



Department
for Education

Governors' Handbook

**For governors in maintained schools,
academies and free schools**

May 2013

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Foreword by Lord Nash

I recognise the dedication of the hundreds of thousands of volunteers who serve as school governors. They invest a huge amount of good will and hard work in our education system. My priority is to make sure that all their hard work pays off. This means focusing their efforts on what really matters – improving education for every child at their school. I want to make it easier for governors to do a good job. I want to be absolutely clear about the role we expect them to play. I want to strip away unnecessary rules and regulations and make sure governing bodies understand their legal duties.



The significance of governing bodies' role has in the past been under-valued. I have no doubt that governing bodies are the key strategic decision makers in every school. They are also a key part of the overall system for school accountability. Governing bodies have a vital role to play in driving up school and pupil performance and ensuring every child receives the best possible education.

The education system is changing rapidly and school governance needs to change too to play its part. My ambition is that every school has a dynamic governing body. That means one that understands its responsibilities and is focused tightly on its core strategic functions. One that is no bigger than it needs to be with all governors actively contributing relevant skills and experience. One that operates efficiently and effectively through appropriate structures and procedures. The government's role is to put in place the framework to enable this to happen. Our reforms set high expectations, based on the principles of accountability and transparency.

I welcome Ofsted's new explicit approach to governance. I believe that a clear and robust system of accountability is as vital to driving up the quality of governing bodies as it is to driving improvement in the quality of the schools they govern. I want to see even greater focus on the effectiveness and impact of governing bodies in raising standards of education.

I want all governing bodies to feel empowered to provide strong strategic leadership and to hold their school leaders to account. Empowered governing bodies need transparent data on the performance and finances of the schools they govern. One of my top priorities is improve the objective and independent data available to, and used by, governing bodies for this purpose.

This handbook is an important step forward. It distils and sets out clearly the essential information that all governors need about their duties and responsibilities. My hope is that helps governors to be confident in their vital role.

A handwritten signature in blue ink, appearing to read 'John Nash', written in a cursive style.

John Nash

Parliamentary Under Secretary of State for Schools

Section 1 - The role of governing bodies

1.1 About this handbook

This handbook is for governors, headteachers and governing body clerks in both maintained schools and academies. It provides three levels of progressively more detailed information:

- Section 1 outlines the core role and functions of school governing bodies, all governors should read this section;
- Sections 2 to 8 summarise all of the specific legal duties on governing bodies – providing a first point of reference for those with a specific area of interest; and
- Further reading signposted from within each section provides more detailed information on governing bodies' legal duties and any supporting guidance or resources.

References to academies should be taken to include free schools, university technical colleges (UTCs) and studio schools. Unless otherwise stated, references to the role and duties of governing bodies refer to the role and duties of the primary legal entity responsible for a school's governance. In the case of multi-academy trusts, some but not necessarily all of these functions may be delegated to local governing bodies.

References to headteachers should be taken to include academy principals. The Handbook does not apply directly to pupil referral units, sixth-form colleges and general FE colleges though they may find its general principles helpful.

While this handbook explains what governing bodies typically need to do to be effective it does not cover how they should operate. We want governing bodies and those that represent them to define good practice. Case studies of good practice are available via the [website](#) of the National College for Teaching and Leadership (National College) and from many other organisations.

The Governance section of our website provides links to the legislation quoted in this Handbook. It also links to further sources of information.

1.2 Governing bodies' core functions

We have high expectations of governing bodies. They are the strategic leaders of our schools and have a vital role to play in making sure every child gets the best possible education. This is reflected in the law, which states that the purpose of maintained school

governing bodies is to ‘conduct the school with a view to promoting high standards of educational achievement at the school’¹.

In all types of schools, governing bodies should have a strong focus on three core strategic functions:

- a. **Ensuring clarity of vision, ethos and strategic direction;**
- b. **Holding the headteacher to account for the educational performance of the school and its pupils;** and
- c. **Overseeing the financial performance of the school and making sure its money is well spent.**

These functions are reflected in new regulations for maintained schools coming into force in September 2013² and in the criteria Ofsted inspectors use to judge the effectiveness of a school’s governing body.

Some governing bodies, including all academies, have additional functions and responsibilities. Depending on the type of school, they may own land, act as employers, admission authorities, or boards of charitable trustees and company directors. Their functions are shown at Table 1.

	Voluntary-controlled	Voluntary-aided	Community	Foundation	Trust	academy / free school
Admissions authority	No	Yes	No	Yes	Yes	Yes
Employer of staff	No ^a	Yes	No ^a	Yes	Yes	Yes
Owner of land and buildings	No ^b	No ^c	No	Yes (usually) ^d	No ^c	In certain cases
Revenue funding	LA	LA	LA	LA	LA	Secretary of State
Charitable Status	Exempt charity ^e	Exempt charity ^e	No	Exempt charity ^e	No	Exempt charity ^e

Table 1 – Governing body functions

^a While the LA employs staff, the governing body undertakes employer responsibilities

^b In most cases the charitable foundation owns some or all of the land

^c Usually a charitable foundation owns the land and buildings

^d With a foundation - land and buildings are usually owned by a charitable foundation. Without a foundation - the governing body owns the land and buildings

^e An exempt charity is one that is not regulated by, and cannot register with, the Charity Commission

This amounts to a demanding role for governing bodies. Evidence suggests that those that deliver it well do so by:

¹ Section 21(2) of the Education Act 2002.

² The School Governance (Role, Procedures and Allowances) (England) Regulations 2013.

- understanding their strategic role – building a productive and supportive relationship with the headteacher while holding them to account for school performance and taking hard strategic decisions in the light of objective data;
- ensuring governors have the necessary skills and commitment, including to challenge the school to bring about improvement and hold leaders to account for performance;
- appointing an effective chair to lead and manage the governing body – [guidance](#) on the crucial role of the chair of governors, developed jointly with the National Governors' Association, is available on the National College website;
- appointing a high quality clerk to advise them on the nature of their functions and duties and ensure the governing body operates efficiently and effectively;
- evaluating their performance regularly in the light of Ofsted expectations and other good practice; and
- making changes as necessary to improve their effectiveness.

Effective governing bodies also think carefully about how they are organised. This includes thinking about whether and how to use their powers to delegate functions and decisions to committees or individual governors. There are many different models and governing bodies are best placed to decide for themselves what will work best in their own circumstances. It is the overall governing body, however, that in all cases remains accountable in law and to Ofsted for the exercise of its functions. We expect every governing body to focus strongly on its core functions and to retain oversight of them.

This Handbook explains where maintained school governing bodies cannot by law delegate functions or decisions to individual governors or the headteacher. Academy trusts decide what they delegate to their governing bodies or, in the case of multi-academy trusts, their local governing bodies. Academy governing bodies and local governing bodies may also delegate to sub-committees, individual governors or the principal.

1.3 Setting strategic direction

Governing bodies are the key strategic decision-making body in every school. It is their job to set the school's strategic framework. This includes ensuring the school has a long-term strategic vision – including for the type of school that will offer them most opportunities. The governing body should agree the strategic priorities, aims and objectives for the school and sign off the policies, plans and targets for how to achieve them. They should check on progress and review regularly their strategic framework for the school in the light of that progress.

Foundation governors, such as those appointed by a church or diocese, have a specific role in preserving and developing the character of the school, including any religious

character. They must also ensure the school is conducted in accordance with the foundations' governing documents, including any trust deed relating to the school.

1.4 Holding the headteacher to account

One of the most significant decisions a governing body makes is the selection and appointment of a headteacher. For most governors this is a decision they will take only once during their term of office. It is therefore essential that governing bodies seek advice and support as necessary to ensure they make the best possible decision. [‘A guide to selecting and recruiting a new headteacher’](#), developed jointly with the National Governors' Association, is available on the National College website.

Governing bodies should play a strategic role and leave the running of the school to the headteacher they have appointed. It is governing bodies' role to support and strengthen the headteachers' leadership and to hold them to account for the performance of pupils and staff. This is particularly important in relation the educational performance of the school.

1.4.1 Asking the right questions

Effective governing bodies hold their headteacher and other senior school leaders to account for improving school performance by asking the right questions.

In relation to the performance of pupils, governing bodies might ask:

- which year groups, subjects and groups of pupils get the best and worst results and why, and how does this relate to the quality of teaching across the school?
- what is your strategy for improving the areas of weakest performance as well as standards for all children, including the most and least able, those with special educational needs, those receiving free school meals, boys and girls, those of a particular ethnicity, and any who are currently underachieving?
- how will we know if your approach is working?

In relation to the quality of teaching, governing bodies might ask:

- have we got the right staff and the right development and reward arrangements?
- what is the school's approach to implementation of pay reform and performance related pay, and if appropriate, is it compliant with the most up to date version of the School Teachers' Pay and Conditions Document?

In relation to the wellbeing of pupils, governing bodies might ask:

- is this a happy school with a positive learning culture?
- what is our track record on attendance, behaviour and bullying?
- are safeguarding procedures securely in place?

- how good is our wider offer to pupils – are we offering a good range of sports, arts and voluntary activities?
- is school food healthy and popular?
- do we listen to what pupils and parents are telling us?
- what are you doing to address any current issues, and how we will know if it is working?

1.4.2 The importance of objective data

Governing bodies must have good and timely data to help them see clearly the questions they need to ask and to provide answers to their questions.

Many governors may not be familiar with looking at and understanding data. There is a large volume of data available. It is essential that every governing body has at least one governor with the skills to understand and interpret the full detail of the financial and performance data available. These governors should make sure that the wider governing body has a correct understanding of the school's performance and finances. They should identify from the data the issues that most need to be discussed. Other governors should learn from them and available training opportunities to improve their confidence and skills in looking at data. While governing bodies may decide to establish a committee to look in detail at performance data, all governors should be able to fully engage with discussions about the performance of their school.

It is headteachers' job (and in maintained schools it is their legal duty³) to give governing bodies all the information they need to do their job well. This means they should help governing bodies access the data published by the department and Ofsted. They should also provide regularly a wide range of other management information so that governing bodies can monitor different aspects of life in the school throughout the year. In particular, governing bodies will need to see information relating to the priorities they have identified for improvement. This might include data on:

- pupil learning and progress;
- pupil applications, admissions, attendance and exclusions;
- staff absence, recruitment, retention, morale and performance; and
- the quality of teaching.

The headteacher and school should not be the only source of information about this. This would make it hard to hold the headteacher to account properly. Governors need to make sure that at least once a year they see objective data so that they can feel empowered to

³ Section 30 of the Education Act 2002.

ask pertinent and searching questions. Governing bodies can get annual performance data direct from a number of sources.

1.4.3 Sources of data

Ofsted's school performance dashboard

Ofsted has published two-page reports for schools in England to explain their overall performance in a clear and simple way. The reports cover pupils' attainment and progress in core subjects, their attendance, and how well the school is doing for its disadvantaged pupils. They show how well schools are performing compared to national averages and compared to similar schools – those whose pupils had similar attainment when they entered the school. Reports are available at key stages 1, 2 and 4. Key stage 5 reports are currently being developed and will be available later in 2013.

Governors who are not used to looking at performance data will find these reports an easy way to understand whether and how their school needs to improve. Our school and college performance tables and RAISEonline⁴ provide more detailed information that will help governors look further into any issues they find.

School and college performance tables

We collect data about schools and publish it in performance tables for everyone to see on our [website](#). This helps to ensure that there is sufficient transparency and public accountability for schools' performance.

The performance tables provide information on pupil attainment and progress, school finances, pupil absence and school workforce. They also contain the most recent overall Ofsted judgement on each school and a link to inspection reports.

Governors can use performance tables to compare their own school with other local or similar schools to see:

- how well their school is doing against a range of performance measures – including each of our 'floor standard' measures on attainment and progress;
- how well a primary school is doing at key stage 2 in English, and maths (from 2013, this will be in reading; writing; grammar, punctuation and spelling, and maths);
- how well a secondary school is doing at key stage 4 in terms of the number of pupils achieving 5A*-C (or equivalents) including English and maths GCSEs, and percentage of pupils achieving 5+ A*-G grade GCSEs (or equivalent);
- how well a sixth-form is doing in A levels and other level 3 qualifications;

⁴ [Reporting and Analysis for Improvement through school Self-Evaluation](#)

- how attainment and progress compares between different groups of pupils, including disadvantaged pupils, those with English as an Additional Language (EAL), and ‘non-mobile’ pupils (i.e. those who have been in the school throughout each of the last two years);
- how the school spends its money, shown as £ per pupil to allow comparison between schools of different size; and
- information about people who work at the school, including the number of teachers, teaching assistants, support workers; their average salaries; and the ratio of teachers to pupils.

RAISEonline

RAISEonline is a secure web-based system available to governors, schools, and LAs. Ofsted inspectors also use it to inform their inspections. The system uses the data collected for our performance tables, but provides a more detailed analysis. RAISEonline reports use tables, graphs and charts to show the attainment and progress of the school and a wide range of different pupil groups.

RAISEonline includes data on pupil attainment, progress, absence, and exclusions. It provides an analysis of the characteristics of pupils, such as their ethnic mix, special educational needs, and level of deprivation. All data are compared to the relevant national average. RAISEonline highlights key strengths and weaknesses. It shows clearly where a difference from the national average is large enough that we can say with confidence that it is not there by chance, but due to a genuine difference at the school. The summary report does not contain any named pupil data.

Legislation⁵ ensures that all governors are entitled to access the RAISEonline system for their school. The school's administrator can provide them with a ‘governor’ account, which allows access to the RAISEonline summary report only. Schools are not required to provide access to the interactive data contained within the RAISEonline system. Some schools may do so by giving governors a ‘school’ user account. It is up to the school to determine what level of data it wants to share. A summary of access rights is available in the RAISEonline library in the ‘Frequently asked questions’ folder.

Governors who lead on understanding and scrutinising attainment data should see and analyse the full RAISEonline summary report. For other governors, less detail may suffice – but it is important that all governors see some form of summary of key RAISEonline data for their school.

Governors can use RAISEonline to look into their school's performance. They can look at the high-level figures. They can also drill down for example into the performance of

⁵ Regulation 3(5)(e) of The Education (Individual Pupil Information) (Prescribed Persons) (England) Regulations 2009.

different pupil groups. In particular, governors can use it to identify priorities for improvement in the light of:

- the attainment of different groups of pupils and in different subjects, and how this compares to national 'floor standards' for [key stage 2](#) and [key stage 4](#);
- the progress made by different groups of pupils and in different subjects, and how this compares to 'expected progress' measures; and
- the progress made by pupils compared to all pupils nationally and pupils with similar prior attainment.

The National Governors' Association has published [guides](#) to help governors get the most out of the data in RAISEonline.

Other data sources

In addition to the government data sources outlined above, there is a growing range of products from third parties that aim to meet the data needs of governing bodies. Many of these draw, at least in part, on our data. Bearing in mind that RAISEonline contains the data that Ofsted inspectors use, it is for governing bodies to choose which works best for them. Options include products developed by some LAs as well as organisations such as Fisher Family Trust and Arbor.

