

Appendix A

NPT DRAFT RESPONSE

All responses are: AGREE/DISAGREE OR NEITHER AGREE OR DISAGREE

Number: WG30066



Welsh Government
Consultation Document

Reform of school governance: regulatory
framework

Proposals to revise and consolidate the school governance
regulatory framework

Date of issue: 11 November 2016
Action required: Responses by 17 February 2017

Mae'r ddogfen yma hefyd ar gael yn
Gymraeg. This document is also available
in Welsh.

Reform of school governance: regulatory framework

Overview

This consultation seeks stakeholder views on proposals to revise and consolidate the school governance regulatory framework in Wales. This involves the revocation and remaking of the following regulations which are referred to as “the Existing Regulations” in this document:

- The School Government (Terms of Reference) (Wales) Regulations 2000
- The New Maintained Schools (Wales) Regulations 2005
- The Government of Maintained Schools (Wales) Regulations 2005
- The Governor Allowances (Wales) Regulations 2005
- The Staffing of Maintained Schools (Wales) Regulations 2006
- The Changing of School Session Times (Wales) Regulations 2009
- The Federation of Maintained Schools (Wales) Regulations 2014.

How to respond

Responses to this consultation should be e-mailed/posted to the address below to arrive by **17 February 2017** at the latest.

Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

School Governors’ guide to the law

<http://gov.wales/topics/educationandskills/schoolshome/fundingschools/school-governance/schoolgovguide/?lang=en>

The consultation documents can be accessed from the Welsh Government’s website at www.gov.wales/consultations

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Data protection

How the views and information you give us will be used

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

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Annex A: The Government and The Government and Staffing of Maintained Schools (Wales) Regulations 2017 [not in document]

Annex B: Reform of school governance: regulatory framework [not in document]

Annex C: Explanatory memorandum to The Government and Staffing of Maintained Schools (Wales) Regulations 2017 [not in document]

Annex D: Equality Impact Assessment (EIA) Template [not in document]

Annex E: Children's Rights Impact Assessment (CRIA) Template [not in document]

Annex F: Welsh Language Impact Assessment [not in document]

Introduction

1. There are around 23,000 school governors in Wales who give their time, experience and expertise voluntarily to help our schools. Governing bodies have a vital and demanding role to play in the success of our schools by setting the strategic direction of their school and holding the head teacher to account for the school's educational and financial performance.
2. In addition to their core functions regarding school performance, governing bodies have a further range of functions and responsibilities including the appointment and disciplining of staff. The nature and extent of school governing bodies' functions and responsibilities mean that the role of school governor is both challenging and demanding.
3. In order for governing bodies to function effectively we believe that skills must be the fundamental consideration when all categories of governor are being appointed. In addition, governing bodies must have the flexibility to ensure that they have the full range of skills required to enable successful governance of their school.

Why are we proposing changes to the school governance structure?

4. In his report on the *Future Delivery of Education Services in Wales*¹ Robert Hill described the quality and skills of school governing bodies as variable. This was consistent with the Welsh Government's Schools Challenge Cymru initiative which also raised concerns about the quality of school governors.
5. Successive annual reports by Her Majesty's Inspector for Education & Training in Wales (Estyn) have also found school governance to be variable, although the latest reports show some general improvement in the level of challenge offered by governing bodies. This more recent improvement may be due to the recent introduction of mandatory training for school governors².
6. In its report "*Step Change – A new approach for schools in Wales*"³ the CBI stressed that "*the focus for composition of governing bodies must be skills - ensuring the right people with the right skills are in place is the key to effectiveness*". The Report concluded "*More freedom should be given to governing bodies to determine composition based on skills, rather than representative roles such as parent governor, LA governor or staff governor*".

¹ <http://gov.wales/docs/dcells/consultation/130621-delivery-of-education-report-en.pdf>

² The Government of Maintained Schools (Training Requirements for Governors)(Wales) Regulations 2013 : <http://www.legislation.gov.uk/wsi/2013/2124/contents/made> as amended by the Federation of Maintained Schools Regulations 2014 at: <http://www.legislation.gov.uk/wsi/2014/1132/contents/made> the Government of Maintained Schools (Training Requirements for Governors)(Wales) (Amendment) Regulations 2014 : <http://www.legislation.gov.uk/wsi/2014/2225/contents/made> and the Government of Maintained Schools (Training Requirements for Governors)(Wales) (Amendment) Regulations 2016 : <http://www.legislation.gov.uk/wsi/2016/137/contents/made>.

³ <http://www.cbi.org.uk/cbi-prod/assets/File/pdf/step-change-a-new-approach-to-schools-in-wales.pdf>

7. The CBI recommended therefore that the restrictions on representation on governing bodies should be relaxed and action should be taken to ensure more volunteers from the business community can serve as governors.

8. The Task and Finish Group on school governance, established by a previous Minister for Education & Skills to consider the fitness for purpose of the school governance framework in Wales, concluded that governing bodies need to be more skilled in their governance role and also need to be able to recruit more widely so that the very best individuals participate in governing schools.

9. The Group recommended a shift from the current stakeholder model to a “Stakeholder Plus” approach to governance. This approach would retain the valuable contribution made by the variety of stakeholders in the current school governance model, but the ‘Plus’ aspect would allow governing bodies the flexibility and freedom to recruit additional governors on the basis of skills need.

10. In its response to the Hill report the Group concluded that there needed to be amongst other matters:

- *More of an emphasis on the skills governors need to discharge their responsibilities rather than who they represent*
- *Greater clarity about the roles and accountabilities of governing bodies.*

Our proposals – an overview

11. We are seeking to revise the legislative framework within which school governance operates to provide school governing bodies with the flexibility to appoint governors with the skills they require to be an effective governing body, and to constitute themselves to meet the particular needs of their schools.

12. Our proposals will:

- Revise and update the school governance and staffing regulatory framework so that all maintained school governing bodies in Wales are best placed to ensure the effective governance and success of their schools
- Consolidate and simplify the current legislative framework by ensuring that there is a single, consistent approach to school governance across all maintained schools in Wales.

13. All maintained school governing bodies are within scope, including federated governing bodies and the temporary governing bodies of new schools.

14. We also propose that changes to the timings of the start and finish of the school day for community, voluntary controlled, community special and maintained nursery schools may take effect at the beginning of a school term instead of having to wait until the beginning of a school year.

15. A draft of our proposed Government and Staffing of Maintained Schools (Wales) Regulations 2017 which will revise and consolidate the school governance framework is attached at Annex A. We refer to these draft Regulations as the “New Regulations” in this document.

16. The questions raised throughout this document are for completion in the accompanying questionnaire at Annex B.

17. We explain our proposals for the revision of each of the existing sets of Regulations which make up the current school governance framework in Parts 1 to 7 of this document. We deal first with the sets of Regulations to which the most fundamental changes are being made, rather than keeping to the order in which they were made. We also refer at the beginning of each Part to the provisions in the New Regulations at Annex A which will replace each set of the Existing Regulations.

18. Part 8 discusses the consequential and other amendments which need to be made to various sets of other regulations as a result of the New Regulations.

19. Part 9 asks for views on proposed implementation timescales.

20. Part 10 asks for views on the draft regulatory impact assessment which is at Part 2 of Annex C, as well as views on the draft Equality Impact Assessment at Annex D, Children’s Rights Impact Assessment at Annex E and the draft Welsh Language Impact Assessment at Annex F.

Part 1: Proposed changes to the Government of Maintained Schools (Wales) Regulations 2005 (the 2005 Regulations)

Proposals are for some or all of the following Parts and Schedules of the New Regulations at Annex A to replace the 2005 Regulations:

- *Part 4 “Categories of governors” and Schedules 2,3 and 4*
- *Part 5: Chapter 1 “Composition of governing body: non federated schools”*
- *Part 5: Chapter 3 “ Qualifications and tenure of office” and Schedule 5*
- *Part 5: Chapter 4 “Instrument of government, school councils and charitable status”*
- *Part 5: Chapter 5 “ Appointment, functions and removal of officers”*
- *Part 5:Chapter 6 “ Meetings and proceedings of the governing body”*
- *Part 5: Chapter 7 “ Committees of governing bodies”*
- *Part 5: Chapter 8 “Restrictions on persons taking part in proceedings of the governing body or its committees” and Schedule 6.*

Membership of governing bodies

Overview

1. The 2005 Regulations that govern the constitution and membership of school governing bodies have been in place since 2005 and are not sufficiently flexible at present, focusing more on who governors represent rather than the skills they possess. The number of governors is currently determined by the number of pupils in a school and whether the school is a secondary or primary school, which means that some governing bodies are considered too large to be effective.

2. These arrangements are inflexible and do not allow governing bodies to constitute themselves in a way that is tailored to the specific identified needs of their school.

3. The revisions we propose to make to the governance framework will allow governing bodies to be smaller and more skills focussed.

Skilled Governing Bodies

4. We want to ensure that all school governors who are appointed to their posts have the skills necessary to be “up to” the demands of their role. This may include relevant experience as well as formally recognised skills; for example, a person with experience in the business community could be viewed as having the skills necessary to be a school governor.

5. Therefore, we are consulting on making it a requirement that all appointed governors have – in the opinion of the person or body making the appointment – the skills required to contribute to the effective governance and success of their school. This is known as “the Skills Criteria”.

6. Governing bodies will be expected to undertake a skills audit to identify any skills gaps and appoint on that basis.

Q.1 Do you agree with our plans for skilled governing bodies? AGREE

Q.2 Do you think that the “Skills Criteria” is appropriately defined? AGREE

Changes to categories of governor

7. The 2005 Regulations created 11 categories of school governor in Wales, although not all categories of governor are required for each type of school. For example, voluntary aided schools do not have community governors.

8. The 11 categories are:

- Parent governors
- Teacher governors
- Staff governors
- Local authority governors
- Community governors
- Additional community governors
- Foundation governors
- Partnership governors
- Sponsor governors
- Representative governors
- Associate pupil governors - although these “pupil governors” do not have a vote and may be excluded from some governing body meetings.

9. We propose to change this so that we have 8 categories of governor, namely:

- Parent governors (which includes both parent governors who are elected by other parents and parent governors who must be appointed by a school governing body)
- Staff governors (covering what is currently known as teacher governors and staff governors)
- Local authority governors
- Community governors
- Foundation governors
- Partnership governors
- Pupil governors – who will continue to not have a vote and may be excluded from some governing body meetings
- A new category of “co-opted” governors, who are appointed by a governing body due to their skills and experience.

10. We look in more detail at these proposed categories below.

Parent Governors

11. Currently, parent governors are elected by other parents at a school. Where governing bodies are unable to fill a parent governor post they may make an appointment “in lieu” of a governor being elected.

12. We propose that governing bodies will have two categories of parent governors - those who are elected and those who are appointed in their own right for the skills they can provide. As we still wish to allow governing bodies to appoint a parent governor “in lieu” of a governor being elected, there will be three ways in which a parent may become a governor:

- i) By being elected by other parents
- ii) By being appointed ‘in lieu’ of an elected parent governor. For example, where there are insufficient numbers standing for election or no parent stands for election
- iii) By being appointed from the outset to the post of ‘appointed parent governor’.

