

## Revised Copy of The School Governance (Federations) (England) Regulations 2012

This is a consolidated copy of The School Governance (Federations) (England) Regulations 2012 to incorporate all subsequent amendments into the text.

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### **Amendments from The School Governance (Roles, Procedures and Allowances) (England) Regulations 2013 are in GREEN**

**Link to the law: <https://www.legislation.gov.uk/uksi/2013/1624/made>**

The 2013 Regulations:

- updated this law so it refers to the 2013 Roles, Procedures and Allowances Regulations
- inserted Part 3A.

### **Amendments from The School Governance (Constitution and Federations) (England) (Amendment) Regulations 2014 are in RED**

**Link to the law: <https://www.legislation.gov.uk/uksi/2014/1257/made>**

The 2014 amendment:

- revoked the Federations Regulations 2007
- stated that local authority, foundation, appointed parent and partnership governors must be appointed for their skills
- amended the rule on co-opted governors who are school employees, which used to say they must not exceed one third of the board (and now says co-opted school employees **plus** headteachers **plus** the staff governor must not exceed one third of the board)
- changed the procedure for removing surplus governors.

**Amendments from The School Governance (Federations) (England) (Amendment) Regulations 2015 are in BLUE**

**Link to the law: <https://www.legislation.gov.uk/uksi/2015/1554/made>**

The 2015 amendment said numbers must be rounded up in academy orders decisions.

**Amendments from The School Governance (Constitution and Federations) (England) (Amendment) Regulations 2016 are in BROWN**

**Link to the law: <https://www.legislation.gov.uk/uksi/2016/204/made>**

The 2016 amendment requires federations to have **only** two parent governors (from any federated school), rather than one parent governor from each school in the federation. It also made minor amendments to the list of preferred candidates when appointing parent governors.

**Amendments from The School Governance (Constitution and Federations) (England) (Amendment) Regulations 2017 are in PURPLE**

**Link to the law: <https://www.legislation.gov.uk/uksi/2017/487/made>**

The 2017 law amended the rules on applying for an academy order.

# STATUTORY INSTRUMENTS

2012 No. 1035

EDUCATION, ENGLAND

## The School Governance (Federations) (England) Regulations 2012

*Made 14th April 2012*

*Laid before Parliament 19th April 2012*

*Coming into force 1st September 2012*

The Secretary of State for Education makes the following Regulations in exercise of the power conferred by sections 19(1A), (2), (3), (4A), (4B) and (8), 20(2), (3) and (4), 24, 25, 34(5), 35(4) and (5), 36(4) and (5) and 210(7) of the Education Act 2002<sup>(1)</sup> and section 3(6) of the Academies Act 2010<sup>(2)</sup>.

### PART 1

#### GENERAL PROVISIONS

##### Citation, commencement and application

1. These Regulations may be cited as the School Governance (Federations) (England) Regulations 2012 and come into force on 1st September 2012.
2. These Regulations apply to governing bodies of maintained schools in England that are either federated governing bodies or are proposing to federate.

##### Revocation, saving and transitional provisions

3. The School Governance (Federations) (England) Regulations 2007<sup>(4)</sup> are revoked.
  4. ~~(1) Regulations 1 to 3 and 13 to 30 of the School Governance (Federations) (England) Regulations 2007 continue to apply to a federated governing body constituted under an instrument of government that takes effect before 1st September 2012 unless and until Parts 3 and 4 of these Regulations apply to the governing body by virtue of regulation 2(2).~~
- (2) A decision by a governing body under regulation 32(2) of the School Governance (Constitution) (England) Regulations 2007 is to be treated for the purposes of these regulations as a decision of the governing body under regulation 30(2) of the School Governance (Constitution) (England) Regulations 2012<sup>(5)</sup>.

## Interpretation

5.—(1) In these Regulations—

“ERA 1988” means the Education Reform Act 1988<sup>(6)</sup>;

“SSFA 1998” means the School Standards and Framework Act 1998<sup>(7)</sup>;

“EA 2002” means the Education Act 2002;

“EIA 2006” means the Education and Inspections Act 2006<sup>(8)</sup>;

“AA 2010” means the Academies Act 2010<sup>(9)</sup>;

“appropriate diocesan authority” has the meaning given by section 142(1) and (4) of SSFA 1998;

“appropriate religious body”, in relation to a school designated under section 69(3) of SSFA 1998 as having a religious character that is not a Church of England school or a Roman Catholic Church school, means the body or person, if any, that represents the specified religion or religious denomination and that is prescribed under section 88F(3)(e) of SSFA 1998;

“the Constitution Regulations 2012” means the School Governance (Constitution) (England) Regulations 2012;

“day” means school day as defined by section 579 of the Education Act 1996;

“the federation date” means the date on which governing bodies federate;

“governing body” means a governing body incorporated under section 19(1) of EA 2002 or these Regulations as appropriate;

“the local authority” means the local authority by which a maintained school is, or a proposed school is to be, maintained;

“new school” has the same meaning as in the New Schools Regulations;

“the New Schools Regulations” means the School Governance (New Schools) (England) Regulations 2007<sup>(10)</sup>

“parent” includes any individual who has or has had parental responsibility for, or cares or has cared for, a child or young person under the age of 19;

“relevant local authority” means the local authority in which a federated school is situated and which is responsible for maintaining that school;

“the Roles and Procedures Regulations” means the School Governance (Roles, Procedures and Allowances) (England) Regulations 2013

“qualifying foundation school” means a foundation or a foundation special school which has a foundation which meets any one or more of the conditions in section 23A(2),(3) and (4) of the SSFA 1998<sup>(12)</sup>; and

“the Staffing Regulations” means the School Staffing (England) Regulations 2009<sup>(13)</sup>.