School visits

Governors need to know their school. Many governors find that visiting, particularly during the day, is a helpful way to find out about the school. Visits can also be an important part of robust school accountability. Through pre-arranged visits, governors can check that the school is implementing the policies and improvement plans they have signed off, and see for themselves how their vision and plans for the school are working in practice. Visits also provide an opportunity to arrange meetings with pupils, staff and parents about what they think of the school and how it is changing.

While it may be helpful to see classes at work, governors are not inspectors and it is not their role to assess the quality or method of teaching. They are also not school managers and should make sure they do not interfere in the day-to-day running of the school. Both are the role of the headteacher.

1.5 Overseeing financial performance

Governing bodies are responsible for making sure their school's money is well spent. They should do this by making sure they have at least one governor with specific skills and experience of financial matters, and by asking questions such as:

- Are we allocating our resources in line with our strategic priorities?
- Are we making full use of all our assets and efficient use of all our financial resources?

- Are other schools buying things cheaper or getting better results with less spending per pupil?
- How can we get better value for money from our budget?

We publish a range of financial information about [maintained schools](#) and [academies](#) on our website. Governors can use this information to compare spending against that of similar schools. Benchmarking financial information in this way helps governors to question whether resources could be used more efficiently. For example:

- If the cost of energy seems high compared to similar schools, are there opportunities for investment in energy-saving devices to reduce the cost?
- If spend on learning resources seems high compared to similar schools, are there opportunities for collaborating with other local schools to bring costs down?

Financial requirements on academy trusts are set out in the Education Funding Agency's '[Academies Financial Handbook](#)' and in their funding agreement. Academies and their auditors should also read the '[Academies Accounts Direction](#)', when preparing and auditing annual reports and financial statements.

There is a wide range of information sources and tools available to help schools secure the best value for money. Our [website](#) provides further guidance and links to organisations that are able to provide support.

1.6 Accountability of governing bodies

Maintained school governing bodies are legally responsible for the conduct of their school. For academies, as explained above, responsibility rests with the academy trust, which will delegate some or all of the responsibility to a school governing body.

The government values every person who volunteers to help improve their school by being a governor. How well a governing body does its job has a real impact on the success of a school. So although they are made up of volunteers, governing bodies cannot afford to be amateur and must be held to account for their effectiveness.

1.6.1 Inspection

Ofsted has published the criteria that inspectors will use to judge the effectiveness of a school's governance⁶. These criteria are consistent with the core functions of all governing bodies set out above. Inspectors will look at the extent to which governing bodies:

⁶ The Inspection Handbook from September 2012.

- ensure clarity of vision, ethos and strategic direction;
- engage with key stakeholders;
- operate in such a way that statutory duties are met and priorities are approved;
- provide challenge and hold the headteacher and other senior leaders to account for improving the quality of teaching, pupils' achievement and pupils' behaviour and safety;
- contribute to the school's self-evaluation and understand its strengths and weaknesses;
- support and strengthen school leadership;
- use performance management systems, including the performance management of the headteacher, to improve teaching, leadership and management;
- ensure solvency and probity and that the financial resources made available to the school are managed effectively; and
- use the pupil premium and other resources to overcome barriers to learning, including reading, writing and mathematics.

Every inspection report will comment on the quality of governance as part of the overall judgement on the quality of the school's leadership and management. These criteria will help to make sure good governance gets the praise it deserves. They will also help inspectors identify when a school's governance is good enough. If it is not, and the school 'requires improvement', inspectors will say that someone from outside the school should look at its governance to see how it needs to improve. The National College has published [information](#) about how schools might go about this.

To make sure governing bodies make good use of money, LAs will look at the finances of maintained schools; the EFA and independent auditors will look at academies. School inspectors and local communities also have a key role in holding governing bodies to account. Both can use performance data from us and Ofsted to see how a school is doing.

Our '[Accountability Statement](#)' explains the system of accountability for schools in more detail.

1.6.2 Self-evaluation

In preparation for inspection and to improve their own effectiveness governing bodies should evaluate regularly their own effectiveness. Good chairs of governors also ask for regular feedback from their governing bodies to improve their effectiveness.

There are a range of self-evaluation tools available that suggest suitable questions to help with self-evaluation. For example, The All-Party Parliamentary Group on Education Governance and Leadership has published '[Twenty key questions for a governing body](#)'

[to ask itself](#). A draft '[Recommended Code of Governance for Schools](#)' is being piloted by the Wellcome Trust as a framework to help governing bodies set strategic direction, evaluate their own performance and hold the headteacher and other senior school leaders to account for the performance of the school.

Governing bodies may decide that they would welcome external help or scrutiny in evaluating their effectiveness. [Information](#) on how they might do this is provided by the National College.

1.7 Enabling better governance

1.7.1 Reducing bureaucracy

We want the legal framework for governance to give governing bodies the powers they need to do their job, rather than tie them up with red tape. This means cutting back on top down rules and allowing governing bodies to operate more efficiently and effectively.

We have recently published simplified Constitution Regulations for maintained schools and more flexible model Articles of Association for academies. These allow governing bodies more freedom to focus on recruiting governors with relevant skills, and to be no bigger than they need to be to do their job well. New regulations will also come into force in September 2013 creating a simpler framework for the roles, procedures and allowances of maintained school governing bodies.

We are looking hard at the specific legal duties placed on governing bodies. We have already removed or simplified a number of duties that are outdated or of secondary importance. We are planning to remove and simplify more. We will update this Handbook as we do this.

1.7.2 Support and training for governors

Even with this reduction in bureaucracy, governing bodies will always have a challenging job to do. High quality induction and training can be vital to equipping governors with the skills they need, but we do not think that training should be compulsory.

Good chairs of governors set out clearly what they expect of their governors, particularly when they first join the governing body. Good governing bodies also carry out regular audits of governors' skills in the light of the skills and competences they need, and actively seek to address any gaps they identify – either through recruitment or training. They have succession plans in place and develop future leaders by identifying and nurturing talent and sharing responsibility. It is for governing bodies to identify training and development opportunities and select those that meet their needs and budget.. The NGA and many LAs and other organisations offer induction and other training courses and resources.

Support from the National College

The leadership of the chair of governors is crucial to the effective functioning of the governing body. The National College booklet '[Leading governors: the role of the chair of governors in schools and academies](#)' describes the role in detail and provides information on the key attributes of an effective chair. The College has also developed a leadership development programme for chairs and aspiring chairs and is delivering it through 18 licenced regional providers. The programme develops leadership skills through facilitated workshops, online activities, personal reflection and school based learning. Further details are available on the National College [website](#).

The National College provides peer-mentoring support to chairs of governors through the [National Leaders of Governance](#) programme. It also provides a wide range of good practice information and resources for governors on its member website, which is free to join.

Other Support

Support for governing bodies may also be available from:

- [SGOSS](#) – the governor recruitment charity funded by us to help governing bodies recruit highly-skilled new governors;
- [GovernorLine](#) – funded by us to provide independent advice and guidance to governors;
- LAs who determine their own offer through their governor support services. Some LAs provide governor or clerk training to schools under a subscription package paid by the governing body. Training provided to governors in maintained schools must be free of charge to the individual governor⁷. LAs may provide these services to academies at a charge;
- commercial governor support organisations; and
- umbrella bodies such as the National Governors Association (NGA), Freedom and Autonomy for Schools - National Association (FASNA) or Independent Academies Association (IAA).

Governing bodies are responsible for approving the school budget and, within that, they should make provision for meeting their own training and clerking needs.

1.8 Structure of this Handbook

The remaining sections of this Handbook set out in more detail the specific role, responsibilities and legal duties of governing bodies in relation to:

⁷ Section 22(b) of the Education Act 2002.

Section 2: Constitution and procedures

- The constitution of governing bodies
- Collaboration and federation between governing bodies
- Procedures governing bodies must follow

Section 3: Education and school performance

- The curriculum
- The education of children with SEN and looked after children
- Ofsted inspections

Section 4: Pupil wellbeing

- The wellbeing of pupils, including school safety and security
- Behaviour, attendance and discipline
- Reviewing decisions by the headteacher to exclude pupils
- Food and uniform policy
- Safeguarding pupils
- Supporting employees or volunteers facing an allegation

Section 5: Teachers and support staff

- Annual appraisal of the headteacher's performance
- Pre-employment checks
- Teacher appraisal, grievance, discipline and capability processes

Section 6: Organisational changes to the school and the use of school premises

- Converting to academy status
- Making other changes to the school
- The admissions process and appeals
- Relationships with parents

Section 7: School finance

- Accountability for how school money is spent
- Financial planning, expenditure and accounting arrangements
- Benchmarking spending against others to improve efficiency

Section 8: Information sharing:

- Sharing information with the Secretary of State and, in some cases, with LAs
- Responding to requests for information under the Freedom of Information and the Data Protection Acts

1.9 Overview of key activities

An overview of governing bodies' key activities is shown at Figure 1.

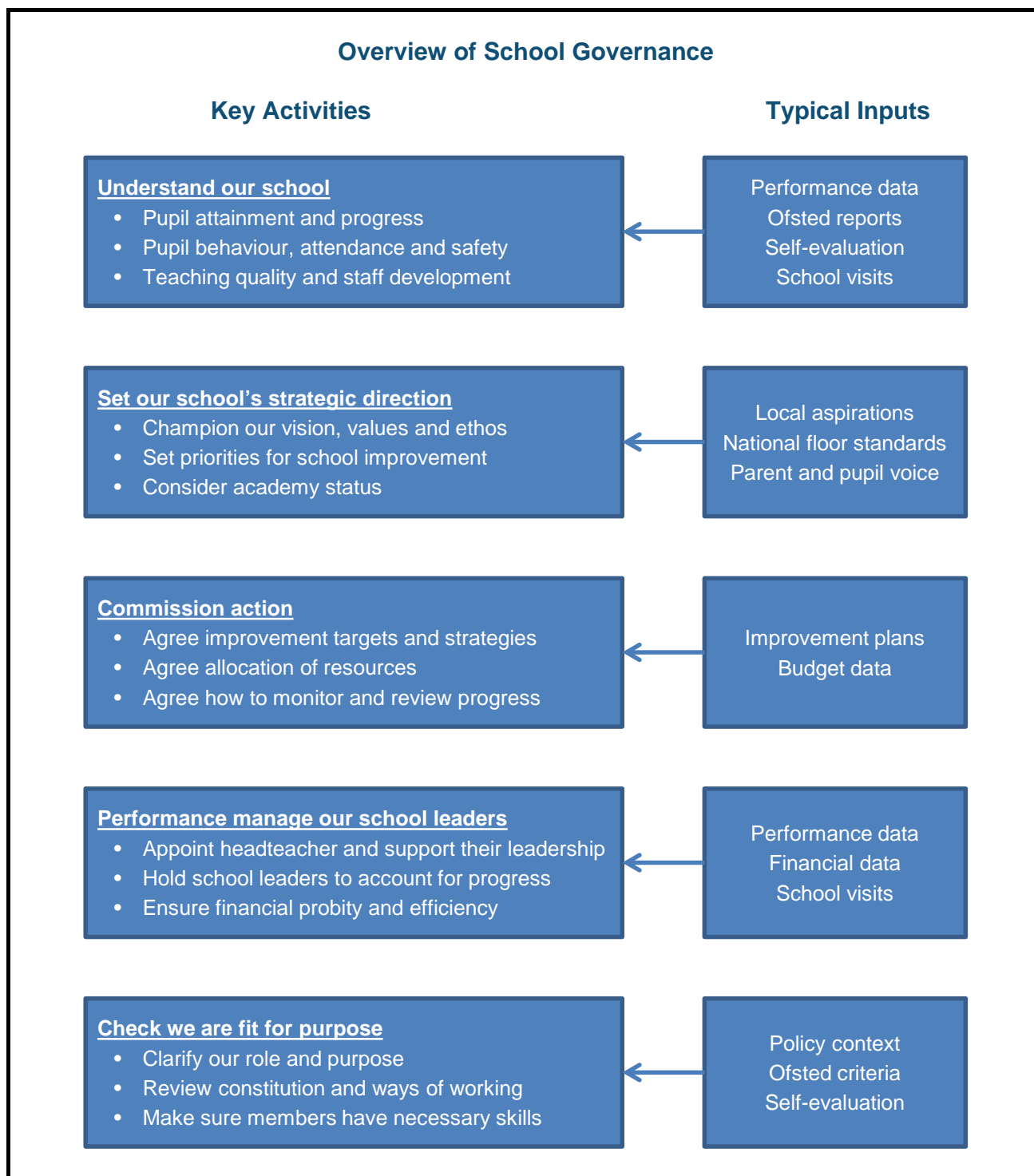


Figure 1 – Governing body key activities

Section 2 - Constitution and procedures

The effectiveness of a governing body depends on the quality of its governors and the ways in which they work together and with school leaders. This section explains how the governing body must be constituted and how it should conduct itself.

2.1 Structure and membership of the governing body

While governing bodies in some schools have more flexibility than in others, all governing bodies have a choice about how they are structured. The constitution, or structure, of the governing body determines how many and what type of people govern the school.

We have given governing bodies more freedom to determine their own constitution. We have relaxed rules that in the past have meant some governing bodies had to be large. We want governing bodies to be tightly focused and no larger than they need to be to carry out their core strategic functions. Every member of the governing body should actively contribute relevant skills and experience.

Governing bodies may consider re-constitution if things are not going well – for example following an Ofsted inspection or in the light of an external review. They may also consider re-constitution as a positive and proactive move to ensure they are fit for purpose for the future, including in the context of a conversion to academy status.

[SGOSS](#) can help governing bodies in maintained schools and academies to find new governors with the skills they require. Governing bodies are responsible for training and developing their members to ensure they have the necessary skills.

2.1.1 Rules on constitution

Academies and free schools

Academy trusts have almost complete flexibility to shape their governance arrangements as they see fit. Their arrangements are set out in their individual Articles of Association. Converting to academy status is a good opportunity to review the constitution of the governing body and make changes as necessary to ensure that governance arrangements will be fit for purpose.

An academy trust is a charitable company limited by guarantee. It has two layers of governance:

- The members of the trust, who are akin to shareholders and have ultimate control over the direction of the academy trust. They ensure the charitable company achieves its objectives, sign off the financial accounts and annual report, and appoint some of the governors; and
- The governors, who are also the directors and trustees of the charitable company. They are responsible for the three core strategic functions outlined in section 1

and ensuring compliance with charity and company law and the academy trust's funding agreement.

While members can also serve as governors, the most robust governance structures retain at least some distinction between the two groups.

Multi-academy trusts are a single legal entity with one governing body that is accountable for a number of academies in its chain. Each academy may have a local governing body to which the trust's governing body delegates functions. Alternatively, each academy may have an advisory body that has no delegated functions but advises the trust's governing body. Local governing bodies and advisory bodies are committees of the trust's governing body. Their members are not governors, trustees or directors of the academy trust – unless they are also members of the trust's governing body.

An umbrella trust is an academy trust with its own members and governing body that oversees a number of other academy trusts, each with their own members and governing body. The umbrella trust ensures collaboration through majority or minority control of the appointment of members of individual academy trusts.