13. The membership proposals are that there must be at least two parent governors – one elected (category i) or appointed in lieu (category ii) and one appointed in their own right (category iii) above. The number of parent governors appointed under category iii must at least equal the combined number of parent governors under categories i and ii.

14. Parent governors who are appointed to their post under category (ii) or (iii) must, in the opinion of the school governing body, fulfil the Skills Criteria. They may also be removed from the governing body using the process set out in the new Regulations. This is discussed at paragraphs 93-95 below, and is very similar to the removal process for appointed parent governors in the 2005 Regulations.

15. Parent governors who are elected to their post by other parents at a school will not be subject to the Skills Criteria. We intend to use guidance to illustrate the demands of the role to encourage parents with the appropriate skills to stand for election.

16. When appointing parent governors “in lieu” under category ii, the 2005 regulations currently set the criteria that the person must be the parent of a registered pupil or the parent of a child of compulsory school age. The new regulations apply this same criteria to appointed parent governors under category iii, and also extend the criteria to allow parents of former registered pupils at the school to be appointed either in lieu of an elected parent governor (ii) or as an appointed parent governor (category iii).

17. We propose that the current reasons why a person may not become a parent governor are extended, so that a person is disqualified if they work at the school irrespective of the hours they work, even if they are a parent of a pupil at the school.

18. This will mean that a person may not become a parent governor if they are:

- An elected member of the local authority
- Employed by the local authority in connection with its education functions
- Working at the school irrespective of the number of hours worked or whether they are a parent of a registered pupil in the school.

Q.3 Do you agree with the proposal to have appointed parent governors who are appointed for the skills they can offer? AGREE

Q.4 Do you agree with the proposal to allow parents of former pupils at the school to be appointed as parent governors under category (ii) or (iii)? **DISAGREE. The category is 'Parent Governor'. There are other categories of governor that would be more suited for 'former' parents to be appointed into.**

Q.5 Do you agree that it should be mandatory for the number of elected parent governors not to outnumber appointed parent governors? **DISAGREE. The proposal should be the other way around in that the number of appointed parents should not outnumber the number elected parents on the basis of democracy.**

Q.6 Do you agree that a person should be disqualified from becoming a parent governor if they work at the school, irrespective of the hours they work and even if they are a parent of a pupil at the school? **AGREE.**

Staff Governors

19. The 2005 Regulations have both teacher and staff governor categories for all except nursery schools. We propose to amalgamate these categories to have a single category of staff governor for all school governing bodies, as all staff at a school have a role to play in contributing to their school's success.

20. Membership proposals are for there to be at least 1 staff governor, who will be elected by all school staff.

21. As staff governors are elected to their post they will not be subject to the Skills Criteria. We intend to use guidance to illustrate the demands of the role to encourage staff with the appropriate skills to stand for election.

22. The current disqualification provisions in the 2005 Regulations whereby a teacher or staff governor has to leave their post as soon as they cease to work at the school will apply to the amalgamated category of staff governor.

Q.7 Do you agree with our proposals for staff governors, including amalgamating the categories of teacher and staff governor? **DISAGREE. The two categories represent very different groups of employees and should remain distinct. It is acknowledged that the proposals will allow for more than one governor within this category, however, an election held amongst school staff might result in the outcome of two employees of the same category being elected rather than one from each.**

Local Authority Governors

23. There will continue to be local authority governors who are appointed by the maintaining local authority.

24. Membership proposals are for the number of local authority governors to be restricted to 1.

25. As local authority governors are appointed to their post, the local authority which appoints them must be of the opinion that the prospective governor

fulfils the Skills Criteria. They may be removed from the governing body by the local authority which appointed him or her.

26. In order to ensure that staff and local authority interests are not over represented on governing bodies we propose to retain an equivalent to the current disqualification criteria in the 2005 Regulations, whereby a person can not continue in office or be appointed as a local authority governor if they are eligible to be a staff governor.

Q.8 Do you agree with our proposals for local authority governors ?
DISAGREE. The LA has an important role to play in school improvement and this includes the appointment of suitably experienced LA Governors who, in the opinion of the LA, will contribute the most to the school.

Q.9 Would you wish to see any other category of person disqualified from becoming a local authority school governor, for example an elected local authority member? NEITHER AGREE OR DISAGREE.
None of the available options apply to this Yes/No question. The response would be NO.

Community Governors

27. Governing bodies of community, voluntary controlled and foundation schools will continue to have community governors, but membership proposals are for there to be only one per governing body.

28. Voluntary aided schools will continue not to have community governors.

29. As with other appointed governors the focus for appointment of community governors will be on the skills they can offer the governing body rather than who they are and who they might represent. Therefore, community governors must fulfil the Skills Criteria in the opinion of the school governing body which appoints them. They may also be removed from the governing body using the process set out in regulations.

Q.10 Do you agree with our proposals for community governors?
AGREED, subject to the introduction of the new category of Co-opted Governor.

Foundation Governors

30. Voluntary aided, voluntary controlled and foundation schools with a foundation will continue to have foundation governors.

31. Membership proposals are for voluntary aided schools to have two more foundation governors than the combined number of all other categories of governor.

32. Voluntary controlled and foundation schools with a foundation will have a minimum of two foundation governors. They may have more, but the total number of foundation governors must not exceed one third of total governor numbers (when rounded up or down to the nearest whole number).

33. As foundation governors are appointed to their post, we propose that the person or body who makes the appointment must be of the opinion that the prospective governor fulfils the Skills Criteria. As is currently the case, foundation governors may be removed from the governing body by the body responsible for making the appointment.

34. Voluntary and foundation schools have a distinct ethos which we believe foundation governors should be able to support. Therefore, we also propose that the person or body making the appointment must be of the opinion that the prospective foundation governor is capable of achieving the purposes for which they were appointed.

Q.11 Do you agree with our proposals for foundation governors? AGREE subject to the skills audit criteria that is referred to is drawn up by individual governing bodies and not the appointing body.

Partnership governors

35. There will continue to be partnership governors for foundation schools without a foundation who are appointed by a governing body either following nomination or directly where there are insufficient eligible nominees.

36. Membership proposals are for appropriate foundation schools to have a minimum of two partnership governors. They may have more, but the total number of partnership governors must not exceed one third of total governor numbers (when rounded up or down to the nearest whole number).

37. No person will be eligible for nomination or direct appointment unless – in the opinion of the person or body nominating or appointing them - they fulfil the Skills Criteria.

38. In the rare cases in which a governing body rejects a nomination for partnership governor the governing body will have to inform the person or body who made the nomination of their decision along with the nominated person who has been rejected and the local authority.

Q.12 Do you agree with our proposals for partnership governors? NEITHER AGREE OR DISAGREE.

Pupil Governors

39. There continues to be provision for pupils to elect up to 2 pupils from years 11 to 13 to be appointed as pupil governors on a school's governing body; the elected pupils do not need to fulfil the Skills Criteria and – as is currently the case - may be removed by the governing body.

40. The title of this category of governor has been shortened to “pupil governor” to avoid confusion with “associate members”, who are discussed at paragraphs 46-52 below. Pupil governors will continue to be able to participate in certain committees of the governing body where most of the day-to-day work of the governing body takes place; if the governing body agrees, they may also have a vote. However, pupil governors will continue not to be able to participate in committees dealing with such matters as staffing

issues or pupil discipline.

Co-opted Governors

41. We propose to have a new category of “co-opted governor” to give governing bodies the flexibility to ensure that they can fill any “skills gaps” which may be identified, and so enable governing bodies to carry out their role more effectively.

42. Membership proposals are that all governing bodies must have at least one co-opted governor, although they may have more. We wish to encourage governing bodies to regularly carry out a “skills audit” so that any missing skills amongst the existing body may be identified, and co-opted governors appointed to fill these skills gaps. They may be removed by the governing body following the process set out in the New Regulations.

43. These governors may be drawn from the business community (as recommended by the CBI in their report “*Step Change - A new approach for schools in Wales*”), or from any other walk of life. They will fulfil the Task & Finish Group’s recommendation of a shift from the current stakeholder model of school governance to a “Stakeholder Plus” approach, as governing bodies will have the flexibility and freedom to recruit additional governors purely on the basis of the skills they require to govern effectively.

44. As co-opted governors need not have direct links with a school, we propose that a governing body must be satisfied prior to appointment that a co-opted governor not only meets the Skills Criteria, but also has the primary aim of wanting the school to secure the best possible outcomes for its pupils (this latter criterion together with the Skills Criteria is referred to as the “Co-opted Criteria” in this document). We think that the latter criterion provides a necessary “connection” to a school while still allowing co-opted governors to be drawn from as wide a “pool” as possible.

Q.13 Do you agree with our proposals for co-opted governors; will they give governing bodies the flexibility needed to fill any “skills gaps”? AGREE

Q.14 Do you agree that co-opted governors ought to fulfil the “Co-opted Criteria”, rather than simply the “Skills Criteria”? DISAGREE. All governors should be subject to the same aim of ‘wanting the school to secure the best possible outcomes for its pupils’, not just one category of governor.

Removal of certain categories of school governor

45. As the eligibility criteria for co-opted governors are – necessarily – drawn widely, we believe that it is no longer necessary to have separate provision for the categories of additional community, sponsor and representative governors. The people who are currently appointed to these roles could fall within the scope of the new “co-opted” category provided they have the necessary skills to fulfil the Co-opted Criteria.

Q.15 Do you agree that it is no longer necessary to have the categories of additional community, sponsor and representative governors? AGREE

Associate Members of committees

46. The 2005 Regulations currently enable “*such other persons as the governing body or committee may determine*” to attend a committee meeting (Please see regulation 59(1)(d)). We know that governing bodies have used this provision to invite specialists such as auditors and HR specialists to specific committee meetings.

47. We propose to keep this provision, but also to allow non-governors to be appointed to committees of a governing body on a more settled basis. These persons will be known as “associate members”, and will have whatever specialised skills and experience may be needed by the governing body to “plug” any skills gaps on a committee and so enable the governing body to better carry out their governance role. They will be members of the committees to which they are appointed, but not members of the governing body.

48. Unlike persons who may currently be invited to attend committee meetings under the 2005 Regulations we propose that a governing body may appoint an individual as an associate member to attend all meetings of a specified committee for between 1 to 4 years. This has the benefit of providing continuity for the governing body and a defined role for the associate member.

49. We think that associate members could be particularly useful where specialised knowledge is required. For example, to recruit a qualified auditor as an associate member on a finance committee could be invaluable for some governing bodies. Such an associate member would have the right set of skills to understand the

nature of the work carried out by that committee - and the experience to help a governing body to take any necessary actions.

50. However, associate members are not governors and so usually will not have voting rights on a committee unless the governing body decide to give them such rights at the time of their appointment.

51. Given that associate members are not governors, the governing body is able to remove them at any time.

52. The eligibility criteria needed to be an associate member are that:

- I. The governing body believes that the associate member’s skills and experience are such that they should be invited to join the meetings of a specific committee or committees of the governing body
- II. The associate member would not be disqualified from being a governor
- III. The associate member is not a registered pupil at the school.

