

Diocese of Hallam

Guidance on the Reconstitution of Governing Bodies 2014/15 for Voluntary Aided Schools

– revised June 2015

Background

During the spring term 2014, the Department for Education (DfE) consulted on changes to the constitution of governing bodies. The outcome of the consultation was that all points were accepted as proposed and during this summer term the government has enacted legislation to allow the changes to take place.

Governing bodies in the Diocese of Hallam are now required to reconstitute by September 2015 following The School Governance (Constitution and Federations) (England) (Amendment) Regulations 2014. The DfE expect that this will provide a helpful stimulus for governing bodies to review and evaluate their effectiveness and ensure their constitution and membership is fit for purpose.

Key Aspects of the New Statutory Guidance

- All newly appointed governors should, in the opinion of the person making the appointment, have the necessary skills required to contribute to the effective governance and success of the school. When vacancies occur, governing bodies should conduct an audit to identify any gaps in skills, knowledge and experience.
- The School Governance Constitution and Federation Regulations 2007 will be revoked and all maintained schools that do not already follow the amended 2012 Regulations will have to do so by 1 September 2015.
- When reconstituting to a small number, the 2012 regulations allowed a “juniority principle” to remove surplus governors (last in, first out) – this principle is removed by the amendment thus allowing governing bodies greater freedom when reconstituting to a smaller number. Except for foundation governors, governing bodies will have to vote on each surplus category of governor to ensure governing bodies retain the skills they need to be effective.
- Surplus foundation governors are to cease to hold office by the agreement of those that appointed them; however, the same principle should be followed, i.e. that those remaining in office are best placed to contribute to the effective governance and success of the school. It is noted that governing bodies may have to make some difficult decisions about their membership but when doing so, a sensitive approach should be adopted.
- Restrictions on the number of staff serving as governors to less than one third of the governing body.
- The guidance suggests that governing bodies should review their effectiveness regularly, including the extent of their size and structure being fit for purpose and their members having the necessary skills.
- When considering the appointment of new governors, governing bodies will need to be mindful of the skills and experience required to be effective. The guidance has been amended to allow eligibility criteria in line with the skills-focused definition of co-opted governors.
- The guidance for parent and staff elections has been amended to ensure governing bodies take steps to inform the electorate of the skills candidates are expected to possess; however, the governing body will not have any say in the election process to ensure this is fair and democratic.

- Meaningful and effective engagement with parents, staff and the wider community is vital. It is not the role of governing bodies to provide this through their membership. They need to assure themselves that specific arrangements are in place for this purpose.
- Governing more than one school can generate a more strategic perspective and more robust accountability through the ability to compare and contrast across schools;

Reconstituting from the 2007 to the 2012 Constitution Regulations

The revised requirements will come into force from 1 September 2014 requiring the constitution established in the amended 2012 Regulations to be in place within that year. All governing bodies that have not already reconstituted under the 2012 Regulations will have to do so before 1 September 2015. Even though the aim was for smaller governing bodies, for VA schools, the parent governors are now completely separate from the foundation governor appointments. The result is the minimum size for a VA governing body is 12 governors which will comprise the following categories:

Seven foundation governors with a majority of 2 appointees

- The head teacher (if they choose to be a governor)
- One elected staff governor
- Two elected parent governors
- One local authority governor

The Diocesan model of Instrument of Government establishes this as the model for all primary schools. In order to allow slightly larger numbers of governors in high schools (if desired) the governing bodies may include one or two co-opted governors resulting in 8 or 9 foundation governor places and a governing body size of 14 or 16 governors. For the majority of primary schools there will be no change however the decision to reconstitute under the 2014 regulations is still required. The model instrument is included in appendix 1.

Categories of Governor

Foundation Governors

These are appointed by the Bishop or his delegate from those volunteering for the role and nominated by both the parish priest of the parish in which they worship and by the parish priest or dean with responsibility for the school. Foundation governors must be practising Catholics in good standing with the Church. They should not be related to staff in the school, however in certain circumstances the Bishop may determine that the appointment may be made. Foundation governor appointments will be for four years. Foundation governors are required to protect the religious character of the school and ensure it is conducted within the tenets of the Church. Hence foundation governors are in the majority. Foundation governors must be willing to take decisions in the interests of Catholic education in the Diocese *as a whole* rather than in the interests of any one particular school.

Headteacher

The headteacher position may only be filled by the headteacher of the school. The headteacher may opt out of this position if they choose; however, the position may not be filled by any other person and will remain vacant in this circumstance.

Staff Governor

There is now one position available for an elected staff governor. The elections should be conducted in accordance with Regulation and using the governing body's agreed procedure. This position

should be made available to teaching and non-teaching persons who are paid to work at the school.