A lead sponsor will have majority control of the academy trust by having the right to appoint the majority its members. Likewise, the minority or majority control of the church in a voluntary controlled or voluntary aided school is retained on conversion to academy status through minority or majority control over the appointment of members of the trust.

There are very few requirements relating to the constitution of the governing body in our model Articles of Association. The governing body of an academy trust must include at least two elected parent governors – in a multi-academy trust the parents can be represented at local governing body level or on the trust's governing body. The principal must be a governor unless he or she chooses not to be. Other than this, academy trusts are free to constitute a governing body in the way they consider is most appropriate for each academy for which they are responsible.

Free schools benefit from the same freedom as other academy trusts. The proposer group need to use the pre-opening period to recruit skilled governors. They should design the structures and reporting arrangements that will drive improvement in their school. We provide pre-opening guidance on governance to every free school proposer group. For university technical colleges there is a requirement that nominees of the employer and university sponsors must together form the majority on the governing body.

Maintained schools

The constitution of all maintained school governing bodies is set out in their instrument of government⁸. The governing body drafts the instrument and submits it to the LA. Before the governing body submits the draft instrument to the LA, it must be approved by any foundation governors and, where relevant, any trustees and/or the appropriate religious body. The LA must check if the draft instrument complies with the legal 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 instrument can be reviewed and changed at any time.

The rules for the constitution of maintained school governing bodies depend on when the governing body was established or varied its instrument of government. We have introduced new regulations from September 2012 that governing bodies can choose to adopt. The new regulations are simpler and give governing bodies more say over their constitution. Maintained school governing bodies are encouraged to consider the benefits of re-constituting under the 2012 regulations, and using this a good opportunity to take stock of what structure and membership will make them most effective.

Maintained school governing bodies established before 1 September 2012 that have not varied their instrument since that date

The minimum size of the governing body in a maintained school is 9 except in voluntary-aided (VA) schools and qualifying foundation schools where the minimum size of the governing body is 10 and 11 respectively. The maximum size is 20 people, excluding provisions on sponsor governors explained below. Within this range, each governing body can adopt the model of their choice, provided it complies with the guiding principles which prescribe which categories of governor must be represented on the governing body and the level of representation for each of the categories. The four compulsory stakeholder groups for community, community special schools and maintained nursery schools are:

- parent governors;
- staff governors;
- authority governors; and
- community governors.

Foundation and voluntary-controlled (VC) schools have foundation governors as an additional fifth compulsory stakeholder group. VA schools also have foundation governors, but do not have community governors – and so have four compulsory stakeholder groups.

⁸ This includes community, community special, foundation (including qualifying foundation schools, foundation schools with and foundation schools without a foundation), foundation special, voluntary-aided (VA), voluntary-controlled (VC) and maintained nursery schools.

Sponsor governors form an optional additional group:

- in primary schools, the governing body can appoint one or two additional sponsor governors, and in secondary schools, the governing body can appoint up to four additional sponsor governors. These governors do not count towards the maximum size; and
- in a VA school or a qualifying foundation school, where the governing body appoints sponsor governors the same number of foundation governors may be appointed to preserve their majority.

This means that in practice the maximum size of a governing body at a VA and qualifying foundation primary school is 24 (20 plus two sponsor governors, plus two foundation governors to preserve the majority of two). The maximum size of a governing body at a VA and qualifying foundation secondary school is 28 (20 plus up to four sponsor governors, plus up to four foundation governors to preserve the majority of two). We have published [statutory guidance](#) on the School Governance (Constitution) (England) Regulations 2007. The guidance, written for the appropriate category of school, provides information about the:

- proportion of places on the governing body that must be reserved for the different categories;
- eligibility criteria for each category of governorship; and
- procedures for electing and appointing governors.

Maintained school governing bodies constituted under an instrument taking effect on or after 1 September 2012 and existing governing bodies that have varied their instrument since that date

Where governing bodies of maintained schools were established after 1 September 2012 or existing governing bodies varied their instrument since that date, they must be constituted under the School Governance (Constitution) (England) Regulations 2012. These regulations provide that the minimum size of the governing body is seven members and the governing body must include:

- at least two parent governors;
- the headteacher, unless the headteacher decides not to be a governor;
- only one staff governor;
- only one LA governor; and
- foundation governors or partnership governors as specified in the regulations.

The governing body may appoint as many additional co-opted governors as it considers necessary. The number of co-opted governors who are eligible to be elected or appointed as staff governors must not (when added to the one staff governor and the headteacher) exceed one-third of the total membership of the governing body.

The governing body can appoint associate members to serve on one or more governing body committees. Associate members can attend full governing body meetings but may be excluded from any part of a meeting where the business being considered concerns a member of school staff or an individual pupil. They are appointed for a period of between one and four years and can be reappointed at the end of their term of office. Associate members are not governors and they are not recorded in the instrument of government.

The definition of associate 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 associate members.

Statutory guidance for maintained schools

[Statutory guidance](#) on the 2007 constitution regulations and [statutory guidance](#) on the 2012 constitution regulations set out in each case the:

- proportion of places on the governing body that must be reserved for the different categories;
- eligibility criteria for each category of governorship; and
- procedures for electing and appointing governors.
- rules on governors' terms of office;
- grounds and procedure for removal of governors from office;
- rules and procedures for the removal of surplus governors; and
- grounds on which people are disqualified from serving as a governor.

2.1.2 Time off work

Employers must give employees who are school governors in maintained schools 'reasonable time off' to carry out their duties⁹. The employee and employer must agree on what is 'reasonable time off'. Among the points they should discuss are:

- how much time is needed overall to perform the duties;
- whether the employee is also being given time off from work for other activities;
- the particular circumstances of the employer's business; and
- the likely effect that the employee's absence may have on it.

Employers may give time off with pay but do not have to do so. This is for discussion between the employee and the employer. Guidance on time off for public duties is available on the [GOV.UK website](#).

⁹ Section 50 of the Employment Rights Act 1996

If the employee and employer cannot agree on any of these questions, either of them can ask for help from the [Advisory Conciliation and Arbitration Service](#) (ACAS), which will try to settle any differences informally. An employee who is still not satisfied may complain to an Employment Tribunal.

Academy governors do not currently have a statutory right to time off work to carry out their duties. We are working with the Department for Business, Innovation & Skills (BIS) to amend the Employment Rights Act 1996 to extend this right to academy trusts.

2.2 Ways of working

Governing bodies are generally best placed to decide how they can best work effectively in the light of their own local circumstances. There are, however, some key general principles and some specific basic rules to ensure a minimum level of effectiveness.

2.2.1 Equality

The Equality Act 2010 applies to all schools in their role as employers, as providers of education to the pupils in their care and as providers of a service or public function. The governing body or academy trust is responsible for compliance with the public sector equality duties of the Act and the specific education sections (part 4) for school pupils.

The Equality Act's general and specific public sector equality duties mean that schools must:

- have due regard to the need to eliminate discrimination;
- advance equality of opportunity and foster good relations across all characteristics; and
- publish equality objectives and information demonstrating how they are doing this.

The Equality and Human Rights Commission (EHRC) can enforce this duty by issuing a compliance notice to order a school to meet the duty within a certain timescale.

Our [departmental advice](#) on the Equality Act 2010 gives detailed information for schools.

Governing bodies should make sure that their school complies with all aspects of discrimination law. The best way to do this is to ensure that they apply the principles of fairness and equality in everything that the school does. Schools with a religious character have legitimate exemptions.

Discrimination claims are heard in the county court, with the exception of pupil disability claims in schools and employment claims which are both heard in specific tribunals.

2.2.2 Governing bodies' relationship with school leaders

The relationship between governing bodies, particularly the chair of governors, and the headteacher is crucial to effective governance. They should work in close partnership, but retain sufficient distance to allow the headteacher to run the school and the governing body to hold them to account effectively for doing so.

Headteachers are responsible for the internal organisation, management and control of the school. It is their job to implement the strategic framework established by the governing body. The governing body should not be involved in the detail of the day-to-day management of the school. The governing body delegates powers to allow the headteacher to perform his or her management duties. The headteacher must report to the governing body regularly on how those powers have been carried out. The headteacher should give the governing body information on the performance of the school and other reports that the governing body may need to carry out its functions. The governing body should offer the headteacher challenge and constructive advice.

The National Association of Headteachers (NAHT), the Association for College and School Leaders (ASCL) and the National Governors' Association (NGA) has issued a joint [statement](#) on the principles for the working relationship between governing bodies and school leaders.

2.2.3 Governing body procedures

Any rules on how governing bodies of academies must operate will be set out in their Articles of Association.

For maintained school governing bodies, we have published [statutory guidance](#) on the procedures they must follow¹⁰. This explains:

- the role, appointment, term of office, delegation of functions to and the removal from office of the chair and vice chair;
- the role, appointment, functions and removal of the clerk;
- the right to attend meetings, convening meetings, quorum, voting, minutes and papers, restrictions on taking part in meetings and suspension of governors;
- delegation of functions and restrictions on delegation; and
- the establishment of and proceedings of committees of the governing body.

Clerks should provide written notice for meetings at least seven clear days in advance, together with a copy of the agenda and any reports and papers to be considered at the meeting. The chair may determine a shorter period is appropriate in cases of emergency.

¹⁰ The School Governance (Procedures) (England) Regulations 2003.

The quorum for governing body meetings and for any vote at a meeting is one half (rounded up to the nearest whole number) of the membership of the governing body, not including any vacant positions.

No decision on a change of maintained school name can take effect unless the issue was an agenda item at a meeting for which appropriate notice was given and all members of the governing body vote in favour of the change of name. Any governor unable to attend the meeting to discuss the change of name may vote by proxy where the proxy is a governor or associate member whose appointment is in writing and signed by the governor unable to attend. This is the only occasion where a proxy vote is allowed.

Governors must, at all times, act with honesty and integrity and be ready to explain their actions and decisions to staff, pupils, parents and anyone with a legitimate interest in the school.

In September 2013, we will introduce new regulations for maintained schools and pupil referral units. The regulations will replace those covering governing body procedures, terms of reference and governors' allowances. The new regulations include provisions that will:

- clarify the respective roles of the headteacher and the governing body, including the governing body's three core functions as detailed in section 1 of this Handbook;
- reduce prescription on how governing bodies exercise their functions, while retaining their overall legal responsibility and accountability;
- emphasise the role of the clerk in advising the governing body on the nature of their duties and functions
- simplify the procedures surrounding the term of office of the chair and vice chair of governors; the functions of the clerk; and the validity of governing body meetings, including the management of meetings and method of voting - bringing them more in line with the freedoms afforded to academies; and
- simplify arrangements for the payment of allowances for out-of-pocket expenses incurred by governors in connection with their duties as governors.

The new Regulations also apply similar provisions to the management committees of pupil referral units.

2.2.4 Dealing with complaints

The governing bodies of all schools have a duty to consider complaints about the school and any community facilities or services that it provides¹¹. They must reassure themselves that their school has a procedure to deal with complaints and that the procedure is publicised. An academy is required, through the obligations set out in its funding agreement, to ensure that a complaints procedure is drawn up and carried out effectively. The funding agreement also sets out a requirement for an academy to handle complaints that arose in part or in whole before the academy opened.

An individual can complain to the Secretary of State for Education if they believe that a governing body is acting 'unreasonably', or is failing to carry out its statutory duties properly¹². The Education Funding Agency (EFA) handles complaints about academies and free schools on behalf of the Secretary of State.

Our [guidance on making a complaint about a school](#) gives detailed information about the role of the Secretary of State and EFA in the complaints process. A [toolkit](#) to help schools draw up a complaints procedure is available on our website.

2.2.5 Governing body collaboration and federation

Two or more maintained schools may federate under a single governing body¹³. More informal collaboration arrangements may be made between maintained schools and schools not maintained by the LA (such as academies, independent schools and further education institutions).

Academy collaboration

Academies may collaborate formally in multi-academy trusts or under umbrella trust arrangements. In a multi-academy trust there is one legal entity accountable for all academies in the chain and each academy may have a local governing body or advisory body to which some matters may be delegated. Under an umbrella trust, each academy is a separate legal entity with its own articles and funding agreement – the umbrella trust ensures collaboration through majority or minority control of individual academies.

Academies may also collaborate informally through collaborative partnerships. They may decide to agree a memorandum of understanding between themselves, but there is no shared governance arrangement required between them, and each academy retains its own Articles and funding agreement.

¹¹ Section 29 of the Education Act 2002. For academies, free schools and independent schools - The Education (Independent Schools Standards) Regulations 2010 (as amended).

¹² Sections 496 and 497 of the Education Act 1996.

¹³ Section 24 of the Education Act 2002.

More information about academy collaboration is available on [our website](#).

Maintained school collaboration

Maintained schools may collaborate formally with other maintained schools, hold joint governing body meetings and form joint committees¹⁴. Regulations¹⁵ leave much of the detailed arrangements to the schools concerned. They allow two or more governing bodies to arrange for any of their functions to be carried out jointly. They also allow those functions to be delegated to a joint committee. The specific procedures (on clerking and membership of committees, for example) generally mirror those for individual schools. Individual governing bodies retain legal responsibility and corporate liability for all decisions made on their behalf. Governing bodies must therefore make sure that they receive regular reports, including signed minutes, from any joint committees they agree to establish.

Since May 2007, maintained schools may enter into collaborative arrangements with FE colleges through the use of joint committees¹⁶. [Guidance](#) is available on our website.

Maintained schools may collaborate informally with non-maintained schools. Under these circumstances they do not need to follow regulations. This type of collaboration allows the creation of joint committees that meets as needed and may only make recommendations. The individual schools' governing body powers can not be delegated.

Maintained school federation

Federation creates a single governing body to govern more than one school. Maintained schools in federations continue to be individual schools, keeping their existing category and character. Admission to each school continues to be determined by the appropriate admissions authority. The governing body of the federation will receive individual budgets for each of the federated schools, and will be able to use them across the schools in the federation.

The governing body decision to federate must follow a prescribed process, which is detailed in our guidance and advice. [Departmental advice](#) on the School Governance (Federations) Regulations 2012 applies to federations established on or after 1 September 2012 or whose instrument of government is varied following a decision to vary on or after 1 September 2012. [Statutory guidance](#) on the School Governance (Federations) (England) Regulations 2007 continues to apply to existing federated governing bodies until such time as it is decided to vary the instrument of government.

¹⁴ Section 26 of the Education Act 2002.

¹⁵ The School Governance (Collaboration) (England) Regulations 2003.

¹⁶ The Collaborative Arrangements (Maintained Schools and Further Education Bodies) (England) Regulations 2003.

In summary, the governing body must:

- attend a meeting, for which seven clear days' notice has been given and specified as an item of business on the agenda, to discuss and consider a report on the proposal to federate;
- give notice of the proposal to the governing body of the federation and to those listed in regulations;
- consider whether to give preliminary consent to the school joining the federation (or not to join);
- jointly, with the other governing body or bodies, publish the proposals;
- make the proposals available for inspection at all reasonable times at the school;
- consider the responses to the proposals and determine whether to:
 - proceed with the proposals as published;
 - proceed with modifications that the governing body considers appropriate; or
 - not to proceed with the proposals to federate.
- within one week of determination, governing bodies that have agreed to proceed must jointly inform the LA(s) and the Secretary of State of the federation; as must those determining not to proceed with the proposals;
- prepare a new instrument of government - a draft instrument is provided in the relevant guidance document;
- prepare a report immediately before the federation date of the action taken by the governing body in the discharge of their functions; and
- make available to the governing body of the federation all minutes and papers of the governing body, including the above report.