Q.16 Do you agree with our proposals for “associate members” who are appointed to specific committee(s)? AGREE

Composition of governing bodies

53. We believe that the current school governance framework is too onerous and overly complicated. We wish to bring flexibility and consistency so that governing bodies can choose a membership that suits the particular needs of their schools, and that the same “core” requirements apply to all schools no matter what their size.

54. There are additional requirements for voluntary and foundation schools due to their special nature which are discussed below at paragraphs 60 to 65.

Core requirements for all schools.

55. We propose that for all schools except voluntary aided a governing body must contain the following 7 “core” governors:

- At least one appointed parent governor - there may be more but more than one will not count towards the “core” requirement. These governors are appointed in their own right and not because there are insufficient parents to fill elected parent governor vacancies
- At least one elected parent governor - there may be more but more than one will not count towards the “core” requirement. There cannot be more elected parent governors than appointed parent governors
- At least one staff governor - there may be more but more than one will not count towards the “core” requirement
- The head teacher – unless he/she resigns their position
- One local authority governor but no more
- One community governor but no more
- At least one co-opted governor; there may be more but more than one will not count towards the “core” requirement.

56. In the case of voluntary aided schools the core requirement will be 6 governors rather than 7. This is because voluntary aided schools do not have community governors.

57. Pupil governors and associate members do not count towards the core governor membership. Neither do any governors appointed by the local authority under section 6, or Welsh Ministers under section 13, of the School Standards and Organisation Act 2013.

58. For all categories of school other than voluntary or foundation our proposals mean that the membership of governing bodies may be as small as 7.

59. We do not intend to set a maximum number of governors for any category or size of school. All governing bodies are free to have greater numbers of parent, staff and co-opted governors should they wish to do so.

Additional requirements: voluntary controlled schools

60. In addition to the “core” requirements voluntary controlled schools must have at least 2 foundation governors. There may be more but the total number of foundation governors must not exceed one third of the total number of governors in other categories when rounded up or down to the nearest whole number. This is a reduction in current numbers of foundation governors set out in the 2005 Regulations.

61. This means that the minimum number of governors for a voluntary controlled school will be 9. As for all schools, there is no limit on the total number of school governors but the number of foundation governors must comply with the above requirements.

Additional requirements: voluntary aided schools

62. In addition to the “core” requirements voluntary aided schools must have foundation governors that outnumber the total of all other categories of governors by two, but no more.

63. The minimum number of governors for a voluntary aided school will therefore be 14, as the “core” requirement for voluntary aided schools is 6. As for all schools, there is no limit on the total number of school governors but the number of foundation governors must comply with the above requirements.

Additional requirements: foundation schools

64. In addition to the “core” requirements a foundation school with a foundation must have at least two foundation governors or two partnership governors if the school has no foundation. There may be more, but the total number of foundation or partnership governors must not exceed one third of the total numbers of governors in other categories.

65. The minimum number of governors for a foundation school would therefore be 9. As for all schools, there is no limit on the total number of school governors but the number of foundation or partnership governors must comply with the above requirements.

Q.17 Do you agree in general with our proposals for the membership of governing bodies? DISAGREE. The introduction to this consultation states the proposals will “consolidate and simplify the current framework... to bring consistency”. The composition and membership criteria is unnecessarily overly complex.

Q.18 Do you agree the suggested minimum size for governing bodies?

DISAGREE. The Minimum numbers need to be higher; otherwise there is the possibility of governing bodies of community schools being as low as 6 in number if the Headteacher were to resign as a governor. Whilst the proposals allow for governing bodies to set their own minimum and maximum numbers it is not conceivable how or why any governing body could operate with such a low number.

No maximum numbers of governors

66. As explained above, in order to give schools as much flexibility as possible we do not wish to set a maximum total number of governors for any type of school – this would be for the governing body to determine.

67. Indeed, we propose to enable even greater flexibility by allowing governing bodies to vary the numbers of parent (both elected and appointed), staff and co-opted governors provided the “core” governor requirements are met. However, there is no obligation on governing bodies to adopt this flexibility if they do not wish to do so.

68. The Instrument of Government (IoG) will need to set out the agreed maximum and minimum numbers of parent, staff and co-opted governors which a governing body may have as well as total maximum and minimum governor numbers. If a governing body does not want flexibility of governor numbers, then the IoG will simply set out the “static” number of governors in each category and the total number of governors on the governing body.

69. We believe that having such flexibility is of benefit as it enables a governing body to vary governor numbers within the agreed maximum and minimum without having to change their IoG. The proposals will also allow a variance in numbers within a single category of parent, staff or co-opted governor.

70. For example, a governing body of a community school may decide that its minimum total membership should be 9 and its maximum membership 12.

71. The governing body’s IoG could be drafted in such a way as to allow membership of between 9 and 12 governors, made up from a combination of 1 or 2 elected parent governors, 1 or 2 appointed parent governors, 1 or 2 staff governors, the mandatory 1 community and local authority governor, the head teacher and between 1 and 5 co-opted governors. However, the governing body’s total membership would never exceed 12 governors at any one time.

72. Voluntary controlled and foundation schools have additional requirements for either foundation or partnership governors; they will have the flexibility to vary their numbers of these governors provided the minimum number of such governors never fall below the “core” requirement of 2 and maximum numbers do not exceed one third of the total number of governors. This is discussed in paragraphs 60-61 and 64- 65 above.

73. Voluntary aided schools must always have only two more foundation governors than the total number of governors in all other categories. Numbers of foundation governors for voluntary aided schools will therefore need to reflect any variations in numbers of parent, staff and co-opted governors.

74. If a governing body wished to change the agreed maximum and minimum numbers of governors in a particular category, or the maximum and minimum total number of governors, then the IoG would require amendment. The procedure to amend the content of IoGs remains virtually unchanged from that in the 2005 Regulations.

75. The governing body would not need to have the maximum number of governors when they reconstitute under the New Regulations. They could start with a smaller sized governing body and enlarge it by appointing extra governors as and when needed.

76. For example, a large secondary school governing body may set out in the IoG that it may have up to 3 elected parent governors, up to 4 appointed parent governors; up to 2 staff governors and up to 8 co-opted governors (plus the head teacher, one community and one local authority governor) – giving a maximum of 20 governors.

77. Initially the governing body may consider a total membership of 12 is adequate to fulfil their governance responsibilities, made up from 2 elected and 2 appointed parent governors, one staff governor and 4 co-opted governors, plus the head teacher, one community and one local authority governor. However, if the school had to establish a disciplinary and dismissal committee and did not have sufficient impartial governors amongst their initial membership they could appoint additional governors from the parent and co-opted categories. In theory an additional staff governor could be used, but we believe most schools would not opt to have a staff governor on a disciplinary committee as it could cause problems amongst the staff.

78. Having this flexibility also means that should governors be suspended but not removed from office, the governing body may appoint more governors to ensure it continues to operate effectively, provided maximum numbers in the IoG are not exceeded. A new governor who is appointed to ensure the effective operation of the governing body need not necessarily be from the same category as that of the suspended governor.

Q.19 Do you agree that there should be no upper limit on the size of a governing body? AGREE

Q.20 Do you support the flexibility of being able to have minimum and maximum numbers of parent, staff and co-opted governors (and potentially foundation and partnership governors, subject to the constraints detailed in paragraphs 72-73) provided this is reflected in the IoG? AGREE

Surplus Governors

79. A school may have more governors than is provided for in its IoG. For example, following transition to the new governing body constitution, governing bodies may have more governors than is required or provided for in their revised IoG.

80. Under the 2005 Regulations if there is a surplus of governors and insufficient numbers resign, then they cease to hold office on a seniority basis i.e. governors who have been in post for the shortest length of time in each category are first to be removed.

81. In order for governing bodies to ensure they retain governors with the best skills to enable the efficient governance and success of the school, we are proposing that in future governing bodies are given discretion to decide for themselves who they retain and who should cease to hold office, using the Skills Criteria as the basis for that decision. The only exception will be the removal of surplus foundation governors, which is discussed at paragraph 85.

82. We propose the new Regulations will provide that:

- The governing body must hold a vote on who should cease to hold office in respect of each category in which there are surplus governors
- Governors must not vote in respect of their own category
- No governor is to cease to hold office until all the votes in all categories have been cast.

83. This process will ensure that no category of governor will be disadvantaged by being the first to be considered for removal if there are several categories with surplus governors.

84. No decision to remove excess governors will have effect unless the matter is specified as an item of business on the agenda for the meeting where votes will be taken.

85. Any decision regarding the removal of surplus foundation governors is to be taken by the person/body responsible for appointing the foundation governors. The decision on which governors to retain and who should cease to hold office must be taken on the basis of who best fulfils the Skills Criteria, as well as their ability to secure the purposes for which they were appointed as a foundation governor.

Q.21 Do you agree with the proposal that the basis for the removal of surplus governors should be the extent to which they meet the skills criteria? DISAGREE. See comments for Q22.

Q.22 Do you have any views on whether the vote to remove surplus governors should be conducted by secret ballot? NEITHER AGREE OR DISAGREE. None of the available options apply to this Yes/No question. The response would be Yes. Governors provide their time voluntary within their local community and the process of conducting discussions and voting one (or many) of their number

off the governing body who may have given many years of dedicated service is disrespectful and degrading. During the transition period of this change to governance regulations if there are surplus governors in a particular category then they should all be required to stand down for a fresh election/appointment to be made to the required number. Those standing down should be eligible to stand again if they so wish.

Appointments, qualifications, tenure of office, resignation and removal of governors

Notification of appointments

86. We want to remove the current requirement for the clerk to give notice of forthcoming governor vacancies to the person or body responsible for appointing governors. Those who are responsible for appointing governors should know when their governors' terms of office end, so we believe this requirement is overly bureaucratic.

Q.23 Do you agree with our proposal regarding the notification of appointments? **AGREE**

Qualifications

87. We are removing the requirement that a person can be a governor in no more than two schools. This will allow persons who meet the Skills Criteria – and the Co-opted Criteria in the case of co-opted governors – to be appointed as governors on more than two school governing bodies. This may be particularly useful for small rural schools which sometimes struggle to appoint governors with appropriate skills.

Q.24 Do you agree with our proposal to end the restriction on persons being governors in more than two schools? **DISAGREE. This may attract individuals to governing bodies for the purpose of promoting their own agenda's or to simply 'looking good' on their CVs. The Council believes that a maximum limit should be retained, however, raised from the current two to no more than three or four governing bodies at most.**

Tenure of office

88. Currently all governors, except foundation governors and ex officio governors⁴, have a four year term of office. We propose to change this so that – provided a school's IoG allows it – a governor may usually be appointed or elected for a term of between 1-4 years.

89. Governing bodies will also be able to specify that varying terms of office apply to the same category of governor. We believe that giving governing bodies this flexibility will give them, and the new governor(s), an opportunity to assess whether the arrangement is working. It also means that new governors will not be 'put off' by immediately having a four year term of office. The only governors for whom governing bodies may not set terms of office are:

- I. "Ex officio" governors
- II. Foundation or partnership governors where the terms of their school's trust or foundation deed means that the governing body may not specify their term of office.