Parent Governors

There must be a minimum of two parent governor positions with parents elected in accordance with the Regulation. Headteachers as previously are obliged to follow the Local Authority's or governing body's agreed procedure for electing parent governors and all eligible parents must be given the opportunity to stand for election as long as they would not be prevented from taking up the post by virtue of the disqualification criteria.

Local Authority Governor

There is now only one position available for a local authority governor. Under the new Regulations governing bodies are expected to liaise with the local authority to identify the eligibility criteria for the local authority governor. The nomination will be made by the local authority using these criteria; however, the appointment will be made by the governing body. As a minimum in a diocesan school, it is expected that anyone being appointed to a Catholic school governing body is supportive of the ethos of the school.

Co-opted Governors (optional)

The governing body may appoint co-opted governors provided that the requirements in Regulation are met in respect of governing bodies of voluntary aided schools i.e. a foundation governor majority. Staff may be appointed as co-opted governors but when counted with the staff governor and head teacher category, must not exceed 1/3 of the total membership of the governing body. It is strongly advised that as staff can only have a limited role in monitoring and accountability and should not be chairs of governing body committees or governors with specific responsibilities, co-opted places should be used to bring in expertise to the governing body through persons who are fully supportive of the ethos of the school and have a skill required by the governing body.

New skills-based eligibility criteria for all appointed governors

- Anyone appointed to the governing body has to have the necessary skills to contribute to effective governance and the success of the school. To embed skills as a fundamental consideration in all governor appointments, the proposals bring the eligibility criteria of all appointed governors in line with the current skills-focus.
- The regulations require that any newly appointed governor has, in the opinion of the person or persons making the appointment, the skills required to contribute to the effective governance and success of the school. This includes specific skills such as an ability to understand data or finances as well as general capabilities such as the capacity and the willingness to learn.
- It will be essential that governing bodies have given due consideration to the skills needed by the governing body prior to making any appointments and it is important that the governing body undertakes a skills audit each year, to help identify any skills gaps and future development requirements. A skills audit has been included on the Diocesan website. In order to make future appointments, the Diocese will require a copy of the latest skills audit for each governing body.
- There are no proposals to change the eligibility criteria of elected parent governors and staff governors. Governing bodies and local authorities should take steps to inform governor elections so that the electorate understands the extent to which nominated candidates possess the skills the governing body ideally requires.

Next Steps for Governing Bodies

1. The Diocese asks that all governing bodies include reconstitution on the agenda for a full governing body meeting to be held during the spring term 2015 in order that the reconstitution can be completed before the end of July 2015. Notice must be given for the meeting and a resolution to reconstitute must be made and recorded in the minutes including the date for the new constitution to be effective usually at the beginning of a month or term. The approval of the new constitution must be given by a) the foundation governors then b) the governing body. A short FAQ sheet is included at appendix 2.

Please note that it can take 6 weeks for the local authority to process instruments.

2. A copy of the minute showing clearly the decision of the governing body and the model chosen must be sent to Clare Thorpe at cthorpe@hallam-diocese.com
3. The new instrument will be drafted by the Diocese, approved by the Bishop and Trustee then sent to the relevant local authority for making i.e. to receive the seal of the local council. The sealed document will be sent to the school by the local authority and a copy must be provided to every governor.
4. Existing governors retain their current terms of office e.g. a governor whose current term of office is four years until 31 October 2015 ceases to be a governor on that date *not four years from the reconstitution date*.
5. If there are any vacancies to be filled, then the governing body must make every effort to fill those vacancies as soon as possible with due regard to the skills required.
6. The Diocese is grateful for the contribution that all governors make to schools. It is recognised that governors give generously of their time and expertise, however these changes will result in some governors being surplus to the constitution and there is a legal requirement for changes to be made in such cases. Where there are surplus governors, then for all posts except foundation governors, the governing body decides which governors should step down on the basis of retaining the skills most needed by the body. This should be done sensitively, it may be that some governors are willing to step down having been in post some time and are ready for a change or a new challenge. Those who may be surplus or have family members working in the school are welcome to be considered for posts in other schools. They should be encouraged to contact Clare Thorpe of the Schools' department for guidance on current vacancies. Clerks should be aware of the procedures around these decisions and Chairs may want to discuss it with them prior to the meeting. No governor is expected to withdraw or not vote at a meeting whilst a vote is taken (if this becomes necessary) until all decisions on surplus members have been made by the governing body.
7. For foundation governors, names of any governors wishing to step down should be sent by the clerk to the Schools' Department. Any recommendations regarding removal of foundation governors should also be sent to the office to be considered by the Diocese.
8. Governing bodies should complete an annual skills audit (available on the Diocesan and CES website) before any further vacancies arise and provide a copy to the Diocese.
9. Governing Bodies should take this opportunity to review their effectiveness, including the extent of their size and structure being fit for purpose and their members having the necessary skills. Governing bodies should also be mindful that any newly appointed governors have the necessary skills and experience required to be effective.

