

3. Governing body constitution

This chapter provides information relating to how governing bodies are made up, including:

- A. categories of schools
- B. how governing bodies are made up:
 - types of governor
 - the instrument of government and process
 - terms of office
 - reviewing the composition and options
 - removing excess governors
 - the composition of governing bodies
 - qualifications and disqualifications to being a governor
- C. election and appointment of governors
- D. resignations and removal of governors, including suspending a governor.

Background

1. Each maintained school must have a governing body constituted in accordance with the Government of Maintained Schools (Wales) Regulations 2005. Those regulations are made under [the Education Act 2002, Part 3, Chapter 1](#), which sets out the framework for the establishment of governing bodies.

2. All school governing bodies must be a specific combination of appointed and elected governors of various categories.

3. The composition of each governing body will depend upon the number and age range of pupils at the school and the category of the school i.e. community, community special, foundation, voluntary aided (VA), voluntary controlled (VC) or maintained nursery (MN). The membership of each governing body will be set out in the instrument of government of the particular school, which is produced under section 20 of the Education Act 2002 and regulations made under that provision.

4. The instrument of government will be made in accordance with [The Government of Maintained Schools \(Wales\) Regulations 2005](#), having regard to any guidance issued by the Welsh Government from time to time. As described later in this chapter, a governing body has the option of having a smaller governing body if that best suits its purpose. The exception to this

being secondary schools with 600 or more pupils and primary schools with 100 or more pupils, which are not permitted to have a smaller governing body.

The guiding principles

5. The [Government of Maintained Schools \(Wales\) Regulations 2005](#) prescribe which categories of governor must be represented on the governing body and what the level of representation is for each of the categories. All schools have five compulsory stakeholder groups being parents, teacher, staff, community and LA representatives. Others vary according to the category of school and may include foundation, representative and partnership governors. Sponsor governors form an optional group.

A. Categories of schools

1. [The School Standards and Framework Act 1998](#) (“the SSF Act”), Part 2, Chapter 1, sets out the framework for the categories of maintained schools. The categories of schools, with a very brief explanation of what they mean for the school, are:

- **Community school** – the school including land is owned, maintained and staffed by the local authority (subject to responsibilities delegated to governing bodies).
- **Foundation school** – the governing body owns the premises, employs the staff and has primary responsibility for admission arrangements. It will receive revenue and capital funding from the local authority.
- **Voluntary aided school** – the school (sometimes via a third party, i.e. the promoter) holds its own premises, employs the staff and deals with admission arrangements. The LA, via the school budget share, provides revenue funding. The governing body will include foundation governors or in the case of a school with no foundation, partnership governors. These will hold a majority of the places on the governing body.
- **Voluntary controlled school** – the land and buildings of the school are often owned by a voluntary organisation. However, the LA will employ the staff and have primary responsibility for admission arrangements. In practice many voluntary controlled schools will have a connection to a promoter, in the main a religious body for the purposes of providing a faith education. The governing body will include foundation governors but they will not be in the majority.
- **Community special school** – a school provided for children with additional learning needs. The school including land is owned, maintained and staffed by the LA.

For further information on the categories of school please refer to the [School Standards and Framework Act 1998](#).

2. For further information relating to land and buildings see Chapter 18, School premises and capital investment. Where the category of school affects the roles and/or responsibilities of the governing body, this will either be dealt with separately or will be highlighted alongside the relevant chapters in the guide.

B. How governing bodies are made up

Types of governor

1. Information relating to the election of governors follows in Part 2C.

2. All governing bodies have four key groups of governors:

- **Parent governors** are elected by the parents or appointed by the governing body to represent the interests of parents on the governing body. Please see paragraph 28 for further information.
- **Teacher governors** are elected by fellow teaching staff at the school. A teacher governor is disqualified from holding the office of a teacher governor if they cease to be employed as a teacher at the school.
- **Staff governors** are elected from and by the non-teaching staff employed to work at the school. For this purpose, 'employed' means employed to work at the school under a contract of employment or a contract for the supply of services. A staff governor is disqualified from their office if they stop working at the school.
- **Local Authority (LA) governors** are appointed by the local authority. Local authorities can appoint any eligible person as an LA governor. For example not all LA governors are councillors, they may include any person who is interested in supporting schools and whose appointment has the support of the authority. A person is disqualified from appointment as an LA governor if they are eligible to be a staff or teacher governor of the school.