## PART 2

### ESTABLISHING OR JOINING A FEDERATION

#### Prescribed cases

6.—(1) Regulations 7 to 10 apply where at least two governing bodies propose to federate in accordance with section 24 of EA 2002.

(2) Regulations 11 and 12 apply where it is proposed to establish a new school and either—

- (a) the temporary governing body wish to federate with one or more governing bodies;
- (b) the local authority propose that the school should be a federated school; or
- (c) where the school is to be a foundation or voluntary school proposals for the establishment of which were published by proposers, the proposers propose that the school be a federated school.

#### Procedure for schools proposing to federate

7.—(1) Where a governing body are proposing to federate, they must first consider a report on the proposal.

(2) The consideration of the report must be specified as an item on the agenda for the meeting of which notice has been given in accordance with [regulation 13\(4\) of the Roles and Procedures Regulations](#).

8.—(1) Where a governing body propose to federate with the governing body of a federation, they must give notice of the proposal to the governing body.

- (2) Upon receipt of the notice, the governing body of that federation must consider whether to—
- (a) give preliminary consent to the governing body joining the federation (“preliminary consent”); or
  - (b) reject the proposal for the governing body to join the federation.

9.—(1) Where a governing body propose to federate with one or more other governing bodies and, where necessary, preliminary consent has been given, they must jointly with the other governing body or bodies publish proposals for federation.

(2) The proposals must contain the following—

- (a) the name or names of the governing body or bodies with which the governing body propose to federate and confirmation that that governing body, or those governing bodies, agree with the proposal to federate;
- (b) the proposed size of the governing body of the federation;
- (c) the proposed number of governors for each category of governor;
- (d) the proposed arrangements for staffing the schools within the federation;
- (e) the proposed federation date;
- (f) the identity of the admission authority or authorities for the schools within the federation;

(g) the date, not less than six weeks after the publication of the proposals, by which written representations may be made to any governing body regarding the proposals and the address to which they should be sent; and

(h) such other matters as the governing bodies consider appropriate.

(3) The governing bodies proposing to federate must publish the proposals by sending them to—

(a) the Secretary of State;

(b) the relevant local authorities;

(c) the head teacher of each school;

(d) in the case of any school with a foundation—

(i) the foundation governors; and

(ii) the trustees of any trust relating to the school;

(e) where any of the schools are designated under section 69(3) of SSFA 1998 as having a religious character, the appropriate diocesan authority in the case of a Church of England or Roman Catholic Church school, or the appropriate religious body in the case of any other school;

(f) all staff paid to work at any of the schools;

(g) every person known to them to be a parent of a registered pupil at any of the schools; and

(h) such other persons as the governing bodies consider appropriate.

(4) A copy of the proposals must be made available for inspection at all reasonable times at each school.

10.—(1) The governing bodies proposing to federate must jointly consider any responses to the proposals and each governing body must determine whether—

(a) to proceed with the proposals for federation as published;

(b) to proceed with the proposals for federation with such modifications as the governing body consider appropriate; or

(c) not to proceed with the proposals for federation.

(2) The modifications referred to in paragraph (1)(b) may not include a change in the identity of the governing bodies proposing to federate.

(3) All the governing bodies which determine to proceed must jointly give notice of that fact to the relevant local authority or authorities and the Secretary of State within one week of that determination.

(4) Any governing body which determines not to proceed must give notice of that fact to the Secretary of State within one week of that determination.

### **New schools proposing to federate**

11.—(1) Where it is proposed that a new school should federate with one or more schools or a federation, paragraph (2) or (3) applies as appropriate.

(2) Where a temporary governing body has been established, regulations 7 to 10 have effect as if references to a governing body proposing to federate were references to a temporary governing body proposing to federate.

(3) Where a temporary governing body is yet to be established, regulations 7 to 10 have effect as if—

(a) references to the governing body proposing to federate were references to the local authority or, where proposals are to establish a foundation or voluntary school proposals for the establishment of which were published by proposers, the proposers;

(b) regulation 7(2) were omitted; and

(c) in regulation 9(2)(a) for “the governing body propose to federate” there were substituted “the authority or the proposers propose that the temporary governing body of the new school should federate”.

12.—(1) Parts 1 to 3 and 5 to 7 of the New Schools Regulations apply to a temporary governing body constituted pursuant to this regulation.

(2) Where it is proposed that two or more new schools should federate together, with or without one or more other schools or other federations, the local authority may make arrangements providing for the constitution of a single temporary governing body for those new schools.

(3) Where the proposed federation includes schools which are maintained by two or more local authorities, those local authorities must agree who may make arrangements providing for the constitution of a single temporary governing body for those new schools.

(4) Where one or more of the new schools referred to in paragraph (2) is to be a foundation or voluntary school proposals for the establishment of which were published by proposers, the local authority must consult the proposers—

(a) as to whether the power given to the local authority in paragraph (2) should be exercised; and

(b) if the local authority propose to exercise it, as to the date on which the arrangements should be made.

(5) Schedule 1 applies to a temporary governing body constituted pursuant to this regulation.

### **Incorporation of governing bodies of federations and dissolution of former governing bodies**

13.—(1) On the federation date—

(a) the governing bodies of the federating schools or federations are dissolved;

(b) the governing body of the federation is incorporated;

(c) all land and property which, immediately before the federation date, was held by the governing body of a federating school or federation transfers to, and by virtue of these Regulations vests in, the governing body of the federation; and

(d) all rights and liabilities subsisting immediately before the federation date which were acquired or incurred by the governing body of a federating school or federation are transferred to the governing body of the federation.

(2) Section 198 of and Schedule 10 to ERA 1988<sup>(14)</sup> (which make further provision in relation to transfers of property, rights and liabilities) apply in relation to transfers effected by this regulation as they apply in relation to transfers to which that section and Schedule apply.