90. Should it be necessary to suspend governors then, provided their LoG allows and maximum membership numbers are not exceeded, governing bodies will be able to recruit more governors for shorter periods of 1 year plus to "plug" the operational gap left by the suspension.

91. Other requirements will be:

- Additional governors or interim executive board members appointed to the governing body of a school causing concern under the School Standards and Organisation (Wales) Act 2013 will continue to hold office for a period determined by the appointer
- Parent governors of nursery schools will no longer have two year terms of office – like other parent governors they can be given a term of office from 1- 4 years
- Associate members appointed to committees can have a term of office ranging from 1-4 years. They may also be re-appointed for further terms of office, removed by the governing body at any time (without the need for a governing body to go through the process set out in the regulations to remove governors) and may be disqualified from office for the same reasons that apply to governors.

Q.25 Do you agree with governors and associate members being appointed for between 1- 4 years? DISAGREE. The appointment period should be as low as 6 months – 4 years.

Q.26 Do you agree that a governing body should set the term of office for all governors except:

- i. *ex-officio governors*
- ii. *foundation and partnership governors where the terms of their school's trust or foundation deed means that that the governing body may not specify their term of office?*

DISAGREE. The governing body should set the term of office for ALL categories of governor, excluding ex-officio governors but including foundation and partnership governors.

Q.27 Do you have concerns that the requirement for all governors to undertake mandatory governor training means that a minimum term of 1 year is too short? NEITHER AGREE OR DISAGREE. None of the available options apply to this Yes/No question. The response would be NO.

Resignation

92. All governors can offer their resignation at any time including a head teacher. A new provision has been introduced which will allow a head teacher to withdraw his/her resignation at any time.

Removal of governors

93. The principle set out in the 2005 school governance regulations - that only those persons or bodies who appoint governors may remove them – will remain. Elected parent and staff governors cannot be removed.

94. In the New Regulations a governing body will be able to remove appointed parent governors; community governors; co-opted governors; pupil governors, and partnership governors (although the persons nominating the partnership governors may request their governors be removed and must give their reasons for doing so to the Clerk).

95. The process for removal of governors mainly remains as set out in the 2005 Regulations with one change relating to partnership governors. If a governing body receives a request to remove a partnership governor from the person who nominated them, the governing body must consider the reasons given and allow the governor concerned an opportunity to respond to the proposed removal.

Q.28 Do you have any concerns with keeping a similar governor removal process to that in the 2005 Regulation? If so, why?

NEITHER AGREE OR DISAGREE. None of the available options apply to this Yes/No question. The response would be NO.

Meetings and proceedings

Convening of meetings where removal of a governor is to be considered

96. Under the 2005 Regulations at least 7 days notice must be given of a meeting where removal of a governor is to be considered by a governing body. Consideration of the governor's removal must also be an item on the agenda for that meeting.

97. We propose that these requirements will continue for all categories of governor who may be removed by a governing body under the new Regulations. This will include appointed parent governors, community governors, co-opted governors, partnership governors and pupil governors. We believe this will give adequate time for governors whose removal is to be discussed to prepare for the meeting.

98. The convening of meetings for removal of surplus governors (which will be decided on skills rather than seniority) will also follow this process. Where there is a surplus in the number of foundation governors the excess governors are to be resolved by the persons or body responsible for appointing the foundation governors.

Q.29 Do you have any comments about these proposals on removal of governors? ***NEITHER AGREE OR DISAGREE. None of the***

available options apply to this Yes/No question. The response would be NO.

Chair and Vice Chair

99. Under current arrangements a chair and vice chair must be elected each year.

100. In the New Regulations we are proposing that the governing body may elect a chair and vice chair for between 1- 4 years, provided that the term of office does not exceed the period which the chair or vice chair has left to serve as a governor. For example, a governor who has a two year term of office remaining cannot be a chair for longer than that period. Only governors who neither are paid to work at the school nor are pupils at the school may act as chair.

Q.30 Do you support the proposal to elect chairs and vice chairs for up to a 4 year period? **DISAGREE. The annual election of a Chair and Vice-chair is a simple process that is not overly bureaucratic and generally takes a matter of minutes at the annual general meeting and so should remain as it is now.**

Electronic communication, minutes and papers

101. We think it would be useful for governing bodies to have the option of using electronic methods of communication such as video conferencing in certain circumstances. This will enable governors who would otherwise be unable to attend the governing body meeting in person - perhaps because of transport difficulties - to participate and count towards the meeting's quorum. However, an actual meeting would still need to take place i.e. fully "virtual" meetings where no governors physically meet up is not within scope of the proposals.

102. We also believe that the current method of recording minutes and keeping paper records is time consuming and outdated. We propose that the clerk can send papers out electronically to all governors, store governing body documents electronically and produce electronic minutes.

103. Under these arrangements any amendments made by the chair must be 'tracked' and kept as a record which will remove the need for the chair to sign every page of the minutes. Electronic versions of minutes may also be sent to the local authority provided that all parties agree this arrangement.

104. The requirement that governing body papers, agendas, minutes etc. must be made available for inspection at the school will remain. However, it will now be possible to provide electronic versions of these documents.

105. With the exception of video conferencing, these new arrangements on electronic communication, minutes and papers will also apply to committees of governing bodies.

106. We do not think that committees need to be able to use video conferencing as their meetings are usually smaller than that of a full governing body and so are easier to re-arrange if some members are unable

to attend.

Q.31 Do you support these proposals on electronic communication, minutes and record keeping? AGREE.

Committees of governing bodies

Associate members

107. The new Regulations will provide that associate members:

- May be appointed to governing body committees
- May have terms of office ranging from 1-4 years as agreed by the governing body
- Will have their voting rights determined by the governing body
- May be removed from office by a resolution of the governing body at any time.

Q.32 Do you have any views on the proposals regarding committees of the governing body and associate members? NEITHER AGREE OR DISAGREE. None of the available options apply to this Yes/No question. The response would be Yes. Terms of office should range from 6 months – 4 years.

Staff disciplinary and dismissal committee and appeals committee

108. All staff disciplinary and dismissal committees and appeal committees dealing with child harm⁵ allegations against members of staff in a school must have an independent non governor member with automatic voting rights.

109. We wish to extend this arrangement to cover all staff disciplinary cases that are dealt with by the governing body's disciplinary and dismissal committee. We consider that introducing persons with expertise and an independent perspective will be invaluable to governors, who are responsible for making decisions about discipline and possible dismissal.

110. The independent person may be somebody identified by the governing body or local authority and may also be an associate member.

111. As previously discussed in paragraph 47 above, "associate members" are not governors; they are invited by the governing body to attend various committees and have their voting rights determined by the governing body on appointment.

112. As associate members are appointed to serve on committees on a relatively "settled" basis, we think it may be useful for governing bodies to be able to appoint an associate member as the independent person on a staff disciplinary committee, rather than the governing body having to go to the trouble of finding an independent person to sit on disciplinary/dismissal committees. *(Please note that we do not propose to allow associate members to be appointed as independent investigators in cases of allegations of harm to*

a pupil).

113. We appreciate the importance of ensuring that all independent persons – whether or not they are associate members - are truly independent. Therefore we propose to extend the criteria currently set out in regulation 55(4A) of the 2005 Regulations which an individual must satisfy to be deemed “independent”, so that the governing body must also be of the opinion that the individual who they wish to appoint as the independent person will:

- Act fairly and impartially
- May be reasonably perceived as being able to act fairly and impartially.

114. For example, a governing body must agree two of their governors to be members of the staff disciplinary and dismissal committee. Under the New Regulations they also require an independent person to make up the membership of the committee. They may decide to appoint a head teacher from a neighbouring local authority area to be an associate member and consequently the designated “independent person” on the staff disciplinary and dismissal committee. If that head teacher only ever attends disciplinary committee meetings of the governing body and does not attend any other committee meetings or meetings of the governing body – then we believe they may be considered to be sufficiently independent.

115. Appointment as an independent person will automatically bring with it a right to vote at the committee.

116. We still wish to retain the flexibility to allow governing bodies to appoint “independent persons” who are not associate members should they wish to do so.

Q.33 Do you agree that all staff disciplinary committees should have an independent person? AGREE.

Q.34 Do you agree with our proposals to extend the criteria by which an individual will be deemed to be “independent”? AGREE.

Q.35 Do you agree that associate members should be able to be independent persons, provided they fulfil the independence criteria discussed in paragraph 113? DISAGREE. Independent persons should be truly independent of every aspect of the governing body’s work.

Part 2: Proposed changes to the Federation Of Maintained Schools (Wales) Regulations 2014 (the 2014 Regulations)

Proposals are for some or all of the following Parts and Schedules of the New Regulations at Annex A to replace the 2014 Regulations:

- *Part 4: “Categories of governor” and Schedules 2,3 and 4*

- *Part 5: Chapter 2 “Composition of governing body: federated schools”*
- *Part 5: Chapter 3 “Qualifications and tenure of office”*
- *Part 5: Chapter 4 “Instrument of government, school councils and charitable status”*
- *Part 5: Chapter 5 “Appointment, functions and removal of officers”*
- *Part 5: Chapter 6 “Meetings and proceedings of the governing body”*
- *Part 5: Chapter 7 “Committees of governing bodies”*
- *Part 5: Chapter 8 “Restrictions on persons taking part in proceedings of the governing body or its committees”*
- *Part 6: Chapter 1 “Establishing or joining a federation” and Schedule 7*
- *Part 6: Chapter 2 “Information and funding federations”*
- *Part 6: Chapter 3 “Federated schools leaving a federation”*
- *Part 6: Chapter 4 “Dissolution of federations”;*

Overview

1. We propose that the governance structure of federations is as similar as possible to that of an equivalent “single” school. For example, the governing body of a federation of voluntary aided schools will be very like the governing body of a single voluntary aided school.
2. We intend to keep the provision whereby federation may only take place between schools of the same general category. For example, foundation schools may federate only with other foundation schools and community schools may only federate with other community schools.
3. Voluntary schools may also federate only with each other; we intend to continue to allow voluntary aided schools to federate with voluntary controlled schools.
4. Categories of school governor and changes to terms of office will reflect those in “single” schools, as will changes to requirements regarding committees of a governing body including staff disciplinary and appeals committees. Federated governing bodies will also be able to appoint associate members to their committees.
5. However, there will be some differences in the governance structure for “single school” governing bodies when compared with federated governing bodies. These are discussed below.

Q.36 Do you agree with the principle of the governance structure of federations being similar to that of an equivalent “single” school? AGREE.

Membership of federated governing bodies

Skilled federated governing bodies

6. We believe that federated governors should represent the interests of the federation and all of its pupils, not only the interests of a

specific school.

7. As a result, the Skills Criteria (or Co-opted Criteria in the case of co-opted governors) will be revised so that all governors who are appointed to a federated governing body must also have, in the opinion of the person or body appointing them, the skills to contribute to the effective governance and success of the federation.

Q.37 Do you agree with these proposals for revision of the skills and Co-opted Criteria for federations? AGREE.

Governors of federated governing bodies

Parent Governors

8. We are proposing that it will no longer be necessary to have a parent governor from every school within a federation unless the Instrument of Government provides otherwise.

