legal duties.

8.6 We accepted concerns about the removal of the regulation which required papers for governing body meetings to be issued 7 days in advance and have reinstated the provision.

8.7 We did not accept concerns about the Regulations giving governing bodies the freedom to determine the length of office of the chair and vice-chair of governors. We trust governing bodies to make sensible decisions on this and are content with the Regulations.

8.8 We did not accept concerns that the Regulations will now permit associate members to be appointed as the clerk. Associate members are appointed for the skills they can bring to the governing body, usually on committees. There is no reason that they should be prevented from acting as clerk if that is what the governing body wishes.

8.9 We did not accept concerns that the wording of regulation 14(7)(d) on the proceedings of the governing body could lead to a situation in which governors could be purposefully excluded without going through the proper suspension formalities. We think there are sufficient safeguards through the duty on the clerk to notify all governors of meetings and send out the agenda, to ensure that these concerns are not realised.

8.10 We did not accept concerns expressed about regulation 15(3)(c) which permits the governing body to exclude from any agenda, minutes or papers, any matter which it considers to be confidential. The Freedom of Information Act 2000 already applies to maintained schools, and so there is already a presumption that papers will be publicly available on request unless an exemption under the Act applies.

8.11 We did not accept concerns about the new provision allowing governing bodies to meet by video conference without regulation. We think this is a matter for the governing body to decide and we are content with the provisions in the Regulations.

8.12 A number of other minor concerns were expressed by individuals about matters which we felt were properly matters of procedure for the governing body to determine, and did not need to be provided for in these Regulations. We have made some minor amendments to the draft to clarify the provisions, and to correct minor errors. We have also added provisions which extend these Regulations to governing bodies of federations.

8.13 No consultation with PRUs was considered to be necessary as these changes merely preserve the status quo for PRUs.

9. Guidance

9.1 An explanation of the legislation will appear on the Department's website. The Governors' Handbook, which replaces the Governors' Guide To The Law, and the guidance on alternative provision, will also reflect these regulations.

9.2 The Department's guidance on alternative provision sets out the role of the management committee of a pupil referral unit. This guidance is available at: <http://www.education.gov.uk/aboutdfe/statutory/g00211923/alternative-provision>.

10. Impact

10.1 An Impact Assessment has not been prepared for this instrument since the net impact is to reduce burdens and constraints on governing bodies, and 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 735558 or e-mail: iain.campbell@Education.gsi.gov.uk can answer any queries regarding the instrument.