## PART 3

### CATEGORIES OF GOVERNOR

#### Parent governor

14.—(1) In these Regulations “parent governor” means—

(a) a person who—

(i) is elected as a governor ~~in respect of a federated school~~ in accordance with paragraphs 3 to 7 of Schedule 2 by—

(aa) parents of registered pupils<sup>(15)</sup> at a federated school, or

(bb) parents of children for whom educational or other provision is made on the premises of a federated school when it is a maintained nursery school (including any such provision made by the governing body under section 27<sup>(16)</sup> of EA 2002); and

(ii) is such a parent at the time of the election; or

(b) a person appointed as a parent governor ~~in respect of a federated school~~ in accordance with paragraphs 8 to 11 of Schedule 2.

(2) Schedule 2 applies to the election and appointment of parent governors.

(3) A person is disqualified from election or appointment as a parent governor ~~of a federated school~~ if the person is—

(a) an elected member of the local authority; or

(b) paid to work at the federation or a federated school for more than 500 hours in any consecutive twelve month period.

(4) A person (“P”) is not disqualified from continuing to hold office as a parent governor because P ceases to be a parent of a registered pupil at a federated school or to fulfil any of the requirements set out in paragraphs 9 and 10 of Schedule 2 (as the case may be).

#### Staff governors

15.—(1) In these Regulations “staff governor” means a person who—

(a) is elected in accordance with Schedule 3 as a governor by persons who are employed by either the governing body of the federation, or the local authority under a contract of employment providing for those persons to work at the federation or federated school, and

(b) is so employed at the time of the election referred to in sub-paragraph (a).

(2) Upon ceasing to work at the federation or at a school within the federation, a staff governor is disqualified from continuing to hold office as such a governor.

### **Local authority governors**

16.—(1) In these Regulations “local authority governor” means a person who—

(a) is nominated by the local authority; and

(b) is appointed by the governing body having, in the opinion of the governing body, the skills required to contribute to the effective governance and success of the federation and having met any additional eligibility criteria set by the governing body.

(2) Where the federation includes schools which are maintained by two or more local authorities, those local authorities must agree who may nominate the local authority governor.

(3) A person is disqualified from appointment as a local authority governor if the person is eligible to be a staff governor.

### **Foundation governors**

17.—(1) In these Regulations,

(a) “foundation governor” means a person who—

(i) is appointed to be a member of the governing body of the federation in respect of a particular federated school, by a person other than the local authority,

(ii) is appointed for the purpose of securing that the character of the federated school including, where the federated school has a particular religious character, such religious character, is preserved and developed,

(iii) where the federated school has a foundation, is appointed for the purpose of securing that the federated school is conducted in accordance with the foundation’s governing documents, including, where appropriate, any trust deed relating to the federated school, ~~and~~

(iv) would, in the opinion of the person entitled to appoint the foundation governor, be capable of achieving the purposes for which they would be appointed as foundation governor, ~~and~~

(v) has, in the opinion of the person entitled to appoint the foundation governor, the skills required to contribute to the effective governance and success of the federation.

(b) “ex officio foundation governor” means a person who is a foundation governor by virtue of an office held by the person; and

(c) “substitute governor” means a foundation governor appointed to act in the place of an ex officio foundation governor who is unwilling or unable to act as a governor or has been removed from office under regulation 21(1) of the Constitution Regulations 2012.

(2) An ex officio foundation governor is, upon ceasing to hold the office from which the governorship derives, disqualified from continuing to hold office as such a governor.

### **Partnership governors**

18.—(1) In these Regulations “partnership governor” means a person who is appointed as such in accordance with Schedule 4.

(2) A person is disqualified from nomination or appointment as a partnership governor of a federation if the person is—

(a) a parent of a registered pupil at a school within the federation;

(b) eligible to be a staff governor of the federation;

(c) an elected member of a relevant local authority; or

(d) employed by a relevant local authority in connection with their education functions.

(3) The disqualification criterion in paragraph (2)(d) does not apply in the case of a person who is employed by a local authority in England under a contract of employment providing for the person to work wholly at a school or schools maintained by the local authority.

### **Co-opted governors**

19. In these Regulations “co-opted governor” means a person who is appointed as a governor by the governing body of the federation and who, in the opinion of the governing body, has the skills required to contribute to the effective governance and success of the federation.

### **Associate members**

20.—(1) In these Regulations “associate member” means a person appointed by the governing body of a federation as a member of any committee established by them but who is not a governor.

(2) Nothing in this regulation prevents an associate member from being reappointed at the expiry of the associate member’s term of office.

## **PART 3A**

### **Roles of the governing body and head teacher**

20A—(1) The functions of the governing body include the following core functions—

- (a) ensuring that the vision, ethos and strategic direction of the federation and each federated school are clearly defined;
- (b) ensuring that the head teacher of the federation or of each federated school performs his or her responsibilities for the educational performance of the school or schools as the case may be; and
- (c) ensuring the sound, proper and effective use of the financial resources of the federation and each federated school.

(2) In exercising their functions the governing body shall—

- (a) act with integrity, objectivity and honesty and in the best interests of the federation; 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.

(3) 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.

(4) The responsibilities of the head teacher of the federation or of each federated school include—

- (a) the internal organisation, management and control of the federated schools, or school as the case may be; and
- (b) the educational performance of the federated schools, or school as the case may be.

(5) The head teacher of the federation or of a federated school is accountable to the governing body for the performance of all his or her responsibilities.

(6) The head teacher of the federation or of a federated school must comply with any reasonable direction of the governing body.

(7) In this regulation the term “governing body” includes the temporary governing body of new schools intending to federate.”

## PART 4

### COMPOSITION OF GOVERNING BODIES OF A FEDERATION

#### Requirements for all federations

21.—(1) The governing body of every federation must be constituted in accordance with this regulation.