9. Instead, the new requirement will be that there is a minimum of one elected and one appointed parent governor to represent the interests of all parents in the federation. The elected parent governor could come from any of the schools in the federation, whilst the appointed parent governor may be a parent of a current or former pupil at any of the schools within the federation and will be appointed for the skills they can offer.

10. Should the governing body of a federation choose to have parent governors from each school they may do so but, as with “single” schools, the number of elected parent governors cannot outnumber appointed parent governors.

Q.38 Do you agree with these proposals for parent governors of a federation? DISAGREE. There should be a requirement for each school within the federation to have a parent governor as part of the governing body.

Staff Governors

11. Under the 2014 Regulations teacher and staff governors only hold office for a period of 2 years. Any teacher or staff governor who has held office for a two year period is disqualified from standing in the elections seeking their replacement.

12. Also, the schools from which the teacher or staff governors come cannot put forward members of their staff to fill the vacancies which arise once those governors’ terms of office comes to an end. This arrangement helps prevent larger schools which federate with smaller schools from dominating the teacher/staff governorships.

13. We wish to continue with this disqualification for the amalgamated category of staff governor, except that the two year ban is reduced to one year to coincide with the new policy of allowing governors to be given a one year

terms of office. However, if no staff governor stands for election from the “eligible” schools in the federations

then the school that has provided a staff governor in the past year may put forward a nomination. This is to ensure there is staff governor representation on the governing body.

14. If the governing body wishes to have more than one staff governor they may do so.

Q.39 Do you agree with this proposal for staff governors of a federation?

DISAGREE. One of the main advantages of federations is to allow staff to move between schools within the federation easily upon direction of the Headteacher. Therefore, teachers/staff governors are better placed to represent all the schools within the federation so there should be no ineligible school or individual.

Local authority governors

15. The new requirement is for there to be only one local authority governor in a federation. Therefore if the federation include schools in different local authority areas the local authorities will have to agree which one will supply the local authority governor.

Q.40 Do you agree with this proposal for local authority governors of a federation? **DISAGREE. This is too few in number.**

Community governors

16. As with single schools, there will be one community governor unless a federation is made up from only voluntary aided schools in which case there will be no community governors.

Q.41 Do you agree with this proposal for community governors of a federation? **DISAGREE. This is too few in number.**

Foundation governors

17. The requirements for foundation governors in federations of voluntary controlled or voluntary aided schools are the same as for equivalent single schools.

18. In the case of federations of voluntary controlled schools of 3 or more our proposals for minimum numbers of foundation governors mean that not every school will necessarily have a foundation governor as the minimum number is 2. (Governors are appointed to represent the interests of the federation as whole, not individual schools).

19. However, we believe that this will not be an issue. The IoG may provide for more foundation governors to be appointed if the governing body thinks it necessary to have foundation governors from every school within the federation. As for single schools, the total number of such governors must not exceed one third of the total number of governors when rounded up or down to the nearest whole number.

20. For a federation consisting of only voluntary aided schools, or “mixed” federations of voluntary controlled and voluntary aided schools, the requirement for foundation governors to outnumber the total of all the other governors by two will mean this issue should not arise for even the largest of federations with 6 schools.

Q.42 Do you agree with these proposals for foundation governors?

AGREE.

Partnership governors

21. In the case of federations of foundation schools containing at least 1 foundation school which appoints partnership governors (because it does not have a foundation) the minimum number of partnership or partnership and foundation governors is 2, which may mean that not every school within the federation will necessarily have a partnership or foundation governor. (Governors are appointed to represent the interests of the federation as whole, not individual schools).

22. As with federations of voluntary controlled schools we believe this should not be an issue, as the instrument of government may provide for more partnership or partnership+ foundation governors to be appointed if necessary. As for single schools, the total number of such governors must not exceed one third of the total number of governors when rounded up or down to the nearest whole number.

Q.43 Do you agree with these proposals for partnership governors?

AGREE.

Pupil governors

23. As for single schools, there continues to be provision for pupils to elect up to 2 pupils from years 11 to 13 to be appointed as pupil governors on a federation’s governing body.

Co-opted governors and associate members

24. In the same way as single schools, federated governing bodies will have the new category of co-opted governor and the ability to appoint associate members to their committees.

25. Federated governing bodies will no longer have sponsor, representative or additional community governors.

Composition of federated governing bodies

Overview

26. As for single schools, we believe that the current school governance framework for federations is too onerous and overly complicated.

27. We wish to bring flexibility so that federated governing bodies can choose a membership that suits the particular needs of their schools, and that the same “core” requirements apply to all federations no matter what their size. We also wish to bring consistency, so we propose that the composition of a federated

governing body is as similar as possible to that of an equivalent single school.

28. There are additional requirements for federations of voluntary and foundation schools which are discussed below at paragraph 31. These requirements are consistent with additional requirements for single voluntary and foundation schools.

Core governor requirements for all federated governing bodies

29. We propose that for all federations except those containing only voluntary aided schools, a governing body must contain the following 7 “core” governors:

- At least one appointed parent governor
- At least one elected parent governor
- At least one staff governor
- The head teacher of the federation – unless he/she resigns their position. (For those federations which continue to have head teachers for each school the current situation will continue to apply whereby the head teacher of each federated school will be a governor unless he or she resigns)
- One local authority governor but no more
- One community governor but no more
- At least one co-opted governor.

30. In the case of a federation containing only voluntary aided schools the core requirement will be 6 categories of governor rather than 7. This is because voluntary aided schools do not have community governors.

Additional requirements for voluntary and foundation schools

31. In addition to the core governor requirements federations of voluntary and foundation schools must have comparable numbers of foundation or partnership governors to equivalent single schools. This means:

- Federations of voluntary controlled or foundation schools must have at least two foundation governors or partnership governors in the case of foundation schools without a foundation. There may be more, but the total number of foundation governors must not exceed one third of the total number of other governors
- Federations of voluntary aided schools must have a sufficient number of foundation governors to outnumber the total of all the other governors by two, but no more
- In the case of “mixed” federations containing voluntary controlled and voluntary aided schools, foundation governors must also outnumber all other governors by two.

Q.44 Do you agree with our proposals for the membership of federated governing bodies? DISAGREE. See comments as part of Q38-41.

No maximum numbers of governors

32. As with single schools, under the proposed new arrangements the loG for a federation may specify minimum and maximum total governor numbers as well as minimum and maximum numbers in the categories of parent, staff and co-opted governor.

33. Voluntary controlled and foundation schools may also have maximum and minimum numbers for foundation or partnership governors, subject to the same rules as apply to single schools.

34. This will enable federated governing bodies to adapt more easily to the changing needs of their schools without always having to amend their loG.

Q.45 Do you agree that there should be no upper limit on the size of a federated governing body? AGREE.

Q.46 Do you support the flexibility of being able to have minimum and maximum numbers of governors in a federation, provided this is reflected in the loG? If not, why not? AGREE.

Federation of new schools

35. Our proposal is for temporary governing bodies of all new schools that wish to federate or will be federated by the local authority to replicate - as far as possible - the governance structure of a single temporary school governing body.

36. For example, the temporary governing body of a community school that wishes to federate or will be federated by the local authority will be the same as the temporary governing body of a new community school that is not being federated. Our proposals for temporary governing bodies of single schools are at Part 3 of this document.

37. Where there are two or more new schools who wish to federate and the local authority wants to have a single temporary governing body, that temporary governing body must also be as similar as possible to that of the equivalent category of single school. For example, a temporary governing body of two or more new voluntary aided schools wishing to federate will have the same governance structure as that of a single temporary voluntary aided school.

38. Where a new voluntary controlled school wants to federate with a new voluntary aided school a single temporary governing body will be made up from a "core" of:

- a) 2 appointed parent governors
- b) 1 appointed staff governor
- c) The proposed head teacher of the federation
- d) 1 local authority governor
- e) 1 community governor
- f) At least 1 co-opted governor

39. In addition, there must be such number of foundation governors as will outnumber the total of the other governors in (a) – (f) above by two.

Q.47 Do you agree with these proposals for federation of new schools?
DISAGREE. There should be representatives of parents from all schools within the federation.

Other changes

40. All other changes to the school governance framework for single schools which are being consulted on in Part 1 of this document will apply to federations. This includes proposals on:

- Surplus governors
- Appointments, disqualification, terms of office and removal of governors
- Meetings and proceedings
- Committees (including staff disciplinary and dismissal committees).

Q.48 Do you support these changes for federations? **AGREE**

Part 3: Proposed changes to the New Maintained Schools (Wales) Regulations 2005 (the 2005 Regulations)

Proposals are for some or all of the following Parts and Schedules of the New Regulations at Annex A to replace the 2005 Regulations:

- Part 7: Chapter 1 “Definitions that apply for the purposes of Part 7”;
- Part 7: Chapter 2 “Incorporation of temporary governing bodies”;
- Part 7: Chapter 3 “Categories of temporary governors”;
- Part 7: Chapter 4 “Constitution of temporary governing bodies”;
- Part 7 : Chapter 5 “Tenure and qualifications of temporary governors”;
- Part 7: Chapter 6 “General conduct of new schools”;
- Part 7: Chapter 7 “Officers, meetings, proceedings, committees and conflicts of interest”
- Part 7: Chapter 8 “Transition from a temporary governing body to a governing body”.

Overview

1. We propose to update the 2005 Regulations so that they take into account our proposed revision of the governance structure of all maintained schools in Wales which is set out in Part 1 of this document.

2. Where possible the membership and constitution of a temporary governing body for a new school will reflect the proposed membership and constitution of an equivalent established school. For example, the temporary governing body of a voluntary aided school will be very similar to the governing body of an established voluntary aided school.

3. However, due to the temporary nature of new school governing bodies there will be some differences with established school governing bodies. The most notable differences are set out below.

Differences in temporary school governing bodies

4. As is currently the case, all parent and staff governors will be appointed.

5. There will be no pupil governors or associate members. This is because temporary governing bodies manage the process of setting up a new school; once the school is incorporated and open to pupils the temporary governing body is replaced with an established body. Also, the transitory nature of a temporary governing body means that the need to provide long term stability of membership on committees by having associate members is not so acute.

6. The person or body responsible for appointing temporary governors in the 2005 Regulations will continue to have this responsibility. Temporary governing bodies will have the responsibility of appointing the new category of co-opted governor.

7. Head teachers may not have been appointed yet, but for the purposes of calculating governing body numbers it will continue to be assumed that a head teacher is a member of the temporary governing body.

8. In addition to the “experience criteria” in regulation 19 of the 2005 Regulations, the person or body making the appointment must also be of the opinion that the temporary governor fulfils the Skills Criteria – or Co-opted Criteria in the case of co-opted governors.

Q.49 Do you agree with the differences in governors & membership for temporary school governing bodies? AGREE

Q.50 Do you agree that appointed governors should also fulfil the Skills Criteria (or Co-opted Criteria in the case of co-opted governors)? AGREE

Committees of temporary governing bodies

9. The new proposals for proceedings, quorums, minutes etc., of governors in respect of meetings of established governing bodies and committees set out in Part 1 of this document will also apply to temporary governing bodies.

10. Whilst a temporary governing body will not have associate members they will still be required to have an independent person with voting rights for all staff disciplinary committees and head/deputy head teacher appointment panels.

