



School Governance (Roles, Procedures and Allowances) (England)
Regulations 2013
S.I No. 1624
("2013 Regulations")

The 2013 Regulations are due to come into force on **1st September 2013**. They apply in relation to **England only**.

As at 1st September 2013, they revoke and consolidate the following Regulations:

- (i) The Education (School Government) (Terms of Reference) (England) Regulations 2000;
- (ii) The Education (Governors' Allowances) (England) Regulations 2003; and
- (iii) The School Governance (Procedures) (England) Regulations 2003.

Parts 2-6 and **Schedules 1 and 2** to the 2013 Regulations apply only in relation to **maintained schools**.

Regulation 4 and **Schedule 2** of the 2013 Regulations makes amendment to the School Governance (Collaboration) (England) Regulations 2003 and the School Governance (Federations) (England) Regulations 2012 and apply to **maintained schools** where they have collaborated/federated.

Part 7 and **Schedule 3** of the 2013 Regulations makes amendment to the Education (Pupil Referral Units) (Management Committees etc) (England) Regulations 2007 and apply to **Pupil Referral Units**.

The 2013 Regulations largely repeat the legal position as contained in the Regulations referenced at (i) – (iii) above. However, set out below are the main changes introduced by the 2013 Regulations as well as commentary on any impact identified.

PART 2 - Roles of the Governing Body and Headteacher

Part 2 of the 2013 Regulations is, in the main, a new provision and **Regulation 6** sets out the roles of the Governing Body and the Headteacher.

Regulation 6(1) stipulates the **core functions** of the Governing Body as:

- (a) ensuring that the vision, ethos and strategic direction of the school are clearly defined;
- (b) ensuring that the Headteacher performs his or her responsibilities for the educational performance of the school and;
- (c) ensuring the sound, proper and effective use of the school's financial resources.



Regulation 6(2) (which repeats Regulation 3(2) of the Terms of Reference Regulations as referred to at (i) above) provides that, in exercising their function, the Governing Body shall:

- (a) act with integrity, objectivity and honesty and in the best interests of the school; and
- (b) be open about the decisions they make and the actions they take and, in particular, shall be prepared to explain their decisions and actions to interested parties.

Regulation 6(3) provides a new requirement that the Governing Body must appoint a Clerk with a view to ensuring their efficient functioning and must have regard to advice from the Clerk as to the nature of the Governing Body's functions.

Regulation 6(4) (which repeats, in part, Regulation 5 of the Terms of Reference Regulations) provides that the Headteacher's responsibilities include:

- (a) internal organisation, management and control of the school; and
- (b) the educational performance of the school.

Regulation 6(5) provides that the Headteacher is accountable to the Governing Body for the performance of all of his or her responsibilities.

Regulation 6(6) provides that the Headteacher must comply with any reasonable direction of the Governing Body.

PART 3 – Appointment, Functions and Removal of Officers

Regulation 7 relates to the election of the Chair and Vice-Chair. On the whole this Regulation is a repeat of Regulation 5 of the School Governance (Procedures) (England) Regulations 2003 (hereinafter referred to as "the 2003 Regulations"). However **Regulation 7(2)** does not stipulate the date when the Chair or Vice-Chair's term of office should come to an end (as was provided for under the 2003 Regulations).

Regulation 7(3) of the 2013 Regulations provides that "a Governor who is employed at the school as a teacher or as any other member of the school's staff is not eligible to be Chair or Vice-Chair of the Governing Body...". The 2013 Regulations have removed the prohibition that a Governor who is a *pupil* at the school is not eligible to be Chair or Vice-Chair. This is in line with Schedule 6 of the School Governance (Constitution) (England) Regulations 2007 (which continue to apply) which provide that a registered pupil is disqualified from holding office as a Governor of the school.

Regulation 10 provides for the appointment and removal of the Clerk to the Governing Body. **Regulation 10(2)** provides that the Clerk must not be a Governor or the Headteacher of the school. The 2003 Regulations precluded an associate member of the Governing Body from being appointed a Clerk but this has been omitted in the 2013 Regulations.



PART 4 – Meetings and Proceedings of Governing Bodies

Regulation 13 relates to convening meetings of the Governing Body. This is essentially the same as Regulation 11 of the 2003 Regulations except that, where 3 members of the Governing Body requisition a meeting by giving written notice to the Clerk, they no longer have to include a summary of the business to be transacted. Further, in convening a meeting, the Clerk must give written notice and a copy of the agenda at least 7 days in advance of the meeting but is no longer required to provide “reports or other papers” with such agenda.

Regulation 13(6) stipulates the circumstances in which short notice of a meeting is not permitted. These remain essentially the same as in the 2003 Regulations but the Governing Body is not precluded from holding a meeting on short notice to consider a change of school name.

Regulation 13(7) is new and provides that, “at the discretion of the Chair, any item of business may be discussed at a meeting irrespective of whether the matter is classified as an item of business on the agenda subject to certain exceptions”, (the exceptions being, for example, a decision to serve notice of discontinuance, a decision to change the name of the school and a resolution to suspend a Governor from office etc).

Regulation 14(6) changes the position so that there is no longer a requirement for all Governors to vote in favour of a change of school name (whether by proxy or not).