(2) The total membership of the governing body of a federation must be no fewer than seven governors.

(3) The governing body of a federation must include the following—

(a) two parent governors

(b) the head teacher of each federated school unless any such head teacher resigns the office of governor in accordance with regulation 19 of the Constitution Regulations 2012;

(c) one staff governor; and

(d) one local authority governor.

(4) The governing body may in addition appoint such number of co-opted governors as they consider necessary provided that the requirements in regulation 22 are met in respect of governing bodies of federations comprising foundation and voluntary schools.

(5) The total number of co-opted governors who are also eligible to be elected as staff governors under Schedule 3, when counted together with the staff governor and the head teachers, must not exceed one third of the total membership of the governing body.

#### Additional requirements for federations comprising foundation and voluntary schools

22.—(1) The governing body of a federation comprising only foundation or foundation special schools which, in either case, do not have a foundation, must also include at least two (but no more than one quarter of the total) partnership governors.

(2) The governing body of a federation comprising only foundation or foundation special schools which have a foundation but which are not qualifying foundation schools must also include at least two (but no more than 45 per cent of the total) foundation governors.

(3) The governing body of a federation comprising only qualifying foundation schools must also include such number of foundation governors as to outnumber all the other governors by up to two.

(4) The governing body of a federation comprising only voluntary controlled schools must also include at least two (but no more than one quarter of the total) foundation governors.

(5) The governing body of a federation comprising only voluntary aided schools must also include such number of foundation governors as to outnumber all the other governors by two.

(6) The governing body of a federation comprising voluntary controlled schools and community, community special or maintained nursery schools must also include at least one foundation governor.

(7) The governing body of a federation comprising more than one category of school including at least one foundation, foundation special or voluntary aided school must also include at least two foundation governors (or partnership governors as appropriate in respect of any school without a foundation).

~~(8) In calculating the number of governors required in order to comply with this regulation, the number is to be rounded up or down to the nearest whole number.~~

### **Surplus governors**

22A.—(1) Where—

(a) the governing body of a federation has more governors of a particular category than are provided for by the instrument of government for the federation, and

(b) the excess is not eliminated by the required number of governors resigning,

the number of governors in that category required to eliminate the excess must cease to hold office in accordance with paragraphs (2) to (4).

(2) Foundation governors must cease to hold office such that, in the opinion of those who appointed them under the instrument of government, the foundation governors remaining in office are those best placed to contribute to the effective governance and success of the federation and serve the purposes for which foundation governors are appointed.

(3) Governors who are not foundation governors must cease to hold office such that, in the opinion of the governing body, the governors remaining in office are those with the most relevant skills to contribute to the effective governance and success of the federation.

(4) In determining which governors should cease to hold office in accordance with paragraph (3)—

(a) the governing body must hold a vote in respect of each category in which there are excess governors;

(b) governors must not vote in respect of their own category; and

(c) no governor ceases to hold office until the votes on all categories are cast.

(5) Any procedure set out in the instrument of government for the removal of excess foundation governors does not apply in the circumstances set out in paragraph (1).

## PART 5

### INSTRUMENTS OF GOVERNMENT, PROCEDURES, STAFFING, FINANCING AND CHARITABLE STATUS

#### Qualifications, tenure of office and instruments of government

23. Regulations 16 to 31 of, and Schedule 4 (Qualifications and disqualifications) to, the Constitution Regulations 2012 apply to the governing body of a federation and its members subject to the modifications in Schedule 5.

#### Procedures of governing bodies of federations

24. [The Roles and Procedures Regulations](#) apply to the procedure of governing bodies of federations subject to the modifications in Schedule 6.

#### Staffing of federations

25. The Staffing Regulations apply to the staffing of federations subject to the modifications in Schedule 7.

#### Charitable status of federations

26. The governing body of a federation which includes a foundation, voluntary or foundation special school is a charity but no governing body of a federation which includes only community, community special or maintained nursery schools is a charity.

#### Information for the governing body of a federation

27.—(1) Immediately before the federation date, the governing body of a school which is to become a federated school must prepare, for the purpose of assisting the governing body of the federation, a written report on the action which they have taken in the discharge of their functions relating to the school.

(2) All minutes and papers of a governing body of a school which is to become a federated school on the federation date, including the report prepared under paragraph (1), must be made available to the governing body of the federation.

#### Financing of federations

28. Except as provided by regulation 29, Chapter 4 of Part 2 of SSFA 1998 (Financing of maintained schools) applies to federated schools and their governing bodies as it applies to other maintained schools and their governing bodies.

29. In their application to a federated school in England, other than one for which a temporary governing body is established pursuant to regulations 31(3), 35 or 41(3), sections 49 to 51 of, and Schedule 15 to, SSFA 1998 have effect subject to the modifications in Schedule 8.



## PART 6

### FEDERATED SCHOOLS LEAVING FEDERATIONS

#### Procedure for a school to leave a federation

30.—(1) This regulation applies to a request made to the governing body of a federation for a federated school (“the relevant school”) to leave the federation.

(2) The request must be made in writing and signed by—

- (a) two or more governors;
- (b) the parents of at least one fifth of the registered pupils at the relevant school;
- (c) at least two fifths of staff who are paid to work at the relevant school;
- (d) the local authority;
- (e) the trustees of the relevant school; or
- (f) a body entitled to appoint foundation governors to the governing body of the federation.

(3) The governing body of the federation must give notice of the request to—

- (a) all relevant local authorities;
- (b) the head teacher of the federation and the head teacher of each federated school;
- (c) where the relevant school is a foundation or voluntary school with a religious foundation, the trustees of any trust relating to the relevant school and, in the case of a Church of England or Roman Catholic Church school, the appropriate diocesan authority, or the appropriate religious body in the case of all other such schools;
- (d) all staff paid to work at the relevant school;
- (e) every person known by the governing body of the federation to be a parent of a registered pupil at the relevant school; and
- (f) such other persons as the governing body of the federation consider appropriate.