Q.51 Do you agree with these proposals regarding committees of temporary governing bodies? AGREE

Part 4: Proposed changes to the Staffing of Maintained Schools (Wales) Regulations 2006 (the 2006 Regulations)

Proposals are for some or all of the following Parts of the New Regulations at Annex A to replace the 2006 Regulations:

- Part 8: Chapter 1 “ General responsibility for the staffing of maintained schools”;
- Part 8: Chapter 2 “ Staffing matters: community, voluntary controlled, community special and maintained nursery schools”;
- Part 8: Chapter 3 “ Staffing matters: foundation and voluntary aided schools”;
- Part 8: Chapter 4 “Staffing matters: new schools”.

Overview

1. We propose to update the 2006 Regulations so that, where appropriate, staffing matters may benefit from some of the same changes that we are proposing for school governing bodies in Part 1. For example, there will be a right to use electronic means of record keeping and communication.
2. However, we also propose to make some specific changes to the staffing aspects of the 2006 Regulations so that they better reflect the needs of governing bodies and their schools. These proposals are discussed below.

Staff disciplinary and dismissal procedures

3. Regulation 7A of the 2006 Regulations provide, in certain circumstances, for the appointment of an independent investigator to investigate an allegation that a member of school staff has harmed a registered pupil.
4. As with the criteria for “independent persons” on staff disciplinary and dismissal committees, we propose to extend the current criteria in regulation 7A(11) of the 2006 Regulations which prospective independent investigators must satisfy in order to be deemed “independent”, so that the governing body must also be of the opinion that the individual who they wish to appoint as the independent investigator will:
 - Act fairly and impartially; or
 - May be reasonably perceived as being able to act fairly and impartially.
5. Currently, where an independent investigation has been carried out the head teacher receives a copy of the investigation report from the governing body prior to their formal consideration and determination of the matter - unless he or she is the subject of the allegations.

6. We propose to extend the reasons why a head teacher may not receive a copy of the report to include where the head is a witness to the incident or incidents on which the allegations of harm are based. This is because having access to the report may “taint” any evidence given by the head to the governing body during the determination process.

7. Please note that one of the key changes proposed for the 2005 Regulations is for all disciplinary and dismissal committees (not just those dealing with allegations of child harm) to have an independent non governor with full voting rights, who may be an associate member. This is discussed in more detail at paragraphs 108 to 116 of Part 1 above.

Q.52 Do you agree with our proposals to extend the criteria which a prospective independent investigator must satisfy to be deemed “independent”? AGREE, however, the new Associated Member should not be included as ‘independent’.

Q.53 Do you agree that a head teacher should not receive a copy of the investigation report where he or she is a witness to the alleged incident in which the pupil was harmed? AGREE

Appointment of head and deputy headteachers

Requirement to advertise head teacher vacancies

8. We have received anecdotal evidence that some schools do not advertise headship vacancies promptly and at reasonable intervals until a suitable applicant is found. This may be in order to give temporary “acting” head teachers time to pass the head teacher examinations so that they may apply for the permanent post.

9. We believe that by not advertising promptly and securing a properly qualified head teacher at the earliest opportunity standards of educational attainment and pupil well being may suffer. Therefore, we propose to introduce a requirement that governing bodies must advertise a head teacher vacancy as soon as it is reasonably practicable, and not less than twice a school year until such time as the vacancy is filled.

Q.54 Do you agree with our proposals regarding the advertising of head teacher vacancies? AGREE, however, further detail is required around the detail of the proposed requirement to advertise a Headship a minimum of twice during the school year. How will this work when a vacancy may occur late in the school year? The new Regulations should also clarify whether the term ‘advertise in publications circulating throughout England and Wales’ within the Regulations, includes the sole use of the internet rather than the traditional form of advertising within a paper-based publication.

Independent person

10. Appointing a head teacher is one of the most important decisions a governing body will have to make for the success of the school. Our anecdotal evidence is that whilst governing bodies accept that they have

responsibility for this process, they may be daunted and overwhelmed with the procedure as they may not have the necessary skills to make the selection and interview process as rigorous as it ought to be.

11. In order to help governors we are proposing to amend the constitution of the appointment panel so that it must include at least one independent person who would have an automatic vote at the selection panel.

12. The intention is that this person would have the right skills and experience to help the governing body draw out candidates' strengths and weaknesses at interview

to ensure the right person is appointed. This could be another long standing, experienced head teacher from a successful school in the same or another town or local authority area, or a former head teacher. The decision would be one for the governing body with advice and support from the local authority.

13. In order to qualify as an "independent person" an individual must satisfy the same "independence" criteria as an independent investigator (This is discussed in paragraph 4 above). An associate member may be appointed as the independent person on the appointment panel provided he or she satisfies these criteria. *(Please note that we do not propose to allow associate members to be independent investigators).*

Q.55 Do you support this proposal to have an independent person on head and deputy head teacher selection panels? AGREE.

Q.56 Do you agree with our proposal that an associate member may be an independent person, provided he or she meets the "independence" criteria? DISAGREE. The independent person should be truly independent of the governing body, as per the current criteria that LA officers, parents and those employed by the school are not independent in this respect.

Local authority Chief Education Officer (CEO)

14. We are proposing that the local authority's CEO (or representative), who currently has the right to attend all teacher appointment and dismissal panels in an advisory role, is given the right to vote on all sift and appointment panels involving the appointment of head and deputy head teachers.

15. Our anecdotal evidence is that many governing bodies already give the CEO's representative a vote anyway as their experience and impartiality can be invaluable to governors.

Q.57 Do you agree with our proposal to give the CEO of the appropriate local authority voting rights? AGREE.

Diocesan authority representatives

16. In voluntary aided schools diocesan authorities currently have the same advisory rights on all appointment and dismissal panels as the CEO of the local authority.

17. Where these schools are appointing head teachers or deputy head teachers we are also proposing to give the diocesan authority representative on head and deputy head teacher sift and appointment panels an automatic vote.

18. In voluntary controlled schools and foundation schools with a religious ethos the 2006 Regulations currently enable governing bodies to grant to the diocese the same advisory rights on appointment and dismissal panels as are granted to the CEO of the local authority. To make arrangements equitable, we are proposing that the governing body may decide to grant their diocesan representative voting rights on head and deputy head teacher sift and appointment panels.

Q.58 Do you agree with our proposals to give diocesan authority representatives voting rights? AGREE.

Membership of head and deputy head teacher appointment panels

19. Mainly due to our proposals above, we are proposing changes to the membership of a head teacher or deputy head teacher appointment panel.

20. In the case of community, community special, maintained nursery schools and foundation schools without a religious ethos the committee will be made up from between 5 and 7 members comprising:

- At least 1 independent person, although the governing body may appoint a maximum of 2 if they believe it to be necessary;
- The local authority CEO or representative; and
- At least 3 governors. There may be more providing the maximum membership of 7 is not exceeded.

21. In the case of voluntary aided schools the committee will be made up from between 7 and 9 members comprising:

- At least 1 independent person, although the governing body may appoint a maximum of 2 if they believe it to be necessary;
- The local authority CEO or representative;
- The appropriate diocesan officer;
- At least 4 governors. There may be more providing the maximum membership of 9 is not exceeded.

22. In the case of voluntary controlled schools and foundation schools with a religious ethos:

- Where the governing body has decided to give the diocesan officer a vote the membership of the committee will be the same as for voluntary aided schools; and
- Where the governing body has decided NOT to give the diocesan officer a vote the membership of the committee will be the same as

for community schools.

23. As is currently the case, the majority of members on the selection panel must be governors. Only governors who are neither paid to work at the school nor are pupils at the school may chair the selection panel. Independent persons, the local authority's chief education officer and the diocesan officer are also prohibited from chairing a selection panel.

Q.59 Do you agree with our proposals for the size and membership of head and deputy head selection panels? AGREE.

Whole governing body appointment panel for head teachers and deputy head teachers in voluntary aided schools

24. Current regulations permit the whole governing body of a voluntary aided school to take part in the selection of head or deputy head teachers in lieu of an appointment panel.

25. We believe that having to take account of the views of a large number of people during an interview is an unwieldy arrangement which could affect the robustness of the process.

26. Therefore, we propose that voluntary aided schools should no longer be able to have the whole governing body as an appointment panel. Instead, the arrangements for voluntary aided schools discussed in paragraph 21 must always apply.

27. When the appointment under consideration is that of a head teacher for a school of Roman Catholic religious orders we propose that – as well as interviewing candidates who are proposed by the Major Superior – the selection panel may also interview such other applicants as they deem suitable.

Q.60 Do you support these proposals to end whole governing body appointment panels and allow selection panels to interview all suitable applicants for the post of head teacher? AGREE

Voluntary aided and foundation schools – duty to inform local authorities

28. We appreciate that governing bodies of these schools are the employer of the staff.

29. However, given the important role that local authorities have for educational standards and attainment of pupils in all categories of school - and their responsibility for maintaining and funding all schools - we are proposing that voluntary aided and foundation schools have a new duty applied to them whereby the local authority must be informed in writing whenever a governing body suspends or dismisses a member of staff and the reasons for it.

30. Similarly, whenever a head teacher suspends a member of staff the

local authority must be informed.

31. These duties currently apply to all other categories of school, and we believe it is equitable for voluntary aided and foundation schools to have the same requirements applied to them.

Q.61 Do you support our proposals that the local authority must be informed whenever staff are suspended or dismissed from voluntary aided and foundation schools? AGREE

Part 5: Proposed changes to the Education (Terms of Reference) Wales Regulations 2000 (the 2000 Regulations)

Proposals are for the following Part of the New Regulations at Annex A to replace the 2000 Regulations:

- Part 3: “Terms of reference: governing bodies and head teachers”;

Overview

1. The 2000 Regulations define the role of the governing body and head teacher. Generally, they give the governing body a broadly strategic role in the running of the school with the head teacher being responsible for the day to day running and organisation.
2. We believe that our proposals for better skilled governing bodies – which will also have the flexibility to respond to the changing requirements of their schools - mean that the role played by governing bodies should be strengthened.
3. We want to be clear that a major part of a governing body’s strategic role is to include the setting of the strategic direction and ethos of the school as well as effective management of the school’s budget.
4. We also consider that giving governing bodies the role of ‘critical friend’ to the head teacher and being able to offer “constructive criticism” is not appropriate or helpful. Governors should be working in partnership with and supporting head teachers but should also be holding them to account for their school’s performance. This includes ensuring challenging targets are set to achieve school improvement.

The role of the governing body

5. We therefore propose that the New Regulations will strengthen the role of the governing body to include:
 - a) Ensuring the strategic direction and ethos of the school are clearly defined;
 - b) Ensuring the head teacher performs his/her responsibilities so as to

- raise the educational performance of the school; and
- c) Ensuring the sound proper and effective use of the school's budget and other resources.

6. The governors' role in setting the strategic direction will still include the functions currently set out in the 2000 Regulations of setting the policies, aims and objectives of the school as well as setting the targets by which those aims and objectives will be measured.

7. The governing body will continue to monitor and review those targets and consider any advice offered by the head teacher.