3. In addition to these, **the head teacher** (or acting head teacher) is a member of the governing body unless they choose not to be. There are no provisions for a substitute governor to take the place of a head teacher who decides not to be a governor. A head teacher must stand down from the governing body on leaving the school.

4. Different categories of governing bodies may also include some governors of the following types:

- **Community governors** are in three categories:
 - **Community governors** are appointed by the governing body to represent the wider community interests of the school. Community governors can be people who live or work in the community served by the school or, if they do not, who are committed to the good governance and success of the school. In deciding whom to appoint, governors should ensure the governing body reflects a balance of interests.

- **Representative governor** - in community special schools, the governing body must appoint as one of the community governors a person (if any) nominated by one or more voluntary organisations designated by the LA. This is not an additional community governor place but one of the specified number. If the school is based in a hospital, the community governor must be nominated by one or more local health boards or the National Health Service (NHS) trust.
- **Additional community governor** – a governing body of a maintained primary or nursery school serving an area for which there are one or more community councils, must provide for the governing body to include one additional community governor to be nominated by the community council(s). This position is in addition to the other community governor places.
- **Foundation governors** are appointed by the people or organisations (if any) named in the school's instrument of government. If the school has a religious character the foundation governors must preserve and develop this, and must also ensure compliance with the trust deed, if there is one.

They may hold their governorship in an ex-officio capacity if they are the holder of an office specified in the instrument of government, for example a parish priest. The person is disqualified from continuing as governor on leaving the specified post.

If there is more than one body that has the right to appoint foundation governors, the instrument of government will specify as such and the basis on which appointments are made.

- **Substitute governors** - where the instrument of government specifies an ex-officio foundation governor and the post holder does not wish or is unable to take up the office of governor, or there is a vacancy in that office, a replacement may be appointed to act in place of the ex-officio governor. This person would be known as a substitute governor.
- **Partnerships governors** - if the school has no foundation or equivalent body, foundation governors are replaced by partnership governors appointed by the governing body after a nominations process. They cannot be a parent of a registered pupil at the school, a registered pupil at the school, eligible to be a teacher or staff governor, or be a member of, or employed by the LA in connection with its functions as an LA.

The governing body must ask parents of registered pupils at the school and others in the community it considers appropriate (for example, staff, community organisations and other local bodies) to provide nominations for partnership governors.

- **Sponsor governors** - are appointed by the governing body. It is at the governing body's discretion whether they choose to appoint sponsor governors or not. The sponsor(s) can be someone who

gives, or has given, substantial assistance to the school, financially or in kind, or who provides services to the school. Where the school has one or more sponsors, the governing body can appoint up to a maximum of two persons as sponsor governors but the instrument of government must make provision for these places.

- **Non governor members** - a governing body can appoint non governor members to attend full governing body meetings or to serve on one or more governing body committees. The definition of a non governor member is wide and pupils, school staff and people who want to contribute specifically on issues related to their area of expertise (for instance, finance) can be appointed as a non governor member.

Non governor members are not governors and they are not recorded in the instrument of government. Non governor members may not vote at governing body meetings but can be given a vote at committee meetings, where the governing body has agreed this when establishing the terms of reference of the committee in question.

- **Associate pupil governors** - [The School Council \(Wales\) Regulations 2005](#) amend [The Government of Maintained Schools \(Wales\) Regulations 2005](#) to allow for appointment of associate pupil governors to the governing body of all maintained secondary schools.

The head teacher of a school must ensure that the school council has the opportunity to nominate up to two pupils from years 11 to 13 from its membership. These are in addition to the numbers of governors set out in the composition options. The governing body must accept any pupil nominated and appoint them as an associate pupil governor, provided the nomination is made in accordance with the regulations and the pupil is not disqualified from holding office.