(4) Notice under paragraph (3)(a) and (b) must be given within the period of one week beginning with the date on which the request was received.

(5) A request under paragraph (1) is to be taken to have been received by the governing body of a federation if given or sent to the chair or to the clerk of the governing body of the federation.

(6) Not less than 14 days after the governing body of the federation has given notice of the request in accordance with paragraph (3), the governing body must consider the request and all responses received from the persons to whom notice of the request was given and must decide whether—

- (a) the relevant school should leave the federation and, if so, on what date it should do so (“the de-federation date”);
- (b) the federation should be dissolved, and if so, on what date; or
- (c) the relevant school should not leave the federation.

(7) Such a decision does not have effect unless the matter is specified as an item on the agenda for the meeting of which notice has been given in accordance with regulation 11(4) of the Procedures Regulations.

(8) The governing body of the federation must give notice in writing of their decision under paragraph (6) within one week of the decision to those persons referred to in paragraph (3).

(9) Where the governing body of the federation decide under paragraph (6)(a) that the relevant school should leave the federation, the governing body must notify the Secretary of State in writing within one week of that decision.

### **Decision to permit federated school to leave a federation**

31.—(1) Where a governing body of a federation have resolved that a federated school should leave the federation paragraph (2) or (3) applies.

(2) Where one of only two federated schools is to leave a federation, regulations 35 and 36 apply to the governing body.

(3) Where a governing body have given notice to a local authority pursuant to regulation 30(8) that a decision has been made that a federated school should leave the federation,

(a) the local authority, on receipt of that notice, must—

(i) establish a temporary governing body in respect of the school leaving the federation in accordance with Parts 3 and 4 of the New Schools Regulations; and

(ii) make a new instrument of government for that school in accordance with Part 5 of the Constitution Regulations 2012; and

(b) the governing body of the federation must review the instrument of government of the federation in accordance with regulation 30 of the Constitution Regulations 2012.

(4) On the de-federation date the temporary governing body of the de-federated school are incorporated as the governing body of that school under the name given in the school's instrument of government.

(5) For the purpose of paragraph (3)(a)(ii)—

(a) the reference in regulation 27 of the Constitution Regulations 2012 to “governing bodies” is treated as a reference to “temporary governing bodies”; and

(b) references in regulation 29 of the Constitution Regulations 2012 to—

(i) “governing body” are treated as references to “temporary governing body”, and

(ii) “foundation governors” are treated as references to “temporary foundation governors”.

### **Availability of amounts representing budget share**

32. Subject to any provision made by or under a scheme made under section 48(1) of SSFA 1998, the temporary governing body of a school leaving a federation may spend any sum made available by the local authority under section 50(1) of that Act to the governing body of the federation in respect of the school leaving the federation, as they think fit for any purposes of that school.

### **Transfer of property, rights and liabilities**

33.—(1) On the de-federation date—

(a) all land or property which, immediately before the de-federation date, was held by the governing body of the federation for the purposes of the de-federated school, transfers to, and by virtue of these Regulations vests in, the governing body incorporated under regulation 31(4); and

(b) all rights and liabilities subsisting immediately before the de-federation date which were acquired or incurred by the governing body of the federation, for the purposes of the de-federated school, transfer to the governing body incorporated under regulation 31(4).

(2) Section 198 of and Schedule 10 to ERA 1988 (which make provision in relation to transfers of property, rights and liabilities) apply in relation to transfers effected by this regulation as they apply in relation to transfers to which that section and Schedule apply.

## PART 7

### DISSOLUTION OF FEDERATIONS

#### Dissolution of federations following decision by the governing body of a federation

34.—(1) Where—

- (a) the governing body of a federation decide that the federation should be dissolved; or
- (b) the governing body of a federation decides that one of only two federated schools should leave a federation,

the governing body of the federation must give notice of the decision and of the date of dissolution to the persons mentioned in paragraph (2) within one week of making the decision.

(2) The persons to be notified are—

- (a) the Secretary of State;
- (b) all relevant local authorities;
- (c) the head teacher of the federation and each head teacher of a federated school;
- (d) all staff paid to work at the federation or a federated school;
- (e) every person known by the governing body to be a parent of a registered pupil at a federated school;
- (f) where a federated school is a foundation or voluntary school with a religious foundation, the foundation governors, the trustees of any trust relating to the federated school and, in the case of a Church of England or Roman Catholic Church school, the appropriate diocesan authority, or the appropriate religious body in the case of all other such schools; and
- (g) such other persons as the governing body of the federation consider appropriate.

35. Upon receipt of the notice given under regulation 34 the relevant local authority or authorities must—

- (a) establish a temporary governing body in respect of each school in accordance with Parts 3 and 4 of the New Schools Regulations; and
- (b) issue a new instrument of government for each school in accordance with Part 5 of the Constitution Regulations 2012.

36. For the purpose of regulation 35(b)—

- (a) the reference in regulation 27 of the Constitution Regulations 2012 to “governing bodies” is treated as a reference to “temporary governing bodies”; and
- (b) references in regulation 29 of the Constitution Regulations 2012 to—
  - (i) “governing body” are treated as references to “temporary governing body”, and
  - (ii) “foundation governors” are treated as references to “temporary foundation governors”.

### **Expenditure of amounts representing budget share**

37. Subject to any provision made by or under a scheme made under section 48(1) of SSFA 1998, the temporary governing body of each de-federated school may spend any sum made available by the local authority under section 50(1) of that Act to the governing body of the federation in respect of each school, as they think fit for any purposes of that school.