Q.62 Do you agree with our proposals to strengthen the role of the governing body? AGREE

The role of the headteacher

8. As we are strengthening the role of governing bodies, we also propose to amend the role of head teacher to make his or her relationship with the governing body as clear as possible.

9. We propose that a head teacher is responsible for the educational performance of their school as well as the school's internal organisation, management and control.

10. We also propose that the head teacher will be accountable to the governing body for the performance of all of his or her responsibilities including raising the educational performance of the school, and will be obliged to comply with **any** reasonable direction of the governing body.

11. The head will also remain responsible for school curriculum policy, and must continue to report annually to the governing body on the progress made towards achieving the school's aims, objectives and targets.

12. While the head teacher will be able to offer advice to the governing body, he or she will not be directly responsible for formulating the school's strategic direction, ethos, aims, objectives or policies, or for setting school targets.

Q.63 Do you agree with our proposals to amend the role of the head teacher? AGREE

Part 6: Proposed changes to the Governor Allowances (Wales) Regulations 2005 (the Allowances Regulations)

Proposals are for the following Part of the New Regulations at Annex A to replace the Allowances Regulations:

- Part 9: “Allowances”.

1. The Allowances Regulations enable allowances to be paid to governors and non governor members of committees by the governing bodies of maintained schools with delegated budgets.

2. Local authorities are also authorised to pay allowances to governors and non governor members of committees whenever schools do not have a delegated budget, as well as to persons who represent the local authority at a further or higher education institution or on the governing body of an independent or special school which is maintained by the local authority.

3. The New Regulations make a technical update to how the maximum allowances for travel and subsistence may be calculated by providing that the rate is to be set in accordance with Part 8 of the Local Government (Wales) Measure 2011.

Part 7: Proposed changes to the Changing of School Session Times (Wales) Regulations 2009 (the 2009 Regulations)

Proposals are for the following Part of the draft Regulations at Annex A to replace the 2009 Regulations:

- Part 10: “ Changing of school session times”

1. At present the 2009 Regulations enable governing bodies of community, community special, maintained nursery and voluntary controlled schools to implement changes to the start or end of the school day at the beginning of a new school year in September.

2. Local authorities may also implement changes to the start and finish of a school day for all schools where those changes are needed to promote sustainable modes of transport, or improve the efficiency or efficacy of travel arrangements made under the Learner Travel (Wales) Measure 2011. However, these changes may also only be made at the beginning of a new school year.

3. We believe these requirements are too restrictive.

4. We are therefore proposing that these schools and local authorities may implement such a change at the beginning of any school term, provided they have consulted appropriately and given at least three months notice to parents and staff.

Q.64 Do you agree with our proposals to enable changes to the start and finish of the school day to be made at the beginning of any school term? AGREE

Part 8: Proposed modifications and amendments to regulations

Proposals are for the following Parts of the New Regulations at Annex A to modify or make amendments to other Regulations:

- Part 11: “Modification to the Schools Councils (Wales) Regulations 2005” and Schedule 8; and
- Part 12: “Amendment to Regulations”

1. Revising and consolidating the school governance regulatory framework in accordance with the New Regulations at Annex A means that changes are required to other subordinate legislation.

2. Part 11 and Schedule 8 modify the School Councils (Wales) Regulations 2005⁶ so that they apply to the governing body of a federation and its members.

3. Part 12 makes consequential amendments to update various references in other regulations to the Existing Regulations, so that they refer to the appropriate provisions in the New Regulations at Annex A. The regulations for which these updates are made include:

- i. The School Councils (Wales) Regulations 2005;
- ii. The School Governance (Transition from an Interim Executive Board) (Wales) Regulations 2012⁷;
- iii. The Government of Maintained Schools (Training Requirements for Governors) (Wales) Regulations 2013⁸;
- iv. The Government of Maintained Schools (Clerk to a Governing Body) (Wales) Regulations 2013;⁹
- v. The education (School Development Plans) (Wales) Regulations 2014¹⁰; and
- vi. The Government of Maintained Schools (Change of Category) (Wales) Regulations 2015¹¹.

4. The Collaboration between Education Bodies (Wales) Regulations 2012¹² (“the Collaboration Regulations”) provide for collaboration by way of joint committee between governing bodies, further education institutions and local authorities.

Consequential amendments to update references to the Existing Regulations are also being made to these Regulations.

5. The Collaboration Regulations are also amended to enable electronic record and minute keeping by joint committees, and to clarify that governing bodies may delegate their functions in respect of appointment of school staff – other than the appointment of head and deputy head teachers – to joint committees of education bodies.

6. The regulations make consequential amendments to The Education (Pupil

Referral Units) (Application of Enactments) (Wales) Regulations 2007¹³ and The Education (Pupil Referral Units) (Management Committees etc.) (Wales) Regulations 2014¹⁴. However, these changes give no additional responsibilities in respect of the management of a PRU, nor do these changes confer additional financial obligations. The ability to produce meeting notes electronically may even result in a small saving.

Q65: Do you agree with our proposals to amend the Collaboration between Education Bodies (Wales) Regulations 2012 to enable electronic record and minute keeping and clarify delegation of functions, as described in paragraph 5. AGREE

Q66: Do you agree with our proposals to amend the Education (Pupil Referral Units) (Application of Enactments) (Wales) Regulations 2007 and the Education (Pupil Referral Units) (Management Committees etc.) (Wales) Regulations 2014? AGREE

Part 9: Timescales for implementation, including the making of Instruments of Government (IoG)

Please see Part 2 of the New Regulations at Annex A for proposals on commencement of those Regulations, including transitional and savings provisions.

Overview

1. Our expectation is that the majority of school governing bodies will begin to operate in accordance with the New Regulations at the same time. We propose that this will be one year after the New Regulations come into force.
2. Local authorities will need to secure the making of IoGs which conform with the New Regulations within this implementation timeframe. The timeframe is discussed in more detail below.

Proposed implementation timeframe

3. We propose to defer the coming into force date of the New Regulations for six months e.g. if the regulations are made on 1 June 2017 they would not come into force until 1 December 2017.
4. Unless the circumstances described in paragraphs 7-9 below apply, we then propose to give local authorities and governing bodies a further year to carry out all necessary changes so that all governing bodies begin to operate under the New Regulations at the same time.
5. In the example used above this means that governing bodies - supported by their local authority – will have the period from 1 June 2017 to 1 December 2018 in which to draft revised IoGs which comply with the new Regulations. The revised IoGs will take effect from the 1 December 2018.

6. This will give local authorities and governing bodies a total “run in” time of 18 months to familiarise themselves with the New Regulations and ensure that all schools have new IoGS in place in readiness for the 1 December 2018.

7. However, if an established governing body varies its IoG after the coming into force date - 1 December 2017 in the above example - it must be constituted and operating in accordance with the New Regulations from the date that the variation has effect if this is before 1 December 2018.

8. Similarly, if a temporary governing body becomes an established governing body after the coming into force date – 1 December 2017 in the above example - it also must operate under the New Regulations from the incorporation date of the new school if this is before 1 December 2018. Where a temporary governing body is established after the coming into force date then it will operate under the New Regulations from the outset.

9. In the case of federations, if a group of schools decide to federate or are federated by the local authority after the coming into force date on the 1 December 2017, or a federation varies its IoG¹⁵, then the federation must operate under the New Regulations from the incorporation date of the new federation - or the date on which the variation takes effect - rather than wait until 1 December 2018.

Q.67 Are these proposals for implementation acceptable and workable for school governing bodies and local authorities? AGREE, providing a clear guidance document and new model Instrument of Government templates are produced by Welsh Government to assist schools and LAs with implementation.

Transitional and savings provisions for staff disciplinary and dismissal committees and head/deputy headteacher selection panels

10. We appreciate that there may be some instances where a governing body begins either a staff disciplinary or dismissal process or a head or deputy head teacher selection process under the current regulatory framework, but does not manage to complete that process before the New Regulations are implemented.

11. We propose that if this happens there will be a further 6 month period in which that disciplinary or selection process may be completed using the existing regulatory requirements. If the process is completed before the end of the 6 month period, the new regulatory requirements will apply from the date of completion. For example, the final date by which all schools must operate within the New Regulations is 1st December 2018. If a governing body begins a disciplinary or headship appointment in November 2018. It will have until May 2019 to complete the process before transition to the new arrangements must take place.

Q:68 Do you agree with our proposals to allow a further 6 months for completion of staff disciplinary & dismissal and head & deputy head teacher selection processes under the current regulatory framework?
AGREE

Part 10: Regulatory impact assessment (RIA)

Overview

1. As well as consulting on the draft New Regulations we are also consulting on a draft regulatory impact assessment (RIA) which sets out our predicted costs to the Welsh Government, local authorities and governing bodies for implementing the New Regulations. The draft RIA is attached at Part 2 of the Explanatory Memorandum and RIA at Annex C.

2. The RIA contains 3 options:

- Option 1 – do nothing
- Option 2 – do minimum and update statutory guidance
- Option 3 – make the new Regulations.

3. Option 3 is the preferred option. We invite views on the estimated costs of this option for local authorities, school governing bodies, the Welsh Government & other bodies below. (Estimated costs associated with this option are summarised in a table in paragraph 146 of the RIA.)

4. We also invite views on our estimate of the only quantifiable benefit of this option to governing bodies at paragraph 125 of the RIA.

Costs to local authorities

5. We have estimated the costs to local authorities of making the required changes to each school's Instrument of Government, and advising schools on the changes and how they will be affected. Paragraphs 37 to 56 of the RIA set out our assumptions and explains how we have estimated the costs associated with this provision.

6. Local authorities usually will have 18 months to change the Instrument of Government for their schools so that they are all operating within the new governance structure one year after the new Regulations come into force – see Part 9 of this document for details of this timeframe.

7. We do not think that there will be any further costs to local authorities as a result of the new Regulations. Paragraphs 57 to 59 of the RIA explain why we are of this view.

Q.69: Do you agree with our estimated costs for local authorities to change the Instruments of Government for their schools, and give advice and support to governing bodies to prepare them for being constituted under the new Regulations? **DISAGREE. The estimate time commitment**

to prepare, support and implement the new Regulations has been grossly underestimated. This is a significant additional piece of work and will have a consequential financial cost to each LA far greater than estimated.

Q.70 Do you agree that there will be no further costs to local authorities as a result of the new Regulations? DISAGREE. In addition to the cost concern expressed in Q69, the new Regulations will generate additional work and cost in respect of assisting governing bodies to identify and nominate independent governors/new associate members/co-opted governors and the new requirement of advertising nationally twice per year for Headteacher vacancies.

Benefits to local authorities

8. We believe that there will no notable monetary benefits to local authorities as a result of the New Regulations. Paragraphs 61-62 of the RIA explain why we are of this view.

Q.71 Do you agree that there will be no notable monetary benefits to local authorities as a result of the new Regulations? AGREE.

Costs to school governing bodies

A focus on skilled governors and changes to constitutional requirements
9. We believe that placing a focus on school governors being recruited, appointed and retained on the basis of their skills will not be of cost to school governing bodies. Similarly, changing constitutional requirements to give governing bodies the flexibility to be smaller and more agile should not be of cost. Paragraphs 64 to 72 of the RIA explain why we are of this view.