- **Independent members of staff disciplinary and dismissal committees** - where a staff disciplinary and dismissal committee or the staff disciplinary and dismissal appeal committee is required to meet to hear allegations against a member of staff that involve issues of child protection, the committee must include at least two governors plus an independent person who is not a governor. For further information on this see information relating to staff disciplinary procedures in chapter 10, Staffing.

The instrument of government

5. The instrument of government sets out how the governing body is constituted and establishes it as a corporate body, it must set out:

- the name of the school
- the category of the school
- the name of the governing body of the school

- the manner in which the governing body is to be constituted, i.e.
 - the number of governors in each category of governor
 - where the school has additional community or sponsor governors, who will be responsible for appointing them
 - the total membership of the governing body
- the term of office of governors, where it is less than the normal period of four years
- where the school has foundation governors:
 - who is to be responsible for appointing them
 - any positions to be held ex-officio
 - the name of the person who is entitled to remove any ex-officio governors and to appoint a substitute
- where the school is a community special school, the name of the body or voluntary organisation responsible for appointing representative governors
- details of any trust, if applicable
- where the school is a foundation or voluntary school designated as having religious character, a description of the religious ethos of the school
- the date when the instrument of government takes effect.

Process for making and reviewing the instrument of government

6. The processes for the making and varying of instruments of government are outlined in [The Government of Maintained Schools \(Wales\) Regulations 2005](#). The governing body drafts the instrument and submits it to the local authority. The LA must check if the draft instrument complies with the statutory requirements, including the relevant guiding principles for the constitution of governing bodies. If the instrument complies with the legal requirements, the LA will make the instrument. The governing body or the LA can review and change the instrument at any time.

7. Where appropriate, the instrument of government must be approved by any foundation governors, trustees and/or religious body, before it is submitted to the LA.

8. Once the instrument of government has been made, the LA should ensure that the following persons are provided with a copy free of charge:

- each member of the governing body
- the head teacher
- the trustees of any trust relating to the school
- any religious body or diocesan authority connected with the school

- in the case of a federated governing body, the Welsh Ministers (see Part 6 of the Federation of Maintained Schools (Wales) Regulations 2014) .

Terms of office

9. The term of office of most governors is four years from their date of appointment. The exceptions being (subject to any re-appointment):

- governors who are appointed as ex-officio governors, i.e. the head teacher or a governor appointed by virtue of their office, who may hold office for as long as they hold the position from which their governorship derives
- parent governors of a community nursery school, where the term of office is two years
- associate pupil governors, where the term of office is one year
- foundation governors, additional governors and additional foundation governors where the term of office is determined by the appointing body/person, up to a maximum of four years
- in federations, staff and teacher governors have a two year term of office to allow for greater rotation and representation of all schools, particularly where there are more than two schools in the federation.

10. A governor may choose to resign from their term of office at any time. If a governor resigns or if the head teacher chooses not to be a governor, the clerk to the governing body must be informed in writing.

11. Terms of office do not prevent a governor from being elected or appointed for a further term, as long as they meet the qualification requirements for the position or are not disqualified under the regulations in place at the time.

Review of the instrument of government

12. The governing body or the local authority may review the instrument of government at any time after it is made. If either of them decides that the instrument should be amended, they must inform the other party of their proposed changes and explain why they want to make the changes.

13. If the other party agrees with the proposed variation, or the parties agree that some other variation should be made instead, the local authority must vary the instrument accordingly. If the parties do not agree, the local authority must either inform the governing body of the reasons why it disagrees with the governing body's proposed variation, or as the case may be, why it wants to make its own amendments. The instrument must then be varied by the local authority, either in the way agreed between the parties or (in the absence of such agreement) in the way it thinks fit having regard, in particular, to the category of school to which the school belongs.

14. A slightly different approach is taken where the school has foundation governors, where the governing body must ensure any proposed variation is approved by the foundation governors, trustees and any diocesan authority or religious body. If they cannot reach agreement, a referral to the Welsh Ministers may be made, who will give such direction as they think fit, again having regard to the category of school to which the school belongs.

15. The LA cannot be forced to vary the instrument of government if it does not consider it appropriate to do so.

Review of governing body

16. The governing body should review its own composition at intervals to make sure that it is still suitable for the school. If a school has significantly more or fewer pupils than when the instrument was made, the number of governors may need to be adjusted.