### **Incorporation of governing body of a school leaving a federation**

38. On the date of dissolution the temporary governing body of each school are incorporated as the governing body of each de-federated school under the name given in the school's instrument of government.

### **Transfer of property, rights and liabilities**

39.—(1) On the date of dissolution—

(a) all land or property which, immediately before the date of dissolution, was held by the governing body of the federation for the purposes of each de-federated school, transfers to, and by virtue of these Regulations vests in, the new governing body of each de-federated school incorporated under regulation 38; and

(b) all rights and liabilities subsisting immediately before the date of dissolution which were acquired or incurred by the governing body of the federation for the purposes of each de-federated school transfer to the new governing body of each de-federated school incorporated under regulation 38.

(2) Section 198 of and Schedule 10 to ERA 1988 (which make provision in relation to transfers of property, rights and liabilities) apply in relation to transfers effected by this regulation as they apply in relation to transfers to which that section and Schedule apply.

## **PART 8**

### **DISCONTINUANCE OF FEDERATED SCHOOLS**

#### **Interpretation of “discontinuance”**

40.—(1) In this Part “discontinuance” includes—

(a) implementation of proposals for discontinuing the federated school under Part 3 of Schedule 2 to EIA 2006;

(b) discontinuance of the federated school under section 30 of SSFA 1998;

(c) discontinuance of a federated school pursuant to a direction given under section 17(1) or 68(1) of EIA 2006; and

(d) a requirement on the local authority to cease to maintain the federated school under section 6(2) of AA 2010.

(2) In this Part “discontinuance date” means the date on which the event described in regulation 40(1) takes effect.

#### **Dissolution of federations on discontinuance of federated schools**

41.—(1) This regulation applies where one or more federated schools are to be discontinued and only one federated school in the federation is not to be discontinued.

(2) The governing body of the federation must inform the Secretary of State of the discontinuance at least 2 months before the discontinuance takes place.

(3) The local authority must before the discontinuance date—

(a) establish a temporary governing body in respect of the school that is not to be discontinued (“the de-federated school”) in accordance with Parts 3 and 4 of the New Schools Regulations; and

(b) issue a new instrument of government for the school in accordance with Part 5 of the Constitution Regulations 2012.

(4) On the dissolution date the temporary governing body of the de-federated school are incorporated as the governing body of that school under the name given in the school’s instrument of government.

(5) Where any land held by the federated governing body for the purposes of the de-federated school is, by virtue of either paragraph 7 of Schedule 22 to the SSFA 1998 or paragraph 13 of Schedule 1 to AA 2010, transferred to and vested in the local authority on the dissolution of the federated governing body, the local authority must within 6 months of the dissolution, transfer the land to the temporary governing body referred to in paragraph 3(a).

42.—(1) For the purpose of regulation 41(3)(b)—

(a) the reference in regulation 27 of the Constitution Regulations 2012 to “governing bodies” is treated as a reference to “temporary governing bodies”; and

(b) references in regulation 29 of the Constitution Regulations 2012 to—

- (i) “governing body” are treated as references to “temporary governing body”, and
- (ii) “foundation governors” are treated as references to “temporary foundation governors”.

43. Subject to any provision made by or under a scheme made under section 48(1) of SSFA 1998, the temporary governing body of a de-federated school may spend any sum made available by the local authority under section 50(1) of that Act to the governing body of the federation in respect of each school, as they think fit for any purposes of that school.

#### **Discontinuance of federated schools where federation not dissolved**

44.—(1) This regulation applies where one or more federated schools are to be discontinued on the discontinuance date but more than one federated school will remain in the federation.

(2) Before the discontinuance date the governing body of the federation must review the instrument of government of the federation in accordance with regulation 30 of the Constitution Regulations 2012.

(3) In relation to any discontinuance other than a requirement on the local authority to cease to maintain the school under section 6(2) of AA 2010, on the discontinuance date—

(a) all land or property, which, immediately before the discontinuance date was held by the governing body of the federation for the purposes of the discontinuing federated school(s) transfers to, and by virtue of these Regulations, vests in the local authority; and

(b) all rights and liabilities subsisting immediately before the discontinuance date which were acquired or incurred by the governing body of the federation for the purposes of the discontinuing federated school or schools transfer to the local authority.

#### **Expenditure of amounts representing budget share**

45. Subject to any provision made by or under a scheme made under section 48(1) of SSFA 1998, the temporary governing body of a de-federated school may spend any sum made available by the local authority under section 50(1) of that Act to the governing body of the federation in respect of each school, as they think fit for any purposes of that school.

## PART 9

### APPLICATIONS FOR ACADEMY ORDERS

#### Members of the federated governing body applying for an Academy order

46.—(1) For the purposes of section 3(6) of the AA 2010, the proportion and description of the members of the governing body that may make an application for an Academy order in respect of a federated school are those, being no fewer than three in number, who—

(a) together make up a proportion of the total number of members of the governing body determined in accordance with paragraph (2); and

(b) include at least 50 percent of those members of the governing body who fall within the descriptions prescribed in paragraph (3).

(2) The proportion is determined by dividing one by the total number of federated schools in the federation.

(3) The prescribed descriptions are—

(a) the head teacher of the federated school, unless the head teacher has resigned the office of governor in accordance with regulation 19 of the Constitution Regulations 2012;

(b) the parent governors elected by parents of registered pupils at the federated school or appointed to represent the federated school;

(c) any staff governor employed by the federated governing body or local authority to work at the federated school; and

(d) where the proposed application for an Academy order is in respect of a foundation or voluntary school, any foundation governors appointed in respect of the federated school.

(4) In any case where the application of—

(a) the percentage referred to in paragraph (1)(b), or

(b) the proportion determined in accordance with paragraph (2) leads to other than a whole number of governors, the number must be rounded up to the nearest whole number.