On the federation date:

- the existing governing bodies are dissolved;
- the governing body of the federation is incorporated;
- all land and property, which immediately before the federation date was held by the governing body of a federated school is transferred and vests in the governing body of the federation; and
- all rights and liabilities that existed immediately before the federation date which were acquired or incurred by the governing body of a federated school are transferred to the governing body of the federation.

This list is not exhaustive and governing bodies are advised to refer to the appropriate departmental advice. The constitution of the federated governing body is provided in more detail in the relevant advice or guidance.

Governing bodies must follow a prescribed process when they wish to leave a federation or where federations are dissolved; these processes are detailed in the relevant departmental advice.

Section 3 - Education and inspection

Governing bodies' primary interest should be in high and rising standards of education for all pupils in their school.

3.1 The national curriculum

Academies do not have to follow the national curriculum. They are bound by their funding agreement to teach a broad and balanced curriculum to the age of 16. This must include English, mathematics and science in mainstream academies. Alternative provision academies are not required to teach science.

Responsibility for the school curriculum in state schools is shared between the headteacher, the governing body and (to a limited extent) LAs. The law¹⁷ says that the curriculum for a maintained school (or maintained nursery school) should be balanced and broadly based, and should:

- promote the spiritual, moral, cultural, mental and physical development of pupils at the school and of society; and
- prepare pupils at the school for the opportunities, responsibilities and experiences of later life.

Governing bodies in maintained schools should reassure themselves that:

- enough teaching time is provided for pupils to cover the national curriculum and other statutory requirements;
- the relevant assessment arrangements are implemented (see section 3.7 Assessing attainment);
- all courses provided for all pupils below the age of 19 which lead to qualifications such as GCSEs and A levels are approved by the Secretary of State.

The statutory requirements for each subject within the national curriculum for [primary](#) and [secondary](#) schools are available on our website.

The national curriculum is currently being [reviewed](#). There will be a new curriculum from 2014.

Study programmes post-16

From September 2013, new study programmes for 16-19 year olds and changes to funding will come into effect.

¹⁷ Section 78 of the Education Act 2002.

The 16-19 study programmes will:

- aid progression to a higher level than students' prior attainment;
- include substantial qualifications that provide a recognised route into employment, or higher education;
- require students to work towards GCSE A*-C grade in mathematics and English;
- provide genuine work experience to help students get the experience and skills they will need for future work or education.

Funding will be per student rather than per qualification. This will allow for more innovation and flexibility to meet the needs of all students, including those with learning difficulties and/or disabilities. The Education Funding Agency (EFA) has published [information about the new funding formula](#) on our website.

3.1.1 Religious education

All state-funded schools must teach religious education. In maintained schools the governing body shares responsibility with the headteacher and, where relevant, the LA, for ensuring that the requirements are met¹⁸. Religious education is also compulsory in faith and non-faith academies as set out in their funding agreements.

3.1.2 Collective worship

Academies must provide a daily act of collective worship by virtue of their funding agreement. An academy wishing to have the broadly Christian requirement removed and replaced by collective worship of another faith should apply to the Secretary of State via the EFA.

All maintained schools must provide a daily act of broadly Christian collective worship for their pupils. In community schools and non-faith foundation schools, the headteacher is responsible for arranging this after consulting the governing body. In voluntary-aided, voluntary-controlled schools and foundation schools with a religious character, the governing body is responsible for arranging the worship after consulting the headteacher.

In some maintained schools, the family background of some or all pupils may lead the headteacher and governing body to conclude that broadly Christian collective worship is not suitable. The headteacher can apply to the local Standing Advisory Council for Religious Education (SACRE) to have the broadly Christian requirement removed and replaced by collective worship of another faith and should consult the governing body in

¹⁸ For maintained schools these requirements are contained in section 80 of the Education Act 2002 and Schedule 19 of the School Standards and Framework Act 1998.

doing so¹⁹. [Non-statutory guidance](#) on the teaching of religious education in England is available on our website.

3.1.3 Political bias

Academy trusts, governing bodies, headteachers and LAs must not allow the promotion of one-sided political views. This applies both to the teaching of any subject and to extra-curricular activities at the school²⁰. Where political issues are covered, opposing views must be presented in a balanced way. The academy trust, governing body, headteacher and LA must also prevent pupils under 12 from taking part in political activities. This covers activities at school or elsewhere. This applies only where the activity is arranged by a member of staff or anyone acting on behalf of the school or a member of staff.

3.1.4 Disapplication of the national curriculum

Governing bodies have a role to play in various 'disapplication' processes, depending on the circumstances. 'Disapplication' is the decision not to apply elements of the national curriculum in certain circumstances. Details are in [guidance](#) on our website.

3.1.5 Curriculum policy

Governing bodies and headteachers formerly had a duty to prepare a policy for the school curriculum. This duty was removed in September 2012. If schools do choose to adopt such a policy, it should be 'broad brush'; it does not need to be a detailed map of all secular curriculum activities.

3.2 Careers guidance

Maintained schools must secure access to independent and impartial careers guidance on the full range of 16-18 education or training options, including apprenticeships²¹. This requirement applies to pupils in years 9 to 11. It will be extended to years 8 to 13 from September 2013. The new model funding agreement for academies opening from September 2012 includes this duty. A 'deed of variation' is being drawn up. This will allow academies that opened before September 2012 to include the requirement in their existing funding agreements. The governing body must reassure itself that the requirement to secure careers guidance from an external source is being met. Schools must have regard to [statutory guidance](#) underpinning the duty and our [practical guide](#) provides additional support.

¹⁹ Section 70 and Schedule 20 of the School Standards and Framework Act 1998.

²⁰ Sections 406 and 407 of the Education Act 1996.

²¹ The Education Act 2011.

3.3 Sex education

All maintained schools providing secondary education must provide sex education as part of the basic school curriculum. This includes education about HIV and AIDS and other sexually-transmitted diseases. All maintained schools must teach human growth and reproduction as set out in the statutory national curriculum for science. Headteachers and governors must make sure that sex education has due regard to moral considerations and the importance of family life.

Governing bodies and headteachers of maintained schools providing primary education must decide whether sex education, beyond that set out in the statutory national curriculum for science, should be included in their school's curriculum. If so, they must decide what it should consist of and how it should be organised, and keep a record of their decisions.

Governing bodies of maintained schools (excluding maintained nursery schools) and academies should reassure themselves that the school has a written statement of the policy they adopt on sex education and make it available to parents.

3.3.1 Statutory Guidance

All schools providing sex education at both primary and secondary level, and including academies through their funding agreements, must have regard to the Secretary of State's '[Guidance on Sex and Relationship Education](#)'²². Sex education is therefore often known by the broader title 'sex and relationship education' (SRE). The guidance document ensures SRE is delivered appropriately to all pupils, and that such education covers a range of topics and issues.

3.4 The early years foundation stage (EYFS)

The EYFS framework sets out requirements for both learning and development, and safeguarding and welfare in early years provision. It is mandatory²³ for all providers. This includes maintained schools and academies and all providers on the Early Years Register. The EYFS [statutory guidance](#) outlines the framework. A range of policies and procedures may be needed by schools delivering the EYFS; these are outlined in the statutory guidance. Governing bodies of establishments delivering the EYFS should

²² Section 403 of the Education Act 1996 and section 148 of the Learning and Skills Act 2000.

²³ The EYFS is given legal force through an Order and Regulations made under the Childcare Act 2006. These are: The Early Years Foundation Stage (Welfare Requirements) Regulations 2012, The Early Years Foundation Stage (Learning and Development Requirements) Order 2007 as amended by The Early Years Foundation Stage (Learning and Development Requirements) (Amendment) Order 2008 and The Early Years Foundation Stage (Learning and Development Requirements) (Amendment) Order 2012.

reassure themselves that the policies and procedures are in place. Further [guidance and supporting materials](#) are available on our website.

3.5 Children with statements of special educational need (SEN)

Legally, a child is defined as having SEN if he or she has a learning difficulty that calls for special educational provision to be made for him or her. A learning difficulty means that the child has significantly greater difficulty in learning than most children of the same age. Or it means that the child has a disability which prevents or hinders him or her from making use of educational facilities of a kind generally provided for children of the same age in schools within the area of the LA.

3.5.1 Responsibilities of the governing body with regard to SEN

Governing bodies of maintained schools have legal duties²⁴ in relation to pupils with SEN. The governing bodies of the great majority of academies have the same responsibilities in relation to pupils with SEN by virtue of their funding agreements. In practice the governing body functions to meet these duties can be delegated to a committee, individual governor or to the headteacher. It should decide, with the headteacher, the school's general policy and approach to meeting children's SEN, including those with and without SEN statements. Statements are documents drawn up by LAs which set out a child's special educational needs and the provision which must be made for the child to meet those needs.

The governing body must set up appropriate staffing and funding arrangements and oversee the school's work. The general duties of governing bodies and the 'responsible person' are set out in full in paragraphs 1:16 to 1:22 of the '[SEN Code of Practice](#)'.

For community, foundation, voluntary schools or maintained nursery schools ('mainstream schools'), the governing body may also appoint a committee to monitor the school's work for children with SEN.

In summary, governing bodies of mainstream schools have the following legal duties under the Education Act 1996. The vast majority of academies must also meet these requirements by virtue of their funding agreement. They must:

- use best endeavours in exercising their functions to ensure that the necessary special education provision is made for any pupil who has SEN;
- ensure that parents are notified by the school when special educational provision is being made for their child, because it is considered that he or she has SEN;
- make sure that the responsible person makes all staff who are likely to teach the

²⁴ under the Education Act 1996.

- pupil aware of the pupil's special educational needs;
- make sure that the teachers in the school are aware of the importance of identifying pupils who have SEN and of providing appropriate teaching;
 - designate a member of staff at the school (to be known as the 'special educational needs co-ordinator') as having responsibility for co-ordinating the provision for pupils with SEN (see below);
 - consult the LA and the governing bodies of other schools when it seems necessary to co-ordinate special educational teaching in the area;
 - ensure that pupils with SEN join in the everyday activities of the school together with children without SEN, as far as is compatible with: them receiving the necessary special educational provision; the provision of efficient education for all other pupils; and the efficient use of resources;
 - publish information on the school's SEN policy on its website, and reflect any changes to the policy as soon as is practicable and complete an annual update;
 - take account of the '[SEN Code of Practice](#)' when carrying out their duties towards all pupils with SEN; and
 - where an LA or the First-tier Tribunal (SEND) names a maintained school as the school the child will attend on an SEN statement the governing body must admit the child to the school. Before naming a maintained school on a statement the LA must consult the governing body of the school (see below).

The responsible person is generally the headteacher, but may be the chair of the governing body or a governor appointed by the governing body to take that responsibility. If the responsible person is the headteacher, it is advisable to have one other governor with an interest in SEN.

Governing bodies and academy trusts are also under a duty to make reasonable adjustments to avoid substantial disadvantages experienced by disabled pupils. Governing bodies and academy trusts are required, where reasonable, to provide auxiliary aids and services as part of the 'reasonable adjustments' duty. Technical guidance on schools' reasonable adjustments duty is available from the [Equality and Human Rights Commission](#).

3.5.2 Admission of pupils with SEN: duties of Admission Authorities (including governing bodies)

The '[School Admissions Code](#)' that came into force in February 2012²⁵ makes clear that all children whose statement of SEN names the school must be admitted. The admission of pupils with SEN but without statements should be handled in the same way as for all other pupils. If the school is not oversubscribed, all applicants must be offered a place (with the exception of designated grammar schools). Admission authorities must ensure that their arrangements will not disadvantage unfairly, or discriminate against a child with a disability or special educational needs. The 'Admissions Code' applies to all maintained schools in England. Academies must, by their funding agreement, comply with the Code and the law relating to admissions. Information about school admissions is in section 6 of this Handbook.

3.5.3 Admission of SEN pupils with statements to mainstream schools

Where the LA names a maintained mainstream school the governing body of the school is under a duty to admit the child²⁶. LAs are under a duty to consult the governing body of a maintained school before naming the school on the statement²⁷. Academies are obliged, through their funding agreements, to admit children whose statements name them.

The general responsibilities of the governing body in the admission of pupils with SEN to mainstream schools are set out in the 'Admissions Code' and the Equality Act. They must draw up and implement an 'accessibility plan' for disabled pupils that aims to:

- increase the extent to which disabled pupils can participate in the curriculum;
- improve the physical environment of schools to enable disabled pupils to take better advantage of education, benefits, facilities and services provided; and
- improve the availability of accessible information to disabled pupils.

Schools must also take into account the need to provide adequate resources for implementing plans and must regularly review them. An accessibility plan may be a freestanding document but may also be published as part of another document such as the school development plan.

²⁵ The Codes are supported by the School Admissions (Admissions Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012, and the School Admissions (Appeal Arrangements) (England) Regulations 2012.

²⁶ Section 324 (5)(b) of the Education Act 1996.

²⁷ Schedule 27, 3A of the Education Act 1996.

3.5.4 Admission to special schools for pupils with SEN

The overwhelming majority of children admitted to maintained special schools have SEN statements and the governing body has the same duty to admit as maintained mainstream schools (see above). Children without statements can be admitted to special schools in specific circumstances – for the purposes of assessment or following a change of circumstances²⁸. Children are admitted to academy special schools through being named on a statement. The academy has an obligation to admit under the terms of its funding agreement.

3.5.5 Teachers in mainstream schools with responsibility for SEN

The governing body of a community, foundation or voluntary school or a maintained nursery school must designate a member of staff at the school, known as the special educational needs co-ordinator (SENCO)²⁹. The SENCO has lead responsibility for co-ordinating the provision for pupils with SEN and disabilities. Regulations³⁰ require that the lead person designated by the governing body as SENCO must be either a qualified teacher at the school, or the headteacher or acting headteacher. These requirements also extend to academies through their funding agreement.

The governing body should reassure itself that the key responsibilities of the SENCO are drawn up and monitor the effectiveness of the way the responsibilities are carried out against a list of illustrative activities, as described in the ‘SEN Code of Practice’ (chapter 1, paragraphs 16–22).

Governing bodies should also reassure themselves that any newly appointed SENCO gains a nationally approved masters-level training qualification, known as the ‘National Award for Special Educational Needs Co-ordination’ within three years of appointment³¹. Experienced SENCOs who have been in post in a school for more than a year and then transferred to another school after the regulations came into force, are not subject to the training requirement.

²⁸ Regulation 12A of the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001.

²⁹ Section 317 of the Education Act 1996 (as amended by section 173 of the Education and Inspections Act 2006).

³⁰ Education (Special Educational Needs Co-ordinators) (England) Regulations 2008.

³¹ The Education (Special Educational Needs Co-ordinators) (England) (Amendment) Regulations 2009.