17. If, following a review, the governing body or LA decides that one of the other options available would be more appropriate than the current composition, each must inform the other party of their intention.

18. If the LA agrees to make the change, the number of governors in some or all categories would then need to be adjusted. The new instrument of government should also include the date on which variations are to take effect.

19. In a foundation or voluntary school the agreement of the foundation governors, trustees and the diocese, as appropriate, must be sought prior to any change.

Removing excess governors

20. Where, on a change of composition, a governing body of a maintained school has more governors of any category than are required by the instrument of government and the excess do not resign, governors of that category will be removed, by order of seniority, with the governor whose current period of office is the shortest being the first to go. Where one or more governors are of equal seniority, the decision will be made by the drawing of lots.

21. Additional community governors are considered to be separate from community governors for the purposes of removing excess governors.

The composition of governing bodies

22. The membership of governing bodies is set out in [The Government of Maintained Schools \(Wales\) Regulations 2005](#) and will depend upon the category and size of the school. Additional community governors, where applicable, are in addition to the number of community governors listed.

Qualifications and disqualifications

23. [Schedule 5 to The Government of Maintained Schools \(Wales\) Regulations 2005](#) covers the qualifications and disqualifications of governors.

24. A governor must be aged 18 or over at the time of their election or appointment (except for associate pupil governors).

25. A person is disqualified from holding or from continuing to hold office as a governor if he or she:

- fails to attend the governing body meetings – without the consent of the governing body – for a continuous period of six months, beginning with the date of the first meeting missed (not applicable to ex-officio governors). Where a governor has sent an apology for the meeting, the minutes of that meeting must record the governing body's consent or otherwise to the absence – and a copy of the minutes must be sent to the governor
- is made bankrupt, made an arrangement with creditors, or had their estate sequestrated, which has not been discharged, annulled or rescinded
- has been disqualified from acting as a company director under the laws of Wales, England, Scotland or Northern Ireland;
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- has been removed from the office of charity trustee under the laws of Wales, England, Scotland or Northern Ireland;
- is included in any list prohibiting or restricting their employment with children, young persons or adults under the laws of Wales, England, Scotland or Northern Ireland;
- has received a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) in the five years before becoming a governor or since becoming a governor
- has received a prison sentence of two-and-a-half years or more in the 20 years before becoming a governor
- has at any time received a prison sentence of five years or more
- has been fined for causing a nuisance or disturbance on school premises during the five years prior to or since appointment or election as a governor
- refuses a request by the governing body to make an application to the Disclosure and Barring Service (DBS) for a DBS certificate.

26. Where a person is disqualified from holding or continuing to hold office under these provisions they must give notice of that fact to the clerk to the governing body.

27. Pupils registered at the school, anybody eligible to be a staff or teacher governor at the school and elected members of the LA in which the school is situated are not able to become community governors. This is because community governors are intended to represent the wider community.

28. Elected members of the local authority, LA employees and employees of the governing body of any school maintained by the LA are not eligible to be appointed by the governing body as parent governors unless they are parents of pupils at the school. (Normally parent governors are parents of pupils at the school who are elected by other such parents).

29. A person cannot, at any time:

- hold more than one governorship at the same school, nor
- be a member of more than two governing bodies of maintained schools unless they are:
 - a governor appointed to a school causing concern under sections 6, 7, 13 or 14 of the School Standards and Organisation (Wales) Act 2013 (see chapter 24)
 - a temporary governor
 - an ex-officio governor. An ex-officio governor may serve in that capacity on two governing bodies of maintained schools or as an ex-officio on one governing body and on another governing body as an ordinary (that is, not ex-officio) governor.