Instrument of Government

Appendix 1

DIOCESE OF HALLAM

[Name of School]

1. The name of the school is [name of school]
2. The school was founded by and is part of the Catholic Church. The school is to be conducted as a Catholic School in accordance with the canon law and teachings of the Catholic Church and in accordance with the Trust Deed of the Diocese of Hallam and in particular:
 - a) religious education is to be in accordance with the teachings, doctrines, discipline and general and particular norms of the Catholic Church;
 - b) religious worship is to be in accordance with the rites, practices, discipline and liturgical norms of the Catholic Church;and at all times the school is to serve as a witness to the Catholic faith in Our Lord Jesus Christ.
3. The school is a voluntary aided school in the trusteeship of the Diocese of Hallam and is an exempt charity for advancing the Catholic religion in the Diocese by such means as the Bishop may think fit and proper.
4. The name of the governing body is The Governing Body of {name of school}
5. The governing body shall consist of
 - a. 7 (8) ((9)) * foundation governors **Delete as necessary*
 - b. 2 parent governors;
 - c. 1 headteacher
 - d. 1 staff
 - e. 1 LEA governor.
 - f. *Not applicable (1) ((2))* * co-opted governors
6. The total number of governors shall be 12 (14) ((16))*.
7. Foundation governors shall be appointed and may be removed by the Bishop of Hallam.
8. The term of office of foundation governors is 4 years.
9. This instrument of government comes into effect on *(a date no later than 31 August 2015*
10. This Instrument of Government was approved by the Diocese of Hallam on [date] and made by order of [name of LA] on [date of making]
11. A copy of this instrument must be supplied to the trustees in accordance with the school's trust deed and to the Director of Schools of the Diocese of Hallam and every member of the governing body.

Frequently Asked Questions

Why reconstitute?
Government policy is that governing bodies should be no bigger than necessary to secure the range of skills -they need. The size and structure of the governing body should be designed so that every member actively contributes relevant skills and experience. In practice for VA schools, the minimum size will be 12 governors which means little or no change for most diocesan schools but the governing body is still required to reconstitute.
When does this need to be done by?
1st September 2015.
What's different?
Governing bodies are no longer based on the stakeholder group principle where the different categories of governor had to be in proportion to the size of the governing body. The 2014 amendments make some changes to this requirement and provide greater flexibility. While some governing bodies may make minimal changes, others may identify the need and opportunity for a fundamental re-fresh.
What do we need to do now?
Study the guidance and discuss the size and composition of a governing body that will enable you to carry out your responsibilities and take the school forward. This is a decision for the foundation governors followed by b) the full governing body and needs to be recorded in the minutes. Ideally it will be done by the end of the Autumn term 2015.
How do we choose the date for reconstitution?
The date must be before 31 August 2015. Each school will have its own circumstances which influence the choice of date for example: <ul style="list-style-type: none"> • current vacancies on the governing body; • imminent Ofsted; • leadership changes. <p>Please bear in mind it can take 4 to 6 weeks after your submission to the Diocese for the new Instrument to be issued by the local authority. Ideally the date will be the beginning of a term or month.</p>
My governing body already consists of 12 governors with the correct numbers in each category
The decision to reconstitute must still be taken and formally recorded with a new Instrument being made in order to have a legal constitution after August 2015.
What happens to the current governors?
Some are entitled to transfer to the new composition, retaining existing terms of office. Others will have to stand down if they are surplus to the category. Some governors could be appointed to serve in a different category or may volunteer to use their expertise on the governing body of another school. If you need advice on this, please email: cthorpe@hallam-diocese.com

Models of Constitution

A governing body of 12 governors (option for primary and high schools)

The governing body shall consist of 12 governors of which there shall be:

- a. 7 foundation governors
- b. 2 parent governors;
- c. 1 headteacher
- d. 1 staff
- e. 1 LEA governor.

A governing body of 14 governors (option for high schools)

The governing body shall consist of 14 governors of which there shall be:

- f. 8 foundation governors
- g. 2 parent governors;
- h. 1 headteacher
- i. 1 staff
- j. 1 LEA governor.
- k. 1 co-opted governor

A governing body of 16 governors (option for high schools)

The governing body shall consist of 16 governors of which there shall be:

- l. 9 foundation governors
- m. 2 parent governors;
- n. 1 headteacher
- o. 1 staff
- p. 1 LEA governor.
- q. 2 co-opted governors

Sources of further information:

Constitution of governing bodies of maintained schools: DfE statutory guidance - May 2014
The School Governance (Constitution and Federations) (England) (Amendment) Regulations 2014
The School Governance (Constitution) (England) Regulations 2012
Skills audit for governors CES

Flowchart for Reconstitution