3.6 Looked after children

3.6.1 School admissions

Admission authorities are required, with some limited exceptions, to give priority to looked after children, children adopted from care under the Adoption and Children Act 2002 and those who left care under a 'Special Guardianship Order' or 'Residence Order' in their oversubscription criteria³². The practical effect of this is that in a school's published admission arrangements, the first and highest oversubscription criterion must be looked after children (see paragraph 1.7 of the 'Admissions Code'). Provisions also apply to schools with a religious character and grammar schools (paragraphs 1.37 and 1.19 of the 'Admissions Code').

The law³³ gives an LA which looks after a child the right to direct the admission authority of any maintained school to give them a place. This applies, even where the school is currently full, or is in another LA area (see paragraph 3.19 of the 'School Admission Code 2012').

Governing bodies of all maintained schools are required to appoint a designated teacher to promote the educational achievement of looked after children who are on the school roll³⁴. Academies are under an obligation to do this through their funding agreements. [Statutory guidance](#) on the roles and responsibilities of designated teachers is available on our website.

Governing bodies must as a minimum ensure that:

- a designated teacher is appointed;
- the teacher undertakes appropriate training;
- it considers an annual report from the designated teacher; and
- acts on issues that the report raises.

Regulations specify that the role should be carried out by:

- a qualified teacher, within the meaning of section 132 of the Education Act 2002, who has completed the appropriate induction period (if required); or
- the headteacher or acting headteacher at the school.

³² The School Admissions (School Admissions and Co-ordination of Admission Arrangements)(England) Regulations 2012.

³³ Section 97A of the School Standards and Framework Act 1998.

³⁴ The Children and Young Persons Act 2008, and the Designated Teacher (Looked After Pupils etc.) (England) Regulations 2009.

All looked after children have a personal education plan (PEP) as part of the care plan that is drawn up by the LA that looks after them. The PEP forms part of the child's education record³⁵.

3.7 Assessing attainment

Teachers should monitor their pupils' progress in each subject as a normal part of their teaching. By law, schools must assess pupils' attainment at key points in their compulsory education. These key points are when pupils have completed the early years foundation stage and the programmes of study for key stages 1, 2 and 3, usually at the ages of 5, 7, 11 and 14. There is also a statutory check of phonics at the end of year 1 (age 6). This process is known as statutory assessment.

While governors are not directly involved in these processes, they may find our [guidance](#) provides useful background in the context of their responsibilities to drive up school and pupil level performance.

3.8 School inspection

3.8.1 Section 5 inspections

Routine school inspections of maintained schools and academies are carried out under section 5 of the Education Act 2005. The scope of the inspection is defined in that statute and is set out in more detail in 'The framework for school inspection' (the Framework), which is published by Ofsted. There is also a handbook setting out further details including the criteria that inspectors will consider in looking at a governing body's effectiveness. Both documents are on the [Ofsted website](#).

Recent regulation³⁶ exempts from routine inspection all outstanding maintained primary and secondary schools and academies. This exemption also applies to academy converters whose predecessor school achieved an 'outstanding' grade overall at its most recent section 5 inspection. However, certain types of schools are not exempt, regardless of the inspection grade awarded at the most recent inspection. These are special schools (including maintained residential special schools and non-maintained special schools with residential provision), pupil referral units and maintained nursery schools.

Since September 2012, the quality of school governance has been central to the overall inspection judgement on the overall leadership and management of a school. Every inspection report contains an explicit comment on the quality of governance, and where

³⁵ the Education (Pupil Information) (England) Regulations 2005.

³⁶ The Education (Exemption from School Inspection) (England) Regulations 2012.

governance is weak in a school that ‘requires improvement’, inspectors may recommend an external review of governance arrangements.

Timing of Inspections

Inspection Grade	Inspection frequency	Monitoring frequency	Risk Assessment
1- Outstanding	Exempt	n/a	3rd year after inspection and annually thereafter
2- Good	Within 3-5 years	n/a	3rd year after inspection and annually thereafter
3- Requires improvement	Within 2 years	If leadership weak, initial monitoring inspection 4-6 weeks after publication of section 5 report, then dependent on leadership capacity	Ongoing through monitoring visits
4- Inadequate (Serious weaknesses and Special Measures)	Between 18 months and 2 years	1-5 monitoring visits before section 5 inspection dependent on leadership capacity	n/a

Table 2 – Timing of inspections

Ofsted may inspect without notice but in most cases schools receive notice of around half a day. Notification will normally be to the headteacher, who is expected to inform the governing body.

A maintained nursery school that was judged to be ‘good’ or ‘outstanding’ at its last full section 5 inspection will be inspected within three years from the end of the school year in which it was last inspected.

Pupil referral units and special schools (including maintained residential special schools and non-maintained special schools with residential provision) will normally be inspected within three school years from the end of the school year in which the last inspection of the school took place.

When notice is given, under section 6, the governing body must take reasonable steps to notify:

- parents of registered pupils at the school about the time of the inspection; and

- any other persons as may be prescribed.

Ofsted must ensure that a copy of the final report is sent to:

- the governing body;
- the headteacher;
- the LA;
- those who appoint the foundation governors and the appropriate appointing authority, if different; and
- the EFA, if the school has a sixth-form.

When it receives the report, the governing body³⁷, must arrange for:

- the parents of all pupils to be sent a copy of it within five working days;
- the report to be made available to any member of the public who wishes to see it, at such times and places as may be reasonable; and
- copies of the report to be provided to anyone who asks.

From 1 September 2012, the amended School Information regulations³⁸ require governing bodies of maintained schools to publish specified information on a website. This includes publishing details of where and how parents may access the most recent report about the school published by Ofsted, for example, by a link to the school's report on the [Ofsted website](#). The governing body should also consider translating the report into other languages where appropriate.

Interim statements

Where Ofsted decides that, following the risk assessment, a school previously judged to be 'good' is not to be inspected; it will publish an interim assessment letter. Interim assessment letters are usually published towards the end of the third year from the end of the school year in which the last section 5 inspection took place. The interim assessment letter explains that the school will not be inspected during the period of a year from the date of publication, unless Ofsted receives information indicating that an earlier inspection is necessary. Those responsible for the governance of the school, such as the governing body or appropriate authority, must send a copy of the interim assessment letter to all registered parents of pupils at the school within five working days of receiving it.

³⁷ Section 14 of the Education Act 2005.

³⁸ The School Information (England) (Amendment) Regulations 2012.

3.8.2 Other Ofsted inspections (section 8 inspections)

In addition to the regular programme of section 5 inspections, Ofsted inspects schools for a variety of reasons, such as:

- to gather evidence for reports and advice on curriculum subjects;
- to assess specific themes and initiatives, for example, literacy and numeracy in primary schools; and
- to monitor progress in ‘satisfactory’ schools and those causing concern.

Outstanding schools are not exempt from section 8 inspections. Section 8 inspections are published on Ofsted's website.

3.8.3 Schools causing concern

We have published statutory guidance for LAs, relating to maintained schools causing concern. By ‘schools causing concern’ we are referring not just to schools ‘eligible for intervention’³⁹ but also those about which the LA and/or the Secretary of State have other serious concerns which need to be addressed. This might be where attainment levels are consistently below the floor standards, where there has been a serious drop in performance or where the performance is not meeting the expected standards of comparable schools. The ‘[Schools Causing Concern - guidance for local authorities](#)’ sets out the legislative requirements for intervening in schools that are causing concern and are eligible for intervention.

An explanation of the criteria for the current [key stage 2](#) and [key stage 4](#) accountability measures are available on our website. Governing bodies are also encouraged to read and become familiar with the guidance and the legislation to which it relates.

3.8.4 Section 48 inspections

The governing body of a voluntary or foundation school or academy that has been designated as having a religious character is responsible for making sure that the content of the school's act of collective worship, and any denominational religious education provided for pupils, is inspected approximately every five years⁴⁰ (a ‘section 48 inspection’). These aspects of the school's provision will not be included in the section 5 inspection arranged by Ofsted. The governing body may arrange for the section 48 inspection also to cover the spiritual, moral, social and cultural development of pupils at the school. The contractual arrangements for the carrying out of section 48 inspections, including fees, are a matter for the governing body. When choosing an inspector for the section 48 inspection, the governing body (or in the case of a voluntary-controlled school,

³⁹ As defined in Part 4 of the Education and Inspections Act 2006.

⁴⁰ Section 48 of the Education Act 2005. This applies to academies via clauses in their funding agreement.

the foundation governors) must consult one of the following bodies shown in Table 3.

School designation	Consultation body
Church of England or Roman Catholic	The appropriate diocesan authority
Jewish	Jewish Studies Education Inspection Service
Methodist	Education Secretary to the Methodist Church
Muslim	Association of Muslim Schools
Sikh	Network of Sikh Organisations
Seventh-day Adventist	Education Department of the British Union Conference of Seventh-day Adventists

Table 3 – Consultation bodies for section 48 inspections

A grant is available towards the cost of the section 48 inspection. The process for claiming the grant is managed by the individual faith groups. Claims are made using grant form [DRE1](#).

An inspection report must be prepared within 15 working days of the end of the inspection. Under section 49, the governing body must publish this in the same way as for section 5 inspections.

3.8.5 Ofsted’s involvement in parental complaints about schools

By law, and in certain circumstances, Ofsted is able to investigate complaints by parents about their child’s school for the purpose of deciding whether to use its inspection powers. It has powers to obtain information to facilitate an investigation. Governors may find it useful to familiarise themselves with Ofsted’s [guidance](#) to parents.

If requested to do so, the governing body must provide Ofsted with any information held by it which Ofsted specifies and any other information that the school considers to be relevant to the investigation of a complaint.

Should Ofsted consider it appropriate for the purpose of an investigation that Ofsted meets with parents, the governing body (or in the case of a school which does not have a delegated budget, the LA) must co-operate with Ofsted in arranging the meeting. This includes allowing a meeting to take place on the school premises, fixing a date for the meeting and notifying parents and the LA of the meeting. A representative of the governing body and the LA may also attend the meeting.

If Ofsted prepares a report of an investigation, that report must be passed to the governing body (or in the case of a school which does not have a delegated budget, the LA). The body must then send a copy of the Ofsted report to all registered parents.

Section 4 - Pupil wellbeing

4.1 Promoting the general wellbeing of pupils

The Education and Inspections Act 2006 places a duty on governing bodies of maintained schools to promote wellbeing. 'Wellbeing' is defined in the Children Act 2004 as:

- physical and mental health and emotional wellbeing;
- protection from harm and neglect;
- education, training and recreation;
- the contribution children make to society; and
- social and economic wellbeing.

Section 4 of that Act explains which issues governors need to consider, to reassure themselves that pupils are adequately being cared for and protected from harm while in school. Education, training and recreation are covered in section 3 of this handbook.

4.2 Behaviour and discipline

An academy trust must make sure that a written policy is drawn up and carried out that promotes good behaviour among pupils and defines the sanctions to be adopted where pupils misbehave⁴¹.

Maintained school governing bodies must make sure that their school has policies designed to promote good behaviour and discipline among pupils. These policies must include the school's approach to the use of reasonable force to control or restrain pupils. Guidance on reasonable force is in '[Use of Reasonable Force – Advice for headteachers, staff and governing bodies](#)'. Maintained schools should not have a 'no contact' policy.

The governing body must also make, and periodically review, a written statement of principles to help the headteacher determine the measures that make up the school's behaviour policy⁴². This duty cannot be delegated. The governing body must consult the headteacher, other appropriate members of staff, parents and all registered pupils before making or changing this statement of principles⁴³. It must also publish the statement on a website⁴⁴. Information on these responsibilities and statutory guidance to which the

⁴¹ The Education (Independent School Standards) (England) Regulations 2010.

⁴² Subject to the passage of legislation, this requirement may be repealed during 2013/2014.

⁴³ Section 88 of the Education and Inspections Act 2006.

⁴⁴ The School Information (England) Regulations 2008 as amended by the School Information (England) (Amendment) Regulations 2012.

governing body must have regard is given in '[Behaviour and Discipline in Schools: Guidance for Governing Bodies](#)' issued by the Secretary of State.

4.2.1 Directing pupils off-site to improve their behaviour

The legislation for directing a pupil off-site does not apply to academies. An academy may, however, direct a pupil off-site under general powers in their Memorandum and Articles of Association.

A maintained school governing body may send pupils to provision outside school premises that is aimed at improving their behaviour ('directing off-site'⁴⁵)⁴⁶. It should make sure that the pupil continues to receive a good education whilst addressing the needs that require intervention. The governing body may direct a pupil off-site without the parent's consent but should, where possible, engage parents in the process. There are specific requirements in relation to notifying parents and reviewing the placement. [Statutory guidance](#) for maintained schools is available on our website.

The requirement to review a placement every 30 days was removed in January 2013. A placement may continue beyond the end of the academic year in which it is made. Further information on governors' powers and responsibilities and statutory guidance to which the governing body must have regard, is provided in '[Alternative Provision: A Guide for Local Authorities, Headteachers and Governing Bodies of Schools, Pupil Referral Units and Other Providers of Alternative Provision](#)'.

4.2.2 Excluding pupils

An explanation of governing bodies' and academy trusts' legal duties in relation to exclusion, as well as statutory guidance on performing these duties, is provided in '[Exclusion from maintained schools, Academies and pupil referral units in England: A guide for those with legal responsibilities in relation to exclusion](#)'.

The governing body has key responsibilities in relation to reviewing headteachers' exclusion decisions⁴⁷ and must arrange suitable full-time education for excluded pupils from the sixth school day of a fixed-period exclusion⁴⁸.

Academy trusts are also responsible for arranging an independent review panel to consider permanent exclusions, where requested by parents. For maintained schools, this duty rests with the LA.

⁴⁵ This power is routinely delegated to the headteacher.

⁴⁶ Section 29A of the Education Act 2002.

⁴⁷ Section 51A of the Education Act 2002 and The School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012.

⁴⁸ Section 100 of the Education and Inspections Act 2006.

Governing bodies have a wider role to hold headteachers to account for the lawful use of exclusion. Exclusion must be for disciplinary reason and all exclusions must be done in line with the legal requirements. Where a pupil is removed from the school premises without being excluded there needs to be a lawful basis for this decision, for example, under the powers of a maintained school to direct a pupil offsite to improve their behaviour (section 4.2.1).

4.2.3 School attendance

The governing body of a maintained school or academy trust must reassure itself that the school keeps admission and attendance registers in accordance with the regulations⁴⁹. Further information and guidance is available in the '[Advice on school attendance](#)' and [school attendance](#) section of our website. The governing body must make sure that the school provides information requested by the Secretary of State, including the termly absence data we collect⁵⁰.

4.2.4 Parenting measures

The maintained school governing body, academy trust, headteacher and LA have powers to intervene where a pupil's behaviour or attendance at school becomes problematic⁵¹. Information on parenting contracts, parenting orders and penalty notices are in section 3 of the statutory guidance '[Advice on school attendance](#)'. Governing bodies, academy trusts, headteachers and LAs must have regard to it when carrying out their duties.