Regulation 14(7) provides that proceedings of the Governing Body will no longer be invalidated where there are more Governors in a particular category than that required under the Instrument of Government.

Regulation 14(8) is entirely new and provides that, as long as Regulation 14(1)-(3) is complied with, the Governing Body may approve alternative arrangements for Governors to participate or vote at meetings of the Governing Body including, but not limited to, by telephone or video conference. It is presumed that such “alternative arrangements” can include meetings by email, however, it is for Governing Bodies to set the requirements relating to such alternative arrangements in light of their obligations under Part 2 (Regulation 6) (see above).

Regulation 19 which relates to restrictions on delegation of Governing Bodies functions, amends the previous position by removing the prohibition on delegation, to an individual, of any function or power imposed on the Governing Body in respect of admission arrangements. The CES, when it was consulted on the 2013 Regulations, opposed the removal of this restriction. The CES also pointed out that the removal of the restriction on delegation to individuals in respect of admissions is contrary to the requirements of The School Admissions Code (the “Admissions Code”) which provides that decisions on admissions must be made by the governing body or a committee appointed by the governing body for that purpose i.e. not by an individual. Clarification was sought as to whether the DfE intended to change the Admissions Code to reflect the change in the 2013 Regulations. The DfE has responded to say that the prohibition was



removed from the 2013 Regulations as a result of the aim of reducing regulation. The DfE took the view that, since the prohibition of delegation to an individual is already contained in the Admissions Code which, as statutory guidance, must be complied with, there was no need to continue to include the provision in the 2013 Regulations. The DfE assures us that there is no intention to change the Admissions Code and that the position regarding delegation will be made clear in the Governors' Handbook. The position is, therefore, that admission decisions must continue to be made by the Governing Body or Admissions Committee and not be delegated to an individual.

PART 5 – Committees of Governing Bodies

Regulation 24, in relation to associate members is the same as the 2003 Regulations except insofar as associate members are no longer precluded from voting on any resolution concerning:

- (a) admission;
- (b) pupil discipline;
- (c) election or appointment of Governors; or
- (d) the budget and financial commitments of the Governing Body.

The CES, when it was consulted on the 2013 Regulations, highlighted the fact that the removal of this restriction would be a concern for our schools as the matters referred to at (a) – (d) above are matters which go to the very heart of what it means to be a Catholic school. The fact that associate members can now vote on such matters means that the balance of voting power may be shifted away from Foundation Governors. Governing Bodies need to be aware of this and ensure that the Foundation Governor majority must be retained in the decision making process, particularly in relation to matters that concern the Catholic character of the school.

Regulation 26, regarding meetings of Committees, provides that the Clerk of the Committee is no longer required to provide reports and papers where a meeting of the Committee is being convened but may instead send written notice and a copy of the agenda. Short notice of a committee meeting is permitted and determination of the shorter period is now determined by the Chair (as opposed to the Clerk under the 2003 Regulations).

PART 6 – Governors' Allowances

As stated above the Education (Governors' Allowances) (England) Regulations 2003 ("the 2003 Regulations") are revoked by the 2013 Regulations. Part 6 sets out the arrangements in relation to Governors' allowances. They follow the 2003 Regulations almost entirely but remove the allowances for schools without delegated budgets to make allowance payments to:

- (i) a person appointed to represent the LA on the Governing Body of any institution providing higher education or further education (or both);
- (ii) a person appointed to represent the LA on the Governing Body of any independent school, alternative provision academy that is not an independent school or special school which is not maintained by that authority.



PART 7 – Pupil Referral Units

Part 7 of the 2013 Regulations brings into effect the amendments listed at Schedule 3 so that certain sections of the Education (Pupil Referral Units) (Management Committees etc) (England) Regulations 2007 which reference the 2003 Regulations, are amended to reference the 2013 Regulations.

Further the 2013 Regulations amend the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007 so that reference to the Terms of Reference Regulations 2000 is deleted.

SCHEDULE 1- Pecuniary Interests and Other Specified Conflicts of Interest

Schedule 1 of the 2013 Regulations replicates the Schedule to the 2003 Regulations.

SCHEDULE 2 – Amendments

Schedule 2 lists the amendments the 2013 Regulations make to the School Governance (Collaboration) (England) Regulations 2003 ("the Collaboration Regulations") and the School Governance (Federations) (England) Regulations 2012 ("the Federation Regulations").

As regards the Collaboration Regulations:-

Amendments are made purely to reflect references to the different regulation numbers under the 2013 Regulations.

As regards the Federation Regulations:-

Amendments are made to reflect references to the different regulation numbers under the 2013 Regulations.

The 2013 Regulations insert a new Part 3A into the Federation Regulations so that the roles of the Governing Body and Headteacher are set out in the same way as in Regulation 6 of the 2013 Regulations (see above).

Further, Schedule 2 of the 2013 Regulations sets out a substitute Schedule 6 to be inserted into the Federation Regulations so that the majority of references to "school" in Parts 2 – 6 of the 2013 Regulations is substituted for "federated school" and so applies to federated schools in the same way that it applies to non-federated schools.