C. Election and appointment of governors

Elections

1. Wherever possible, places for parent, teacher and staff governors must be filled by election. The organisation of the elections will be the responsibility of the appropriate authority.
2. For community, community special, VC and nursery schools, the LA is the appropriate authority, though it can delegate this function to the head teacher.
3. For foundation, foundation special and VA schools, the governing body is the appropriate authority, although it may delegate some of the work to the head teacher. The governing body may also agree with the LA for it to make the arrangements, in these circumstances the LA can delegate the function to the head teacher.
4. The appropriate authority will need to decide:
 - when and where the election will be held
 - how nominations should be made
 - what voting method will be used
 - whether there should be a returning or presiding officer (an official in charge of the voting process).
5. The appropriate authority may also set qualifying dates for candidates to stand for election. No requirement can be imposed as to the minimum number of votes that need to be cast for parent, teacher or staff governor elections.
6. Parents, teaching and non-teaching staff, the LA and the governing body (as appropriate) should be told the result of the election. The ballot papers should be kept in line with the school's agreed retention policy in case the election is challenged.
7. The clerk must inform the LA of any governor changes. The LA needs these details to help them discharge its statutory duty to provide information and training for all governors of maintained schools in their area.
8. Parent, teacher and staff governors may stand for re-election once their term of office has come to an end, as long as they still meet the requirements to do so.
9. Teacher and staff governors must stand down from their term of office if their employment at the school ends.

10. Election procedures should be reviewed from time to time. If the LA conducts elections, and the head teacher or governing body become aware of problems that have arisen during elections, they should tell the LA so that the LA can consider whether any changes are needed.

Parent governor elections

11. All parents of registered pupils at a school must be informed about any parent governor vacancy, the need for an election, their right to stand for election and to vote for the candidate of their choice. In this context, a parent is someone who is a natural parent or an individual who has assumed parental responsibility or has care of a child or young person, however this would not include a LA where a child was in its care. (For a full definition of parent see the [Education Act 1996: Section 576](#) and the [Parents and Parental Responsibility](#) guidance for schools.)

12. Parents should be invited to put themselves forward for election as a parent governor. It cannot be insisted upon that the person is nominated and seconded by other parents nor is it a requirement that the parents supply a personal nomination statement.

13. If the number of parents standing for election is equal to or less than the number of places available, those parents will automatically become governors.

14. Where more nominations are received than there are vacancies an election must be held by secret ballot. Parent governor ballots may be either by post or by electronic means, provided anonymity can be preserved.

15. In some circumstances a child may have more than two parents who have the right to stand as governors, or to vote. The school's admissions register will include a list of parents of pupils at the school. A parent only has one vote, no matter how many children they have at the school.

16. Schools must make every effort to fill parent governor vacancies by means of elections, but there are three situations where it might not be possible for parent governors to be elected. These are:

- there are fewer parents standing for election than there are places to be filled
- at a school where at least half the pupils are boarders, the LA decides it would not be practical to hold an election
- at a school established in a hospital, the LA decides it would not be practical to hold an election.

17. In such circumstances the governing body must appoint a parent of a registered pupil at the school, or, where that is not possible a parent of a child of compulsory school age, or in the case of a maintained nursery school, a child under compulsory school age. Please note that different considerations

apply in relation to community special schools. Further details can be found in Schedule 1 to [The Government of Maintained Schools \(Wales\) Regulations 2005](#).

18. The minimum number of governors that must be present at a governors' meeting held to appoint a parent governor is one half (rounded up to a whole number) of current governors, excluding any associate governors, vacancies or suspensions. The governing body must not appoint an elected member or an employee of the LA, or an employee of any school in the LA area as a parent governor unless that person is a parent of a pupil at that school.

19. Parent governors do not have to stand down if their child leaves the school during the period of their term of office, though they may do so if they wish. They may stand for re-election at the end of their term of office if they still have a child on the school roll.

20. Members of staff can vote in parent governor elections if they are parents of children at the school. They can also be governors at other schools. Their employment status will not affect their qualification for governorships in these categories at another school.

Teacher governor elections

21. Anybody who is employed as a teacher under a contract of employment or a contract for services at the school, must be offered a chance to stand for election as a teacher governor at the school, and to vote for the candidate of their choice. Elections must be held by secret ballot.

Staff governor elections

22. Anybody who is employed to work at the school (other than as a teacher) under a contract of employment or a contract for services must be offered a chance to stand for election as a staff governor at the school, and to vote for a candidate of their choice. Elections must be held by secret ballot.