4.3 The school day and school year

Academies set their own school day and term dates. The provisions on school sessions do not apply to them. The headteacher of a maintained school will recommend the length of the school day, including session times and breaks. The governing body must agree the recommendation. School employers determine the term dates⁵². Maintained schools must open for at least 380 sessions (190 days) in a school year⁵³. The school year must begin after July. If a school is prevented from meeting and cannot make up the lost session(s) it can be deemed to have been open for the required 380 sessions.

⁴⁹ Education (Pupil Registration) (England) Regulations 2006.

⁵⁰ Section 538 of the Education Act 1996.

⁵¹ Sections 18-23 of the Anti-social Behaviour Act 2003.

⁵² Section 32 of the Education Act 2002.

⁵³ Education (School Day and School Year) (England) Regulations 1999.

4.4 School food and milk

Maintained school governing bodies and academies must provide paid-for lunches for registered pupils, including nursery pupils who receive education both before and after lunch. This only applies where the parents request them and it would be unreasonable not to provide them. These meals must be free for pupils who receive, or whose parents receive, an eligible benefit. Maintained schools and academies are not obliged to offer milk to pupils. Where they choose to, it must be provided free of charge to pupils who receive or whose parents receive an eligible benefit. Governing bodies of maintained schools should ensure that all food provided by the school meets nutritional standards⁵⁴.

4.5 School uniform

In all schools, governing bodies decide whether there should be a school uniform and other rules relating to pupils' appearance and, if so, what they should be. [Non-statutory guidance](#) on school uniform and related policies is available on our website.

4.6 Pupil health and safety

4.6.1 Liability for health and safety

The main legislation covering this area is the Health and Safety at Work etc. Act 1974 and regulations made under that Act. The employer is responsible for health and safety.

Information about the law on pupil health and safety is in [departmental advice](#) on Health and Safety for Schools. This advice summarises health and safety law relevant to schools and explains how it affects governing bodies as well as LAs, headteachers and other school staff. It covers activities that take place on school premises as well as school trips. The advice applies to all state funded schools. Where the school is the employer, the governing body must make sure that the school has a policy on health and safety.

4.6.2 Pupils unable to attend school through ill health

The duty to provide suitable education for children of compulsory school age who cannot attend school due to illness or injury (alternative provision) rests with LAs. All schools, including academies, have a key role in ensuring that children on their roll with medical needs also receive a good education. They should involve the relevant LA without delay when it is clear that a pupil's health will prevent them from attending school for 15 days or more.

⁵⁴ The Education (Nutritional Standards and Requirements for school Food)(England) Regulations 2007 (SI 2007/2359) as amended by the 2008 regulations (SI 2008/1800) and the 2011 regulations (SI 2011/1190).

4.6.3 Supporting pupils in school with additional health needs

Some pupils have additional health needs and may require medicines, adaptations or support to keep well. Governing bodies must oversee the development of policies that cover their own circumstances. Having an additional health needs policy (or including information in health and safety and/or SEN policies) helps ensure consistent arrangements are in place. Where the school is the employer the governing body will be directly responsible for the policy. For other schools, the responsibility will usually be delegated by the LA. The policy should address emergency procedures, training, supervision, record-keeping, including storage and disposal. It should also set up a named staff member to coordinate health care needs and to link with parents.

4.6.4 First aid

Where they are the employer, governing bodies have overall responsibility for first-aid under the Health and Safety (First Aid) Regulations 1981. The regulations set out first-aid provision in the work place, and require employers to provide adequate and appropriate equipment, facilities and qualified first-aid personnel. It is recommended that schools treat pupils as if they were employees for the purposes of first-aid and provide first-aid materials and expertise as appropriate, based on risk assessment. This responsibility may be delegated by the LA where they are the employer.

4.6.5 Pupils with disabilities and special educational needs (SEN)

The governing body must reassure itself that the school prepares and implements an accessibility strategy to improve the physical environment of the school for pupils with disabilities and SEN⁵⁵. This should include consideration of their particular health and safety needs on the school premises and how these can be met.

Governors of schools providing extended services must also consider their duties under the Equality Act 2010. In particular, whether the proposed extended services impact upon their functions and responsibilities towards their pupils, users of these services or their employees. When services are provided by a third party on schools' premises, either independently of the school or on behalf of the school, governors should establish who will be regarded as the service provider with the responsibility to make 'reasonable adjustments' and/or access improvements for disabled users, pupils or employees.

4.6.6 School security

In community, voluntary-controlled and community special schools, the responsibility to make the school secure ultimately rests with the LA as employer. It may however

⁵⁵ The Equalities Act 2010

delegate these duties to the schools. With all other schools, including academies, responsibility rests with the schools.

All schools have a common law power to bar troublesome adults from the school premises. Governing bodies of foundation, voluntary-aided and foundation special schools also have a power under section 547 of the Education Act 1996 to authorise someone to remove from school premises any intruder causing a disturbance or nuisance. In community and voluntary-controlled schools this power is exercised by the LA unless it is delegated to the school. This power of removal also extends to academies. [Departmental advice](#) on this power is on our website.

Schools using automated biometric recognition systems should be aware of their legal duties under the Protection of Freedoms Act 2012. [Departmental advice](#) about these duties is on our website.

4.6.7 Fire Safety

Governors of all schools must reassure themselves that annual risk assessments are carried out to make sure that the fire precautions needed in the school are in place.

4.6.8 Playground supervision

We do not have a recommendation about the number of adults who should be in charge of pupils during lunch and other breaks. This should be determined locally by the school, having assessed risks and making sure that competent supervisors are available.

4.7 Promoting community cohesion

All state funded schools are required to promote community cohesion. The duty was first introduced through the Education and Inspections Act 2006 and came into effect in September 2007. The governing body (or school executive, where the governing body opts to delegate the responsibility) decides how to fulfil this duty in the light of their local circumstances.

4.8 Safeguarding and promoting the welfare of pupils

4.8.1 General duty

Section 175 of the Education Act 2002 places a duty on the governing bodies of maintained schools, and regulations under section 157, about safeguarding pupils in Independent Schools (which include academies) requires academy trusts to have arrangements in place to ensure that they:

- carry out their functions with a view to safeguarding and promoting the welfare of children; and

- have regard to the statutory guidance issued by the Secretary of State in considering what arrangements they need to make for the purpose of that section.

[Statutory guidance](#), 'Safeguarding Children and Safer Recruitment in Education', places statutory requirements on all governing bodies, which must make sure their school has policies and procedures in place and take into account any statutory guidance issued by the Secretary of State, any LA guidance and locally agreed interagency procedures.

4.8.2 Allegations against staff and volunteers

Employers have a duty of care to their employees. Governing bodies should make sure that the school provides effective support for anyone facing an allegation. They must also provide them with a named contact within school if they are suspended. If an allegation is made the headteacher, chair of governors or chair of the management committee (the 'case manager') should immediately discuss the case with the Local Authority Designated Officer (LADO). This initial discussion allows the LADO and case manager to consider the nature, content and context of the allegation and agree a course of action.

Statutory guidance '[Dealing with Allegations of Abuse against Teachers and other Staff](#)' sets out the procedures all schools must have in place for dealing with allegations.

The procedures should make it clear that all allegations should be reported straight away, normally to the headteacher. The procedures should also identify the person, often the chair of governors, to whom reports should be made in the absence of the headteacher, or in cases where the headteacher themselves are the subject of the allegation or concern. Procedures should also include contact details for the LADO responsible for providing advice and monitoring cases.

Chairs of governing bodies are expected to work with the headteacher (unless the allegation concerns the headteacher) and LADO to confirm the facts about individual cases. They are also expected to reach a joint decision on the way forward in each case. Chairs have a key role in deciding courses of action, including disciplinary action, in those cases where a criminal investigation may not be required. In cases where allegations have been substantiated, the chair should work with the LADO and headteacher to determine whether there are any improvements to be made to the school's procedures or practice to help prevent similar events in the future.

It is helpful if all governing body members have training about safeguarding, whether the governing body acts collectively or an individual member takes the lead. This will make sure they have the knowledge and information needed to perform their functions and understand their responsibilities.

Governors should make sure that a senior member of the school's leadership team is designated to take lead responsibility for dealing with safeguarding issues; providing advice and support to other staff; liaising with the LA; and working with other agencies.

4.8.3 Safe recruitment procedures

A key aspect of safeguarding is the vetting of applicants and prospective volunteers working with children to make sure they are not unsuitable. Guidance about this is in section 5 of this Handbook, and also in 'Safeguarding Children and Safer Recruitment in Education'.

Section 5 - Teachers and support staff

5.1 General

The governing body of a maintained school may delegate all of its functions relating to staff employment in schools⁵⁶ with the exception of:

- establishing a selection panel to appoint a headteacher or deputy headteacher;
- making sure that headteachers benefit from any statutory entitlements and comply with the duties imposed on them which are contained within the '[School Teachers' Pay and Conditions Document](#)' (STPCD);
- responding to any report from the LA that raises serious concerns about the performance of the headteacher;
- establishing procedures for the regulation of conduct and discipline of staff; and
- making sure that safer recruitment procedures are applied.

The main staffing functions of the governing body in a maintained school are set out in the School Staffing (England) Regulations 2009 and supporting '[Guidance on managing staff employment in schools](#)'. Some of this guidance is statutory and governing bodies must have regard to it when exercising their functions under the Regulations. Academy trusts are free to decide which functions they delegate.

Not all governing body duties and responsibilities listed in this section fall from the School Staffing Regulations and supporting guidance. Where this is the case, alternative guidance and regulations are given.

In addition to their responsibilities under employment law, maintained school governing bodies and academy trusts also have responsibilities under the Equality Act 2010. This sets out that employers must not discriminate against employees on any protected grounds (e.g. race or sex) in relation to pay, conditions, dismissals, opportunities, promotion, training or dismissals. Advice for employers on their responsibilities is available on the [ACAS](#) website.

5.2 Appointing staff

Appointing a head teacher is a pivotal decision in the life of a school. It is crucial that a governing body has the skills it needs to carry out a thorough and effective selection process. Governors may need to seek help or training, for example on good interviewing techniques or how to secure meaningful and accurate references. The National

⁵⁶ Regulation 4 of the School Staffing (England) Regulations 2009.

College [recruitment toolkit](#) supports the head teacher selection, assessment and interview process. The toolkit provides expert advice; an action checklist; videos and the publication '[A guide to selecting and recruiting a new headteacher](#)'. Free registration is needed to access the toolkit

Academy trusts are free to appoint staff in accordance with employment law and in line with the requirements set out in their funding agreement.

Every maintained school must have a headteacher⁵⁷. The governing body must notify the LA in writing of any headteacher vacancy, advertise the post in an appropriate manner, and then appoint a selection panel. The governing body must appoint a member of staff to carry out the functions of a headteacher pending the appointment of a headteacher or in the absence of a headteacher.

As part of the appointment process the governing body of a maintained school or academy trust may ask for details about whether a headteacher or teacher at the school has been subject to capability procedures in the previous two years. A maintained school must provide this. The trust of any academy that opens after April 2013 must also provide this information⁵⁸.

Where the LA is the employer⁵⁹, a representative of the authority may attend proceedings relating to the selection or dismissal of any teacher. The governing body must consider any advice offered by the representative. Where the governing body is the employer⁶⁰ and where it has been agreed the LA has advisory rights the governing body must consider any advice offered.

5.2.1 Discrimination in appointments and during service

Employers must be aware of their responsibilities in respect of discrimination within equalities legislation⁶¹ when recruiting staff and throughout the employment relationship.

Employers are not allowed to ask about the health and disability of any candidate until after a job offer has been made, unless such an enquiry is to establish their capability to carry out a function intrinsic to the work concerned. Governing bodies and academy trusts must make 'reasonable adjustments' to their employment arrangements, practices or premises if such changes would help alleviate any disadvantage suffered by a disabled employee compared to a non-disabled person.

⁵⁷ Sections 35(3) and 36(3) Education Act 2002.

⁵⁸ Subject to the terms of its funding agreement an academy that opens earlier than April 2013 may also be required to provide information relating to a teacher's capability procedures.

⁵⁹ Community, voluntary-controlled, community special or maintained nursery schools (section 35 of the Education Act 2002).

⁶⁰ Foundation, voluntary-aided and foundation special schools (section 36 of the Education Act 2002)

⁶¹ The Equality Act 2010.

Legislation⁶² sets out the circumstances in which maintained schools, designated by the Secretary of State as having a religious character, have some leeway to take into account certain religious or denominational considerations in making specified employment decisions relating to their staff (i.e. decisions on appointment, remuneration, promotion and dismissal). Guidance on the subject is provided in Chapter 9 of our [‘Guidance on managing staff employment in schools’](#), entitled ‘Staff at schools with a religious character’.

In relation to academy schools, converters follow the position of the school prior to conversion. New academy schools are able to appoint all their teaching staff on the basis of faith in line with their designation, and can appoint support staff by application of religious criteria, where they can demonstrate a genuine occupational requirement for doing so.

5.2.2 Employment checks

When making appointments, governing bodies and academy trusts must take into account the requirements of equalities legislation and best employment practices.

Once the governing body or academy trust has chosen a preferred candidate, and before any appointment is made, it must:

- check the identity of the candidate;
- their right to work in the United Kingdom⁶³ and whether the candidate has the necessary health and mental fitness to teach⁶⁴; and
- whether any reasonable adjustments are required to allow teaching staff to provide effective and efficient teaching.

Governing bodies and academy trusts should also:

- take up references from the applicant’s current or former employer; and
- consider asking the candidate’s current employer for details of any capability history in the previous two years, and the reasons for this.

When sharing information employers should make sure that they act in accordance with the Data Protection Act 1998 and data protection principles, making sure that the information is provided fairly and lawfully to prospective employers.

⁶² Sections 58 to 60 of the School Standards and Framework Act 1998.

⁶³ Regulations 12 and 24 of the School Staffing (England) Regulations 2009 for maintained schools and for academy schools and AP academies, in line with the requirements set out in their funding agreement.

⁶⁴ The Education (Health Standards) (England) Regulations 2003.

For the majority of work in schools, governing bodies and academy trusts must obtain, for all new appointments, an enhanced Criminal Record check before, or as soon as practicable after appointment, and a barred list check before appointment if the work is within the scope of 'regulated activity' relating to children.⁶⁵ Further guidance on these checks is provided in '[Safeguarding Children and Safer Recruitment in Education](#)' (SCSRE).

The governing body or academy trust is required to carry out additional checks if the applicant has lived outside the UK. Employers have a duty⁶⁶ to check potential employees' documents before employing them, to ensure they have the right to work in the UK. Further guidance on the checks needed to establish the right to work in the UK is available on the [UK Border Agency website](#).

The governing body or academy trust must reassure itself that all appropriate suitability checks have been undertaken and that the school keeps a single central record, detailing the range of checks it has carried out on its staff.

The barred list check is a check that the person is not barred from 'regulated activity' – work that a barred person must not do. From September 2012, the amended definition of regulated activity in relation to children comprises, in summary:

- a. unsupervised activities: teaching, training, instructing, caring for or supervising children, or providing advice/guidance on wellbeing, or driving a vehicle that is being used solely for the purpose of transporting children and their carers/escorts;
- b. work carried out in and for the purposes of a limited range of establishments, where that work gives the opportunity to have contact with children: for example, work in schools, children's homes, childcare premises. This does not include work by volunteers who are supervised to the [required level](#) unless the volunteer provides certain types of personal or health care to a child⁶⁷.