Q.72 Do you agree that placing a focus on skilled governors - and changing constitutional requirements so that governing bodies may be more flexible - will not be of cost to governing bodies? DISAGREE. Whilst the Council supports a focus on skilled governors the Regulatory changes proposed to governing body constitutions will have a consequential impact on every governing body throughout Wales. It will be rural and remote schools where these proposals will have the most significant impact as they will find it particularly difficult in identifying and attracting the skilled, professional and independent governors proposed throughout the consultation document. Therefore, the Council disagrees with this proposal on account of the difficulties constitutional change is expected to cause in terms of time, effort and cost.

Independent person on staff disciplinary and dismissal committees

10. We have also estimated the costs of our proposals for schools to have an independent person with full voting rights on all staff disciplinary and dismissal committees and appeal committees.

11. This arrangement is already well established for committees dealing with allegations of child harm; we are seeking to extend this to give governors the

same level of support when dealing with other gross misconduct matters. Paragraphs 79 to 96 of the RIA sets out our assumptions and explains how we have estimated the costs associated with this provision.

Q.73 Do you agree with our estimated costs for governing bodies to have an independent person for all staff disciplinary and dismissal committees?

DISAGREE. The Welsh Government estimated number of Staff Disciplinary and Dismissal Committees and subsequent Appeal Committees has been wholly underestimated at approximately 48 a year throughout Wales. The SDDC and SDDAC in addition to disciplinary matters are also required to consider all potential redundancy and sickness dismissal matters. Statutory redundancy procedures require a series of meetings between the governing body (SDDC) and trades unions to consult on proposals, identify individuals for redundancy and allow for representations to be made. In Neath Port Talbot alone the number of meetings held by these committees last year to consider discipline, redundancy and ill-health dismissal matters was 60+. Given that the Regulations require all SDDC and SDDAC meetings include an independent governor the number of independent governors needed and number of meetings required to attend will be significantly more than first estimated and therefore grossly under estimated in terms of potential maximum cost.

Independent person on head teacher and deputy head teacher appointment panels

12. Our final major costed proposal for governing bodies is for the provision of an independent person with experience and expertise on all head teacher and deputy head teacher appointment panels.

13. We informally requested information from all local authorities on the numbers of head and deputy head teacher appointments that were made in 2014/15, and based our estimated costs on the responses we received. Paragraphs 97 to 113 of the RIA explain in more detail how we have estimated the costs associated with this provision.

Q.74 Do you agree with our estimated costs for governing bodies to have an independent person for head teacher and deputy head teacher appointment panels? NEITHER AGREE OR DISAGREE.

Other possible costs to governing bodies

14. We do not think that there will be any further costs to governing bodies as a result of the New Regulations. This includes having to advertise head teacher vacancies at reasonable intervals and at least twice a year until the vacancy is filled, clarifying and strengthening the role of governing bodies, updating the way in which governors' allowances are calculated and allowing changes to be made to school session times at the beginning of a term, as set out at paragraphs 114 to 120 of the RIA.

Q.75 Do you agree that there will be no further costs to governing bodies as a result of the new Regulations? DISAGREE. There will be an additional cost to governing bodies in advertising at least twice a year

Headteacher posts nationally where vacancies occur. Also see response to Q72.

Benefits to governing bodies

15. As explained in paragraphs 121-122 of the RIA, many of the changes brought about by the New Regulations will not bring advantages which are quantifiable in monetary terms for governing bodies.

16. However, we believe there will be a small monetary benefit to governing bodies if they are able to keep records and communicate electronically, as explained in paragraphs 123 to 125 of the RIA.

Q.76 Do you agree with our views on benefits to governing bodies?
AGREE.

Costs and benefits to the Welsh Government and other bodies

17. We have set out our estimate of costs and an explanation of non-monetary benefits to the Welsh Government at paragraphs 129 to 133 of the RIA.

18. We have explained why we do not think that the New Regulations will have costs implications for other bodies (such as diocesan authorities) - as well as the potential non-monetary benefits for these bodies - at paragraphs 134 to 140 of the RIA.

Q.77 Do you agree with our estimate of costs and benefits to the Welsh Government and other bodies? **NEITHER AGREE OR DISAGREE.**

Analysis of other effects and impacts including on matters of equality

19. We have analysed the possible effect of the New Regulations on equality of opportunity, the Welsh language, sustainable development and the rights of the child at paragraphs 141 to 144 of the RIA.

Q.78 Do you agree with our analysis of the possible effects of the new Regulations on the four areas mentioned above? **NEITHER AGREE OR DISAGREE**

Q.79 An Equalities Impact Assessment (EIA) is attached at Annex D. We would welcome your views on the EIA and the potential impact of all of our proposals on:

- ***Disability***
- ***Race***
- ***Gender and gender reassignment***
- ***Age***
- ***Religion and belief and non-belief***

- **Sexual orientation**
- **Human rights.**

NEITHER AGREE OR DISAGREE

Q.80 A Children's Rights Impact Assessment (CRIA) is attached at Annex E. We would welcome your views on the CRIA and the potential impact of our proposals on children. NEITHER AGREE OR DISAGREE

Q.81 We have asked a number of questions about our proposals for school governance and the new Regulations, including requesting feedback on the RIA, EIA and CRAI. If you have any related issues or comments in addition to these questions, please use this space to report them. It is the opinion of Neath Port Talbot County Borough Council that Headteachers should not be a full member of the governing body with a vote. There should be a requirement for Headteachers to attend meetings as an ex-officio officer and to provide regular updates and reports to governors and of course be subject to scrutiny, however, the decision-making process should be that of governors alone. This is the system that operates in the majority of other public service organisations where the role of the Headteacher is analogous to that of a chief executive or director and where that head of the organisation is required to report to their board or committee as a paid official without voting on their own recommendations or proposals.

Additional information

The proposed revision of the constitution and membership of governing bodies focuses on the skills and experiences that governors and proposed governors can offer, and will give governing bodies the flexibility to have a governing body that suits the needs of individual schools. Updates to staffing requirements will help ensure that staff disciplinary hearings are impartial, and that the best candidates are picked to become head and deputy head teachers.

Proposals are also for all of the Existing Regulations which currently provide for the school governance regulatory framework to be consolidated into one single, accessible set.

A draft of our proposed revision and consolidation of the Existing Regulations is called "The Government and Staffing of Maintained Schools (Wales) Regulations 2017" and is attached at Annex A.

- The School Government (Terms of Reference)(Wales) Regulations 2000; <http://www.legislation.gov.uk/secondary/2000/3027>

As amended by:

- The Education Act 2002 (Transitional Provisions and Consequential Amendments) (Wales) Regulations 2005:

<http://www.legislation.gov.uk/2005/2913>

- The School Teacher Appraisal (Amendment) (Wales)

Regulations <http://www.legislation.gov.uk/2009/2159>

- The School Teacher Appraisal (Wales) Regulations

2011 <http://www.legislation.gov.uk/2011/2940>

- The New Maintained Schools (Wales) Regulations 2005;

<http://www.legislation.gov.uk/secondary/2005/2912>

As amended by:

- The Local Education Authorities and Children's Services Authorities (Integration of Functions) (Subordinate Legislation) (Wales) Order 2010:

<http://www.legislation.gov.uk/2010/1142>

- The Government of Maintained Schools (Wales) Regulations 2005;

<http://www.legislation.gov.uk/wsi/2005/2914/contents/made>

As amended by:

- The Schools Councils (Wales) Regulations 2005

<http://www.legislation.gov.uk/secondary/2005/320>

- The Staffing of Maintained Schools (Wales) Regulations

2006: <http://www.legislation.gov.uk/2006/873>

- The Staffing of Maintained Schools (Miscellaneous Amendments) (Wales) Regulations 2007:

<http://www.legislation.gov.uk/2007/944>

- The Education (Miscellaneous Amendments Relating to Safeguarding Children)(Wales) Regulations 2009:

<http://www.legislation.gov.uk/2009/2544>

- The Federation of Maintained Schools and Miscellaneous Amendments (Wales) Regulations 2010:

<http://www.legislation.gov.uk/secondary/2010/638>

- The Local Education Authorities and Children's Services Authorities (Integration of Functions) (Subordinate Legislation) (Wales) Order 2010:

<http://www.legislation.gov.uk/2010/1142>

- The Children and Families (Wales) Measure 2010 (Commencement No. 2, Savings and Transitional Provisions) Order 2010:

<http://www.legislation.gov.uk/2010/2582>

- The Children and Families (Wales) Measure 2010 (Commencement No. 2, Savings and Transitional Provisions) (Amendment) and (Consequential Amendments) Order 2011:

<http://www.legislation.gov.uk/wsi/2011/577/contents/made>

- The Government of Maintained Schools (Training Requirements for Governors)(Wales) Regulations 2013:

<http://www.legislation.gov.uk/2013/2124>

- The Staffing of Maintained Schools (Amendment) Regulations

2014: <http://www.legislation.gov.uk/2014/1609>

- The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016:

<http://www.legislation.gov.uk/uksi/2016/481/contents/made>

- The Governor Allowances (Wales) Regulations

2005; <http://www.legislation.gov.uk/2005/2915>

As amended by:

- The Local Education Authorities and Children's Services Authorities (Integration of Functions) (Subordinate Legislation) (Wales) Order 2010:

<http://www.legislation.gov.uk/2010/1142>

- The Staffing of Maintained Schools (Wales) Regulations

2006; <http://www.legislation.gov.uk/2006/873>

As amended by:

- The Staffing of Maintained Schools (Miscellaneous Amendments)

(Wales) Regulations 2007:

<http://www.legislation.gov.uk/2007/944>

- The Education (Miscellaneous Amendments Relating to Safeguarding Children)(Wales) Regulations 2009:

<http://www.legislation.gov.uk/2009/2544>

- The Staffing of Maintained Schools (Wales)(Amendment) Regulations 2009:

<http://www.legislation.gov.uk/2009/2708>

- The Staffing of Maintained Schools (Wales)(Amendment No. 2) Regulations 2009:

<http://www.legislation.gov.uk/2009/3161>

- The Local Education Authorities and Children's Services Authorities (Integration of Functions) (Subordinate Legislation) (Wales) Order 2010:

<http://www.legislation.gov.uk/2010/1142>

- The Staffing of Maintained Schools (Amendment) Regulations 2014:

<http://www.legislation.gov.uk/2014/1609>

- Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) (Secondary Legislation) Regulations 2016:

<http://www.legislation.gov.uk/2016/211>

- The Changing of School Session Times (Wales) Regulations 2009;

<http://www.legislation.gov.uk/2009/572>

As amended by:

- The Local Education Authorities and Children's Services Authorities (Integration of Functions) (Subordinate Legislation) (Wales) Order 2010:

<http://www.legislation.gov.uk/2010/1142>

- The Federation of Maintained Schools (Wales) Regulations 2014.

<http://www.legislation.gov.uk/2014/1132>

As amended by:

- The Staffing of Maintained Schools (Amendment) Regulations 2014:

<http://www.legislation.gov.uk/2014/1609>

- The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016:

<http://www.legislation.gov.uk/uksi/2016/481/contents/made>