## SCHEDULE 1

### Regulation 12

#### Temporary governing bodies of new schools intending to federate

##### Composition of temporary governing body

1. The size of the membership of the temporary governing body, being no fewer than seven governors, is to be determined by the local authority.

2.—(1) A temporary governing body constituted for two or more proposed maintained schools must include—

(a) two temporary parent governors;

(b) the head teacher or head teacher designate of each proposed school unless any such head teacher resigns the office of governor in accordance with regulation 19 of the Constitution Regulations 2012;

(c) one temporary staff governor; and

(d) one temporary local authority governor.

(2) The local authority may in addition appoint such number of temporary co-opted governors as the local authority consider necessary, provided that the requirements in paragraph 3 are met in respect of temporary governing bodies constituted for schools that include foundation and voluntary schools.

(3) The total number of temporary co-opted governors who are also eligible to be appointed as temporary staff governors, when counted together with the temporary staff governor and the head teachers and head teachers designate, must not exceed one third of the total membership of the temporary governing body.

##### Additional requirements for temporary governing bodies comprising proposed foundation and voluntary schools

3.—(1) A temporary governing body constituted for two or more proposed foundation or foundation special schools only, which, in either case, are not to have a foundation, must also include at least two (but no more than one quarter of the total) temporary partnership governors.

(2) A temporary governing body constituted for two or more proposed foundation or foundation special schools only, which are to have a foundation but which are not to be qualifying foundation schools, must also include at least two (but no more than 45 per cent of the total) temporary foundation governors.

(3) A temporary governing body constituted for two or more proposed qualifying foundation schools only must also include such number of temporary foundation governors as to outnumber all the other temporary governors by up to two.

(4) A temporary governing body constituted for two or more proposed voluntary controlled schools only must also include at least two (but no more than one quarter of the total) temporary foundation governors.

(5) A temporary governing body constituted for two or more proposed voluntary aided schools only must also include such number of temporary foundation governors as to outnumber all the other temporary governors by two.

(6) A temporary governing body constituted for two or more proposed voluntary controlled schools and proposed community, community special or maintained nursery schools must also include comprise at least one temporary foundation governor.

(7) A temporary governing body constituted for more than one category of proposed school including at least one proposed foundation, foundation special or voluntary aided school must also include at least two temporary foundation governors (or temporary partnership governors as appropriate in respect of any proposed school which is not to have a foundation).

## SCHEDULE 2

### Regulation 14

#### Election and appointment of parent governors

1. Subject to paragraph 2(2), in this Schedule “appropriate body” means—
  - (a) the local authority, where the federated school is a community school, community special school, a voluntary controlled school or a maintained nursery school; or
  - (b) the governing body of the federation, where the federated school is a foundation school, foundation special school or voluntary aided school.
- 2.—(1) Where a local authority are the appropriate body in relation to a school, that local authority may delegate to the head teacher of the school, or to the head teacher of the federation, any of their functions under this Schedule.
  - (2) The local authority are the appropriate body in relation to a school within paragraph 1(b) if the governing body of the federation and the local authority so agree.
3. Subject to paragraphs 4 to 7, the appropriate body must make all necessary arrangements for the election of parent governors.
4. The duty imposed by paragraph 3 does not confer power to impose any requirements as to the minimum number of votes required to be cast for a candidate to be elected.
5. Any election which is contested must be held by ballot.
- 6.—(1) The arrangements made under paragraph 3 must provide for every person who is entitled to vote to have an opportunity to do so by post.
  - (2) For the purposes of sub-paragraph (1), “post” includes delivery by hand.
  - (3) The arrangements made under paragraph 3 may provide for every person who is entitled to vote to have an opportunity to do so by electronic means.
7. Where a vacancy for a parent governor arises, the local authority must take such steps as are reasonably practicable to secure that every person who is known to them to be a parent of a registered pupil at a federated school is—
  - (a) informed of the vacancy and that it is required to be filled by election;
  - (b) informed of their entitlement to stand as a candidate and vote in the election; and
  - (c) given the opportunity to do so.
8. Where a vacancy for a parent governor is not filled by election, the governing body of a federation must appoint a parent governor to fill the vacancy.
- 9.—(1) In appointing a parent governor, the governing body of a federation must appoint in the following order of preference—
  - (a) a parent of a registered pupil at a federated school (or, in respect of any maintained nursery school in the federation, a parent of a child for whom educational or other provision is made on the

premises of the school (including any such provision made by the governing body under section 27 of EA 2002));

(b) a parent of a former registered pupil at a federated school;

(c) a parent of a child with special educational needs for which a federated school is approved; or

(d) a parent of a child, including a child who has special educational needs and is over compulsory school age.

~~(2) The governing body of a federation may only appoint a person referred to in sub-paragraph (1)(b), (c) or (d) if it is not reasonably practicable to appoint a person referred to in the sub-paragraph which immediately precedes it.~~

~~10.—(1) Where the school is a community special school or a foundation special school, in appointing a parent governor the governing body of a federation must appoint—~~

~~(a) a parent of a registered pupil at the school;~~

~~(b) a parent of a former pupil at the school;~~

~~(c) a parent of a child with special educational needs for which the school is approved; or~~

~~(d) a parent of a child who has special educational needs and is over compulsory school age.~~

~~(2) The governing body of a federation may only appoint a person referred to in sub-paragraph (1)(b), (c) or (d) if it is not reasonably practicable to appoint a person referred to in the sub-paragraph which immediately precedes it.~~

11. The governing body of a federation may only appoint as a parent governor a person who has, in the opinion of the governing body, the skills required to contribute to the effective governance and success of the federation.

