

EXPLANATORY MEMORANDUM (SUPPLEMENTARY) TO
THE SCHOOL GOVERNANCE (CONSTITUTION AND FEDERATIONS)
(ENGLAND) (AMENDMENT) REGULATIONS 2016

2016 No. 204

1. Introduction

- 1.1 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 the governing bodies of maintained schools in England to require them to apply for an enhanced criminal record certificate in respect of any of their governors who do not currently hold one. They also amend the requirements on the constitution of federations by requiring governing bodies to have two parent governors.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 This entire instrument applies only to England.
- 3.3 The instrument applies only to England because it applies only to maintained schools in England, as indicated by the title of the instrument and the instruments it amends, The School Governance (Constitution) (England) Regulations 2012 (“the 2012 Constitution Regulations”) and The School Governance (Federations) (England) Regulations 2012 (“the 2012 Federation Regulations”). The instruments are made under powers in the Education Act 2002, which are exercisable by the Secretary of State in relation to England. The instrument has minor and consequential effects outside England as it may affect governors of maintained schools in England who are not resident in England.
- 3.4 In the view of the department, for the purposes of House of Commons Standing Order 83P, the subject matter of this entire instrument would be within the devolved legislative competence of the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter, and the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament and National Assembly for Wales if equivalent provision in relation to Wales were included in an Act of the National Assembly for Wales.
- 3.5 The Department has reached this view because it considers that the primary purpose of the instrument relates to education, which is within the devolved legislative competence of each of the three devolved legislatures. In relation to Scotland, education is not a reserved matter under the Scotland Act 1998 (Schedule 5). In relation to Northern Ireland, education is not an excepted matter or reserved matter

under the Northern Ireland Act 1998 (Schedules 2 and 3). In relation to Wales, education is devolved to the National Assembly for Wales by paragraph 5 of Part 1 of Schedule 7 to the Government of Wales Act 2006.

4. Legislative Context

- 4.1 The 2012 Constitution Regulations set out the arrangements for the constitution of governing bodies of maintained schools in England. Regulation 2 of these Regulations amends the 2012 Constitution Regulations to require governing bodies of maintained schools to apply for an enhanced criminal record certificate in respect of any of their governors who do not currently hold one.
- 4.2 The 2012 Federation Regulations set out the arrangements that apply to maintained schools in a federation, including matters relating to their establishment, dissolution and constitution. Regulation 3 of these Regulations amend the 2012 Federation Regulations to require the governing bodies of federated maintained schools, and the temporary governing bodies of two or more maintained schools intending to federate, to have two parent governors.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is set out in Section 3 under “Other matters of interest to the House of Commons”.

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

What is being done and why

- 7.1 The Department’s aim is to improve the regulatory framework for maintained school governance. Enhanced Criminal Records checks are currently not mandatory for maintained school governors. The current system of disqualification relies on governors self-disclosing their criminal convictions unless the clerk has asked for a check to be made. Amending the 2012 Constitution Regulations will provide reassurance to the governing body that an individual is not disqualified from holding office as a governor due to criminal convictions. The checks will only be made on those governors that do not already have a certificate. This will bring the arrangements in the maintained sector into line with the requirements in place for trustees in academies and free schools.
- 7.2 Federations are currently required to have a parent governor from each school in the federation. This can result in their having a governing body which is far larger than they need or want – particularly in larger federations and VA school federations where foundation governors must outnumber all other governors by a majority of two. These Regulations will replace the current arrangements with a requirement that the governing body has two, and only two, parent governors elected by parents across all the schools in the federation. This will also help reinforce the message that governors govern in the interests of all the pupils in all the schools in the federation.

Consolidation

- 7.3 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 Constitution Regulations and the 2012 Federation Regulations were consulted on with the Department for Education's Advisory Group on Governance (AGOG) and through them, their members, from September 2015 to November 2015. The AGOG includes representatives of the Catholic Church (CES), the Church of England, the National Governors' Association (NGA), National Association of Headteachers (NAHT), the Association of School and College Leaders (ASCL), Freedom and Autonomy for Schools National Association (FASNA), Information for School and College Governor (ISCG), National Co-ordinators of Governor Services (NCOGS), Ofsted and the Specialist Schools and Academies Trust (SSAT).
- 8.2 In total five substantive responses were received. These were from: NGA; NCOGS; CES; NAHT; and SSAT. There was full support for the introduction of enhanced criminal record certificate checks on all new governors appointed or elected from April 2016. There was also full agreement that all existing governors should have an enhanced criminal records certificate check, but opinion was split on whether this could be achieved by 1 September 2016. On requiring two parent governors on the governing bodies of federated maintained schools, two of the respondents were fully committed to this, with others indicating that they were not sure. One indicated that while governing bodies should not be too large, it should be for the federation to determine its constitution. One respondent was concerned that the amendment may result in the governing body failing to represent the interests of all parents and all schools in the federation.
- 8.3 The Department for Education intends to make a report of the consultation available to members of the AGOG.

9. Guidance

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

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is no impact on the public sector.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

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 340469 or e-mail: iain.campbell@Education.gsi.gov.uk) can answer any queries regarding the instrument.