Work under (a) or (b) is regulated activity only if done regularly, with the exception of the provision of healthcare or certain types of personal care (for example, helping a child dress) which is always a regulated activity. The scope of regulated activity has been reduced, as part of moves to scale back disclosure and barring arrangements to common-sense levels. Most work in a school will be work that individuals must not do if they are barred. Schools must refer to the [Disclosure and Barring Service \(DBS\)](#) anyone who has harmed or poses a risk of harm to a child and who has been removed from working (paid or unpaid) in regulated activity, or would have been removed had they not left (see section 5.7). The DBS will consider whether to bar the person. Referrals should

⁶⁵ As defined in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.

⁶⁶ The Immigration, Asylum and Nationality Act 2006.

⁶⁷ The types of personal and health care are specified in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.

be made as soon as possible after the resignation or removal of the individual. Guidance on referrals is provided by the [DBS](#).

5.2.3 The Employer Access Online system

When making appointments, governing bodies and, where applicable, academy trusts will need to reassure themselves that mechanisms are in place within the school to check that any persons employed to teach have the required teaching qualifications and have successfully completed any statutory induction, if required. The National College for Teaching and Leadership's Employer Access Online system can be used to confirm teaching qualifications and the satisfactory completion of the necessary induction period for UK trained teachers.

Governing bodies and academy trusts must always make sure that any person employed to teach is not prohibited from teaching by checking the National College's Employer Access Online system.

[Further information](#) on the lists held and the Employer Access Online system can be accessed from our website. Making these checks is a key public safeguard, alongside criminal record checks, identity checks and the scheme for barring unsuitable persons from working with children, run by the DBS.

5.3 Statutory induction for newly qualified teachers (NQTs)

The governing body or academy trust must be satisfied that the institution in which the induction of NQTs is being served has the capacity to support the NQT and that the headteacher is fulfilling their responsibilities. In addition, charges made by appropriate bodies for their services in respect of induction in maintained schools will be directed to the governing body. The full [statutory guidance](#) is on our website.

5.4 Teacher qualifications

The governing body of a maintained school or non-maintained special school should be aware the teachers must hold qualified teacher status (QTS)⁶⁸ (unless the teacher satisfies one of the requirements or conditions specified in the [Schedule to the appropriate regulations](#)). The need to make sure that any teachers that it employs hold QTS also applies to any academy trust whose funding agreement retains a clause to this effect.

⁶⁸ Regulation 3(1) of the Education (Specified Work) (England) Regulations 2012.

Since 1 April 2012, further education teachers who have been awarded QTLS by the Institute for Learning (IfL) and are members of the IfL are recognised as qualified teachers in schools. This will allow them to be appointed to permanent posts in state maintained schools in England and they will be paid on the qualified teachers' pay scale. They will continue to be recognised as qualified school teachers providing they remain a member of the IfL.

The same statutory requirement to hold QTS is not in place for teachers employed by academies unless the academy's funding agreement retains a clause to that effect. An academy may be required through its funding agreement to employ teachers with QTS, but we may agree to relax this requirement if requested by an academy. Even in academies, special educational needs coordinators and designated teachers for looked after children must have QTS. All teachers in special academies must hold QTS. There is no requirement for teaching staff in free schools to hold QTS.

5.5 Teacher and headteacher appraisal

Academies are free to determine their own appraisal process and may adopt the requirements for maintained schools if they wish.

Governing bodies in maintained schools have a statutory duty⁶⁹ to:

- appoint an external adviser for advice and support on the headteacher's appraisal and to consult that adviser on setting objectives for, and appraisal of, the headteacher;
- inform the headteacher of the standards against which their performance will be assessed;
- set objectives for the headteacher;
- appraise the performance of the headteacher, assessing their performance of their role and responsibilities against the relevant standards and their objectives;
- assess the headteacher's professional development needs and action needed to address them;
- make a recommendation on headteacher's pay, where relevant;
- give the headteacher a written report of their appraisal which includes the assessments and recommendation above;
- determine the appraisal period that applies to teachers (including headteachers)⁷⁰;

⁶⁹ The Education (School Teachers' Appraisal) (England) Regulations 2012.

⁷⁰ Regulation 5 of The Education (School Teachers' Appraisal) (England) Regulations 2012.

- adopt a document that sets out the appraisal process for teachers (including headteachers) and make that document available to teachers; and
- make sure that headteachers carry out their duties in respect of appraising other teachers.

In practice, governing bodies will want, in relation to the appraisal of the headteacher, to:

- satisfy themselves that the external advisor has the skills, experience and objectivity to provide them with advice and support;
- consider whether to delegate the headteacher's appraisal to a sub-group;
- satisfy themselves that the headteacher's objectives are SMART⁷¹;
- decide which standards they will use to assess the headteacher's performance. They must assess headteachers' performance against the Teachers' Standards and may also wish to use the National Standards for Headteachers;
- decide what arrangements to make for observing the headteacher's performance, including any arrangements for classroom observation where headteachers teach; and
- satisfy themselves that appraisal evidence informs other decisions for example, on professional development and pay.

In relation to appraisal more widely, governing bodies will want to:

- scrutinise the content of the school's draft appraisal policy carefully to make sure that it will support effective appraisal in the school, challenging the headteacher as appropriate. In particular they will want to satisfy themselves with:
 - the provision that is made for the appraisal of teacher performance against the Teachers' Standards;
 - the arrangements being made for classroom observation now that there is no annual limit on the amount of observation that can take place;
 - any arrangements for the head to delegate the duty of managing the performance of teachers to others.
- satisfy themselves that the appraisal policy is being implemented effectively and fairly in the school, challenging the headteacher on how objectives and assessments are quality assured and moderated;
- satisfy themselves that appraisal evidence informs other decisions for example, on professional development and pay; and
- keep the policy under review and amend it as necessary.

⁷¹ Specific, measurable, achievable, realistic, time-bound.

5.6 Pay and conditions of service

New pay progression arrangements come into force with effect from 1 September 2013. The arrangements apply to maintained schools. September 2013 will be the last time that annual pay increments are awarded to teachers based on the length of their service. After this, decisions about teachers' pay progression will be linked to performance, with their first annual performance-related progression pay increases being made in September 2014. We have published [non-statutory advice](#) to help governing bodies to determine their approach to teachers' pay.

The relevant body (usually the governing body) must adopt and take full responsibility for maintaining, updating and implementing a robust and considered pay policy that:

- sets out clearly the basis on which all decisions that determine pay will be made and communicated to all teachers;
- sets out the extent to which specific functions relating to pay determination will be delegated to others, such as the headteacher;
- explains the role that the relevant body will play in determining decisions relating to individual teachers;
- fully complies with all relevant aspects of equalities legislation;
- sets the date by which it will determine teachers' annual pay review; and
- establishes procedures for addressing teachers' grievances in relation to their pay in accordance with the ACAS Code of Practice.

Such a policy must conform with any statutory provisions that are set out within the STPCD. Governing bodies must assure themselves that the arrangements proposed for linking appraisal to pay progression are robust and can be applied consistently.

All teachers in maintained schools are subject to statutory conditions relating to their professional duties and working time⁷². In addition to these statutory conditions, teachers are subject to other conditions of employment laid down in their contracts of employment, such as those that provide for sick pay and maternity leave. The terms of certain local agreements may also be incorporated into their contracts of employment.

In schools where the LA is the legal employer, the pay and conditions of service for school support staff must be on the scale of grades determined by the LA. In foundation and voluntary-aided schools the governing body is free to determine the pay and conditions of support staff.

⁷² Parts 8 to 10 of the STPCD.

Academy trusts are free to set their own pay and conditions of service for any teachers and support staff⁷³.

5.7 Discipline, grievance, capability procedures and suspending and dismissing staff

The full governing body of maintained schools must approve disciplinary and grievance procedures for staff. Academy trusts may delegate this duty. Maintained school governing bodies must also approve capability procedures for dealing with staff underperformance and provide a procedure to enable staff to appeal against a decision to dismiss them. Governing bodies may adopt our ['Model capability policy for teachers'](#).

Advice for governing bodies about establishing these procedures is provided in ['Guidance on managing staff employment in schools'](#). Governing bodies should be mindful of their obligations under employment law and take into account the ['Advisory, Conciliation and Arbitration Service \(ACAS\) Code of Practice'](#).

Academy trusts are responsible for establishing their own staff procedures and need to take account of the relevant law and guidance.

5.7.1 Trade unions and disputes with staff

Employers are bound to recognise those trades unions with which they have a voluntary recognition agreement or which they are required to recognise by the Central Arbitration Committee. In foundation and voluntary-aided schools it will be the governing body as the employer that will recognise such unions; for community and voluntary-controlled schools it will be the LA.

Trade union recognition and the continuation of consultation and bargaining rights are protected under the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) (2006). This means that for staff transferring from an existing school to an academy trust, any trade union recognition agreements applying to transferring staff will also transfer, as will any collective agreements in force at the time of transfer. The process for trade union recognition is set out in the Trade Union and Labour Relations (Consolidation) Act 1992 (TULR(C)A). Further information about ACAS and the advice it provides on trade union recognition is on the [ACAS](#) website.

⁷³ Where a maintained school converts to an academy, at the point of transfer the existing terms and conditions of teachers and support staff are protected under The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) arrangements. The STPCD will, therefore, remain relevant to any teachers whose contract has not been renegotiated.

If a trade union organises industrial action in a school it must follow the law on balloting for the action to be lawful. Both strike action and action short of strike action may be protected under the same ballot. Unions must give the employer notice of their intention to hold a ballot and the notice must satisfy certain conditions. Industrial action must begin within four weeks of the last date of the ballot and unions must give at least seven days' notice of the beginning of the industrial action to employers.

If the conduct of the ballot does not comply with the statutory requirements, strike action taken as a result of the ballot will be unlawful (subject to provisions excusing small accidental errors in respect of the employees balloted). This means that employers can apply to the court for an injunction preventing the strike action from taking place.

If the industrial action taken is lawful then participants cannot be fairly dismissed for a period of 12 weeks after the start of the action, and longer in some circumstances. Employers are entitled to deduct full pay from any employee participating in strike action for the duration of the action. Employers may also deduct pay from employees participating in action short of a strike.

While employees are not required to tell their employers whether they intend to take strike action, employers are fully entitled to ask staff if they are planning to strike.

5.7.2 Employment tribunals

Employment tribunals hear complaints lodged against employers on the grounds that they have discriminated against individuals or failed to respect their rights under employment law. Tribunals can order an employee to be re-engaged or reinstated, and they can award compensation. Guidance on the role of employment tribunals is on the [GOV.UK](https://www.gov.uk) and [ACAS](https://www.acas.co.uk) websites.

5.8 Teacher regulation

The Education Act 2011, provided for the abolition of the GTCE and for the Secretary of State for Education to take responsibility for the regulation of the teaching profession from 1 April 2012. The National College operates the arrangements on behalf of the Secretary of State for Education. Details are available on [our website](#).

The new regulatory arrangements cover teachers in all schools in England and only deal with cases of serious misconduct. Less serious cases of misconduct, and all cases of incompetence, should be dealt with at a local level. Employers must consider whether to refer a teacher who has been dismissed for serious misconduct, or would have been dismissed had they not resigned. Members of the public, other regulators and the police are also able to refer cases of misconduct. The National College holds a list of teachers who have been prohibited from working in schools in England, and a database of teachers who hold QTS and who have passed induction.

5.8.1 Referring cases to the National College and the Disclosure and Barring Service (DBS)

Allegations of serious misconduct against a teacher may be referred to the National College by any of those listed below:

- a teacher's employer, including an employment or supply agency, has a legal duty to consider whether to refer a case to the National College when they have dismissed a teacher for misconduct, or would have dismissed them had they not resigned first;
- members of the public who think that a case of misconduct by a teacher is serious enough to warrant a prohibition order, although the National College will expect local procedures to have been exhausted before it will consider investigating the case; or
- the police, the DBS and other regulators who are aware of relevant information.

A referral to the DBS must be made if someone has harmed, or poses a risk of harm to a child and who has been removed from working (paid or unpaid) in regulated activity, or would have been removed had they not left. Referrals should be made to both the DBS and the National College in cases where there is alleged serious teacher misconduct as well as harm or risk of harm to a child. Further details are on [our website](#).

5.9 Teachers' Pension Scheme (TPS)

The TPS is an occupational, public service pension scheme for teachers governed by regulations⁷⁴. We have overall responsibility for the TPS whilst the day-to-day administration is undertaken by Capita Teachers' Pensions. Full information regarding the terms of the TPS and the level and range of benefits available are on [TP website](#), which presents information from the perspective of both the member and the employer; employers have a crucial role in the successful administration of the TPS. Details of the full range of employer duties are on the [TP Employer Hub](#).

All employment as a teacher (both full and part time) and regardless of qualified teacher status is covered by the TPS. Membership is voluntary but employment is pensionable by default. A teacher must elect to opt out if they do not wish to contribute to the TPS; this is a personal decision on the part of the teacher and an employer cannot be selective about whether a teacher's employment is pensionable.

In LA maintained schools (including foundation schools), the LA is deemed to be the employer for TPS purposes. This is a statutory requirement that means that the school

⁷⁴ The Teachers' Pensions Regulations 2010.

must work with the LA in all matters relating to the TPS. In academies the employer for TPS purposes is the academy trust.

The TPS contains flexibilities that support employers in managing their workforce and succession planning.

5.9.1 Ill Health Retirement

Teachers who are ill may have to stop working before their normal retirement age. Applications and supporting medical evidence will be considered by Medical Advisors appointed by the Secretary of State for Education and the decision will be made by Teachers' Pensions. There are two different levels of ill health benefits that can be awarded. Advice is available on the [TP website](#).

5.9.2 Retired Teachers and re-employment

Retired teachers may be re-employed. However, those who retired on ill health grounds and have not attained their normal pension age will come within the scope of the TP Regulations upon re-employment. The only ill-health pensioners who may undertake employment, without their entitlement to ill health benefits being automatically affected, are those who retired on ill health grounds before 1 April 1997 (this would be for limited part-time work only). The scheme administrators must be informed of all re-employment and the pension will cease where individuals are considered to no longer be incapacitated. Advice is available on the [TP website](#).

5.9.3 Outsourcing

Employers may choose to outsource some of their education services. This may, however, affect the pension provision in respect of some members depending upon how their eligibility is determined. Advice is available on the [TP website](#).

5.9.4 Premature Retirement

The Teachers (Compensation for Redundancy and Premature Retirement) Regulations 1997 (PRC Regulations) govern premature retirement. Information on these regulations is not covered on the TP website and so an introduction is given here. For further information you should email us

at: PensionsPolicyTeam.CORRESPONDENCE@education.gsi.gov.uk

The PRC regulations apply to all TPS employers, including academies, and provide discretion to award premature retirement benefits to teachers aged 55 or over who are made redundant or whose employment has been terminated early on efficiency grounds.

Mandatory compensation is payable with premature retirement – costs are met by the employer and will reflect the cost to the TPS of allowing the teacher to take their pension

before normal pension age. The further from normal pension age, the higher the amount of mandatory compensation that will have to be paid.