## **SCHEDULE 3**

### **Regulation 13**

#### **Election of staff governors**

1. Subject to paragraphs 2 and 3, the governing body of the federation must make all necessary arrangements for the election of staff governors.
2. The duty imposed by paragraph 1 does not confer power to impose any requirements as to the minimum number of votes required to be cast for a candidate to be elected.
3. Any election which is contested must be held by ballot.

## SCHEDULE 4

### Regulation 18

#### Partnership governors

1. Where a partnership governor is required, the governing body of a federation—

(a) must seek nominations from parents of registered pupils at schools in the federation which have no foundation; and

(b) may seek nominations from parents of registered pupils at other schools in the federation and from such other persons in the community served by the federation as they consider appropriate.

~~2. No person may be nominated for appointment, or be appointed, as a partnership governor unless that person would be eligible for appointment by the governing body of the federation as a co-opted governor.~~

3. Subject to paragraph 4(2), no governor may nominate a person for appointment as a partnership governor.

4.—(1) The governing body of a federation must appoint such number of partnership governors as is required by the instrument of government from among eligible nominees.

(2) If the number of eligible nominees is less than the number of vacancies, the number of partnership governors required may be made up by persons selected by the governing body of the federation.

5.—(1) Where the governing body of a federation makes an appointment under paragraph 4(2), having rejected any person nominated under paragraph 1, they must give written reasons for their decision to the local authority and to the person rejected.

(2) Where the federation includes schools maintained by more than one local authority, the reference in sub-paragraph (1) to the local authority is to be taken as a reference to each local authority.

6. The governing body of a federation must make all necessary arrangements for and determine all other matters relating to the nomination and appointment of partnership governors.

~~7.—(1) No person is eligible to be nominated for appointment as a partnership governor unless that person has, in the opinion of the person nominating them, the skills required to contribute to the effective governance and success of the federation.~~

~~(2) No person is eligible to be appointed as a partnership governor unless that person has, in the opinion of the governing body, the skills required to contribute to the effective governance and success of the federation.~~

## SCHEDULE 5

### Regulation 23

#### Modification of the Constitution Regulations 2012

1. In regulation 18(2) for “head teacher of the school” substitute “head teacher of the federation or a federated school”.
2. In regulation 24 for “paragraphs 9 to 11 of Schedule 1” substitute “paragraphs 8 to 10 of Schedule 2 to the School Governance (Federations) (England) Regulations 2012”.
3. In regulation 26 for “school” substitute “federated school”.
4. In regulation 28—
  - (a) in paragraph (1) for “maintained school” substitute “federation”;
  - (b) in paragraph (1)(a), (c) and (f) for “school” substitute “federation”;
  - (c) for paragraph (1)(b) substitute the following paragraph—

“(b) the names and categories of the federated schools within the federation;”;
  - (d) in paragraph (1)(d) for “Part 3” substitute “Part 4 of the School Governance (Federations) (England) Regulations 2012”;
  - (e) for paragraph (1)(g) substitute the following sub-paragraph—

“(g) where a federated school is a foundation or voluntary school which has a religious character, a single description of the religious ethos of each such school”;
  - (f) in paragraph (2) for “these Regulations as they apply to a school of the category to which the schools belong” substitute “regulations 21 and 22 of the School Governance (Federations) (England) Regulations 2012”; and
  - (g) in paragraph (3) for “the school” substitute “a federated school”.
5. For regulation 29, substitute—

“29.—(1) In this regulation, where reference is made to the local authority and the federation is to include schools maintained by different local authorities, the reference is to be taken as a reference to whichever of those local authorities the governing bodies of the schools agree should make the instrument of government for the federation.

(2) The governing bodies of the schools which are to form the federation must jointly prepare a draft instrument of government and submit it to the local authority.

(3) Where the federation will have foundation governors, the governing bodies of the proposed federation must not submit the draft to the local authority unless it has been approved in respect of each foundation or voluntary school by—

  - (a) that school’s foundation governors;
  - (b) the trustees of any trust relating to that school;

(c) in the case of a Church of England or Roman Catholic Church school, the appropriate diocesan authority; and

(d) in the case of any other school designated under section 69(3) of SSFA 1998 as having a religious character, the appropriate religious body.

(4) If—

(a) the local authority are content that the draft complies with all the applicable statutory provisions, or

(b) there is agreement between the local authority, the governing bodies and (where the federation will have foundation governors) the persons mentioned in paragraph (3) that the draft should be revised to any extent, and the revised draft complies with all the applicable statutory provisions,

the instrument of government must be made by the local authority in the form of the draft or (as the case may be) the revised draft.

(5) If neither sub-paragraph (a) nor (b) of paragraph (4) applies in the case of a federation which will not have foundation governors, the local authority must—

(a) inform the governing body of the federation of the reasons why they are not content with the draft instrument of government, and

(b) give the governing body of the federation a reasonable opportunity to reach agreement with them on revising the draft,

and must make the instrument of government either in the form of a revised draft agreed between them and the governing body of the federation or (in the absence of such agreement) in such form as they think fit having regard, in particular, to the category of school to which the school belongs.”.

6. In regulation 30—

(a) in paragraphs (4) to (7)—

(i) for “school” substitute “federation”; and

(ii) for “regulation 29(2)” substitute “regulation 29(3)”; and

(b) in paragraph (6) omit from the words “having regard, in particular” to the end; and

(c) in paragraph (7) for “regulation 29(3)” substitute “regulation 29(4)”.

7. In regulation 31—

(a) in paragraphs (1) and (2)(a) for “school” substitute “federation”;

(b) in paragraph (2)(b) for “head teacher” substitute “head teacher of the federation or of a federated school”;

(c) in paragraph (2)(c) for “the school” substitute “a federated school”; and

(d) in paragraph (2)(d) and (e) for “school” substitute “federated school”.

8. In paragraph 1 of Schedule 4 for “the school” substitute “one of the federated schools”.