D. Resignation and removal of governors

1. Any governor may resign at any time. A governor must give written notice of their resignation to the clerk.
2. The power to remove governors must be used reasonably and lawfully.
3. Elected parent, teacher or staff governors cannot be removed during their term of office unless they become disqualified under the regulations listed earlier in this chapter or, in the case of a teacher or staff governor, they cease to be employed to work at the school.
4. Any LA , foundation or representative governor may be removed from office by the person or body responsible for their appointment. That person must give notice in writing to the clerk to the governing body and to the governor to be removed.
5. An ex-officio governor may be removed by the person named in the instrument of government. That person must give notice in writing to the clerk and to the governor to be removed.
6. Additional community or sponsor governors may be removed by the person or body that nominated them. Again, that person must give notice in writing to the clerk and to the governor to be removed.
7. The governing body may remove a community governor, an appointed parent governor, a partnership governor or an associate pupil governor by:
 - passing a resolution of the governing body at a meeting held on seven days' notice
 - placing the removal of the governor as a specific item on the agenda for the meeting
 - ensuring that at least half the members of the governing body (rounded up to a whole number) are present at the meeting
 - ensuring that at the meeting, the governor or governors proposing the removal of the governor states the reasons for the proposal, and the governor whom it is proposed to remove is given an opportunity to make a statement in reply
 - giving written notice to the governor of the reasons for their removal. This should be done after the resolution has been passed.

Notifying the clerk of resignations and removals

8. If a governor resigns or is removed from office, or if the head teacher chooses not to be a governor, the clerk to the governing body must be informed in writing.

Suspension of governors

9. In certain prescribed circumstances as outlined below, the governing body can decide to suspend a governor for a period of up to six months if:

- the governor is paid to work at the school and is the subject of disciplinary proceedings in relation to their employment
- the governor is the subject of any court or tribunal proceedings, the outcome of which may be that they are disqualified from continuing to hold office as a governor under Schedule 5 of [The Government of Maintained Schools \(Wales\) Regulations 2005](#)
- the governor has acted in a way that is inconsistent with the school's ethos or religious character and has brought, or is likely to bring, the school, the governing body or their office of governor into disrepute
- the governor is in breach of their duty of confidentiality to the school, the staff or to the pupils.

10. A governing body can vote to suspend a governor on any of the above grounds but does not have to do so. The governing body should only use suspension as a last resort and after seeking to resolve any difficulties or disputes in a more constructive manner.

11. Subject to the regulations, a governing body may decide to suspend a governor for further fixed periods.

12. Any motion to suspend must be specified as an agenda item of a meeting for which at least seven days' notice must be given. Before the governing body votes to suspend a governor, the governor proposing the suspension must give their reasons for doing so. The governor who is proposed for suspension must be given the opportunity to make a statement in response before withdrawing from the meeting in accordance with regulation 67 of and Schedule 7 to [The Government of Maintained Schools \(Wales\) Regulations 2005](#). A vote should then take place.

13. A governor who has been suspended must be given notice of any meetings and must be sent agendas, reports and papers for any meetings during their suspension.

14. A governor who has been suspended cannot be disqualified from holding office for failure to attend meetings while suspended.

The Law

The School Standards and Framework Act 1998, Part 2, Chapter 1,

[Education Act 1996: Section 576](#)

[Education Act 2002: Sections 19, 20, 21 and 23](#)

[The Government of Maintained Schools \(Wales\) Regulations 2005, as amended](#)

The Staffing of Maintained Schools (Wales) Regulations 2006, as amended

[The School Councils \(Wales\) Regulations 2005](#)

[School Standards and Organisation \(Wales\) Act 2013](#)

Guidance

[Parents and Parental Responsibility guidance for schools](#)

If the governing body wants to check whether a prospective or existing governor has been disqualified under the provisions listed above, some sources of information are:

- **Disclosure and Barring Service:** contact your LA
- **Bankruptcy:**
 - The Insolvency Service Website
<https://www.gov.uk/government/organisations/insolvency-service>
 - The Land Registry Service
<https://www.gov.uk/government/organisations/land-registry>
- **Company directorships:**
The Companies House disqualified directors register
<https://www.gov.uk/government/organisations/companies-house>