In addition, employers are able to pay discretionary compensation by way of additional pension and lump sum. The decision to increase the teacher's benefits in this way, and by how much, is entirely at the employer's discretion but is subject to certain limits. There are no costs to the TPS in relation to discretionary compensation payments – these are all met by the employer.

Discretionary compensation does **not** apply to HE institutions, accepted independent schools, academies and certain other employers.

Governors should be aware that the costs of premature retirements (including discretionary compensation) may be taken from school budgets if the LA has not agreed to the premature retirement, or if they have good reason to do so (for example, where an LA thinks the discretionary payment is too high)⁷⁵. It is important for the governing body to liaise with its LA regarding any planned premature retirements/redundancy compensation.

Staff appointed several years ago may have contracts which say what payments must be made if teachers take early retirement. The governing body should make sure that any decisions take account of these - legal guidance is advised.

Academies are outside of the scope of the PRC Regulations. An academy may award Premature Retirement Compensation, but does not rely on these regulations for its power to make those discretionary payments and is not constrained by the conditions contained in them. The funding agreement, however, expects that an academy would apply the same criteria used by the LA in which the academy is situated, in its decision making. Where an academy closes with mandatory compensation in payment, the liability transfers to a successor establishment.

5.10 The Local Government Pension Scheme

An academy trust who has entered into academy arrangements is a Scheme employer in the Local Government Pension Scheme (LGPS) and is listed in paragraph 21 of Part 1 of Schedule 2 to the LGPS (Administration) Regulations 2008. This means that the non-teaching staff employed by academy trusts are automatically eligible for membership of the LGPS and existing members in a maintained school retain eligibility when a school becomes an academy. The change in legal status, when a former maintained school is replaced by an academy, means that the academy trust becomes an LGPS employing

⁷⁵ Section 37 of the Education Act 2002.

authority in its own right. Academy trusts for new provision, such as free schools, studio schools and UTCs will also be LGPS employers.

[Detailed advice](#) relating to the LGPS and Frequently Asked Questions (FAQs) can be accessed on our website.

Section 6 - Organisational changes and the use of school premises

6.1 Conversion to academy status

Governing bodies play a pivotal role in deciding whether conversion to academy status is right for their school. The governing body must pass a resolution confirming its desire to convert to academy status before the school can make a formal application to start the conversion process. Any trustees and those who appoint any foundation governors must also give their consent before the governing body can apply.

Maintained school governing bodies considering conversion to academy status must consult people that they think appropriate. Schools with a religious designation must also consult their Diocesan Board or relevant religious authority and must secure that body's consent before submitting an application.

Schools can consult in a number of ways such as via a website, newsletters and face-to-face meetings or discussions. It is important that people being consulted are given all relevant information about what is proposed and have a fair chance to respond. There is no set time for carrying out the consultation, although it is useful to have discussions early in the process. The consultation process must be completed before a funding agreement is signed with the Secretary of State.

The governing body must be able to confirm that a consultation has taken place, when it was carried out and that the views obtained were properly considered. Schools do not have to provide documentary evidence of this as part of the academy conversion process but will need to make sure it is available on request.

Under equalities legislation, public bodies must have 'due regard' to the need to eliminate discrimination, promote equality of opportunity and foster good relations when carrying out their duties. Governing bodies should consider whether they have met the requirements under the Equality Act 2010 or whether any further action needs to be taken in relation to their conversion to academy status.

When a school converts to an academy, TUPE legislation entitles staff to transfer under the same employment terms and conditions. The current employer (the LA in community and voluntary-controlled (VC) schools and the governing body in foundation and voluntary-aided schools) has a statutory obligation to inform their employees' representatives (i.e. trade union or elected representatives) that:

- the transfer is to take place;
- the date of the transfer and the reasons for it;
- the legal economic and social implications of the transfer; and

- whether the current employer, or as the new employer the academy trust, expects to make changes connected to the transfer that will affect the employees' terms and conditions of employment and, if so, what those changes will be.

It is also good practice to provide this information to the employees themselves at an early stage in the process. Employers should consider seeking legal advice to make sure that they can identify the potential implications for employees of the transfer.

Where an employer (current or new) decides that changes are to be made to employees' terms and conditions of employment, it is important to make sure that the process for introducing those changes complies with employment law. This will usually involve consultation both with employees' representatives and with the affected employees.

The National College online resource '[Academy Models & Governance Structures](#)' will help schools considering a move to academy status. Free membership is required to access the resource.

6.2 Other organisational changes

Academy trusts can apply to the Education Funding Agency (EFA) to make changes to their existing arrangements. Detailed information on the type of changes and a [question and answer brief](#) is available on our website.

The different types of maintained school are set out in the introduction to this Handbook. The school type determines the 'prescribed alterations' and significant changes that the governing body can propose. Examples are:

- a change of school type;
- expanding the school;
- a change of age range;
- transfer of site or discontinuance of a split site;
- co-educational to single sex or vice versa;
- changes to SEN or boarding provision etc.; or
- school closure (including in order to add, change or remove religious character).

[Guidance](#) on the roles and processes to be followed are available in the 'Who Can Do What' chart, guidance documents and legislation⁷⁶ available on our website.

⁷⁶ The Education and Inspections Act 2006, the School Organisation (Establishment and Discontinuance of Schools) (England) Regulations 2007, the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007, as amended, and the School Organisation (Removal of Foundation,

6.2.1 Closure of a voluntary or foundation school

In addition to the method above, the governing body of a foundation, VA or VC school may close their school by giving two years' notice. This must follow the process set out in section 30 of the School Standards and Framework Act 1998.

6.2.2 Governing body as decision maker

The governing body of a community, community special, foundation, foundation special, VA or VC school is the decision maker for 'foundation' proposals⁷⁷ unless referred to the schools' adjudicator by the LA in 'prescribed' circumstances⁷⁸.

Following a VA school's governing body decision, in 'prescribed' circumstances, the LA, Roman Catholic and/or Church of England diocese, or the EFA may request referral to the schools' adjudicator. The request must be made within four weeks of the governing body's decision. The governing body must submit the proposals, and any objections or comments relating to them, to the adjudicator within one week of receiving the request.

6.2.3 Right of appeal by a governing body

The governing body of a community, community special, foundation, foundation special, foundation or voluntary school can appeal to the schools' adjudicator if they disagree with the LA's decision on any 'prescribed' alteration or closure proposals for its school. The governing body of a community school (other than a grammar school) can only appeal the LA's decision on enlargement or addition of a sixth-form proposal for its school. Any request for referral must be made within four weeks of the LA's decision.

6.2.4 Revocation of proposals

Where statutory proposals are approved, the proposer must carry them out. If, however, circumstances change significantly and it is difficult or no longer appropriate to carry out approved proposals, the original proposer can publish 'revocation proposals'. Approval of the revocation proposals removes the duty to carry out the original proposals.

Where the governing body of a foundation or voluntary school with a religious character publishes foundation 'revocation proposals', it must notify the local Roman Catholic and/or Church of England diocese, the EFA (where appropriate) and any trustees, of its decision.

Reduction in Number of Foundation Governors and Ability of Foundation to Pay Debts) (England) Regulations 2007.

⁷⁷ A change of category to foundation; the acquisition of a Trust or acquisition of a foundation majority

⁷⁸ Schedule 1, paragraph 10 of The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007, as amended.

6.2.5 Removal of a trust or reduction in the number of foundation governors

The governing body of a foundation school may remove the Trust or alter the school's instrument of government so that the Trust no longer appoints the majority of governors. This would apply where they believe it to be in the best interests of the school. It applies only to Trust schools that have been established or have acquired their Trust under the Education and Inspections Act 2006. This is a statutory process⁷⁹. When a Trust is removed, the school becomes a foundation school without a foundation.

6.3 Control and community use of school premises

6.3.1 Day-to-day control of school premises

Academy trusts are responsible for the running of the school and have control over the land and other assets.

All maintained school governing bodies control the occupation and use of premises during and outside school hours. This means that governing bodies have control over what happens in school buildings and grounds. They are also responsible for deciding how school facilities are used. There are limited exceptions to this, such as:

- in a school where a trust deed transfers control to someone other than the governing body;
- where a Transfer of Control Agreement (TofCA) has been made (see below);
- where the LA issues directions⁸⁰ on how school premises should be used, e.g. regular booking for youth or community groups; or
- where the school is needed for local or general elections.

6.3.2 Use of premises for extended activities and community services

Schools can accommodate extended and community services. Examples include after-school clubs, adult education, out-of-school childcare (including breakfast clubs and holiday care), sport and youth clubs. Some schools offer or rent out their facilities to voluntary organisations.

⁷⁹the School Organisation (Removal of Foundation, Reduction in Number of Foundation Governors and Ability of Foundations to Pay Debts) (England) Regulations 2007.

⁸⁰ Directions should be reasonable and not interfere too much with the governing body's control. For example, the LA should not require premises to be made available to it if this would mean the governing body breaking a booking agreement.

These arrangements can benefit schools, their pupils and parents, and their local communities. Schools offering extended services may benefit from improved behaviour and attendance. These arrangements can also enable schools to make the best use of their facilities, which may otherwise be underused before and after the school day and in school holidays.

Governing bodies may not use their delegated budget shares for anything other than the purposes of the school. The term 'purposes of the school' would normally be interpreted as including all activities that bring an educational benefit to pupils at the school. The term also includes spending on pupils registered at other maintained schools and providing community facilities for charitable services⁸¹ (see below).

Governing bodies can charge for the provision of extended and community services⁸².

An academy trust's Articles of Association set out the powers that the trust may exercise in pursuit of its charitable object. The current model articles allow the academy trust 'to provide educational facilities and services to students of all ages and the wider community for the public benefit'.

Academies should also consult their funding agreement. The current model funding agreement says that the academy 'will be at the heart of its community, promoting community cohesion and sharing facilities with other schools and the wider community'. The funding agreement will set out how the grant available from the Secretary of State can be used.

6.3.3 Transfer of control agreements

Governing bodies can enter into a Transfer of Control Agreement (TofCA) as a way of sharing control of the school premises with another body, or transferring control to it. The other body, known as the 'controlling body', will continue to occupy and use the premises during the times specified in the agreement. Transferring control of the premises to local community groups, sports associations and service providers can allow school facilities to be used without needing ongoing management or administrative time from the school staff. The governing body of a community school must obtain the LA's consent before entering into a TofCA that transfers control during school hours.

It may not be necessary for a school to enter into a TofCA to enable another organisation to use their premises. Alternative options for a school include retaining overall control of the premises while subletting use of part of their premises to another organisation; or entering into a Service Level Agreement with another organisation.

⁸¹ See section 27 of the Education Act 2002.

⁸² See section 27(3) of the Education Act 2002.

6.4 Provision of childcare and other community services

Many schools and academies offer comprehensive programmes of before and after school and holiday care, and other activities, throughout the year. These programmes support pupils and parents, place the schools and academies at the hearts of their communities, and can generate profits which can be reinvested to improve services.

In deciding what, if any, extended activities to offer and in making decisions on the form any such activities should take, governing bodies should:

- make sure that extended activities or services benefit the public and any profits made are reinvested in the service or in the school;
- make sure that in providing extended activities or services, these do not conflict unduly with their statutory duties, in particular their duty to promote high educational achievement in the school;
- consult the LA, school staff, parents of its school's registered pupils and anyone else the school considers appropriate, given the nature of the service. This should include some or all of the registered pupils where appropriate, particularly in view of their age and understanding;
- refer to any advice given by the LA and to guidance issued by us; and
- make sure that any childcare for children under the age of three provided by the school is registered with Ofsted, and any other childcare provided is registered where necessary or appropriate.

Academy trusts may choose to run extended services and provide childcare, as well as run nurseries and children's centres. This may, however, require a change to their Articles of Association. Academy trusts are advised to contact the EFA who will advise.

6.4.1 The 'charitable purpose' requirement

The governing body of a maintained school has the power to provide, or enter into contracts to provide any facilities or services that will further any 'charitable purpose' for the benefit of pupils at its school, families of pupils or people who live and work in the local community⁸³. This power is in addition to governing bodies' powers and responsibilities on the control and community use of school premises.

'Charitable purposes'⁸⁴ may cover such services and activities as:

- childcare (including before and after school and during the holidays);
- adult and family learning;

⁸³Section 27 of the Education Act 2002.

⁸⁴the Charities Act 2011.

- health and social services; and
- parenting support and other facilities of benefit to the local community. Examples include access to information and communication technology (ICT), or sports facilities.

This is not an exhaustive list and a wide range of services will be covered within the definition of charitable purposes. Any profits that a school may make from providing such services must be reinvested in the service or in the school.

All academy trusts are charities. Their charitable object (or objects) is (are) set out in its Articles of Association, together with the powers that the academy trust can exercise in pursuit of its charitable object(s).

6.4.2 Restrictions on extended activities

A governing body cannot engage in any activity that might interfere with its duty to promote high standards of educational achievement at the school. The governing body's use of the power is also subject to any limits or restrictions contained in the school's instrument of government or in its trust deed (if it has one) and to any local directions issued by the LA regarding the control of school premises.

Before carrying out any plans to provide facilities or services using the power in section 27 of the Education Act 2002, the governing body must consult with the LA, school staff, and parents of its school's registered pupils. The governing body can also consult some or all of the registered pupils, where the governing body considers this to be appropriate in view of their age and understanding and where the exercise of the power would affect those pupils, and anyone else that the governing body consider appropriate.

6.4.3 Ofsted registration and inspection for childcare facilities

Governing bodies should be aware that schools do not have to register childcare provision for children over three separately with Ofsted, where:

- at least one of the children is a registered pupil at the school;
- it is provided on school premises; and
- delivered directly by the school.

Where a school engages childcare providers who are not required to be registered by Ofsted, it is advised to work only with providers who are registered on the voluntary part of the Ofsted Childcare Register.

6.5 School admissions

The new 'School Admissions Code' and 'School Admission Appeals Code' (the Codes) came into force in February 2012⁸⁵. The 'Admissions Code' applies to the arrangements for the admission of pupils in the 2013/14 school year and later. Appeals made on or after 1 February 2012 are dealt with under the 2012 'Admission Appeals Code'.

The Codes apply to all state-funded schools in England. The Codes do not apply to nursery schools or any other nursery provision.

Governing bodies, LAs, Schools Adjudicators and admission appeal panels (see below) must act in accordance with the Codes.

This Handbook is a summary reference but is not a substitute for the full [Codes](#), which are on our website.

Any person or body can make an objection to the Schools Adjudicator about the admission arrangements of any state-funded school. The objection must be made by 30 June in the year in which the admission arrangements are determined. Further information on how to make an objection is available on the [Office of the Schools Adjudicator website](#).

'Admission authorities' are responsible for setting fair and transparent admission arrangements; making admission decisions and arranging admission appeals in accordance with the Codes. Admission authorities decide which children are admitted by applying the admissions criteria they have set and published. For community and VC schools the LA is the admission authority; for all other schools it is the governing body or academy trust⁸⁶. Governors of VA schools, foundation schools or academies should, therefore understand their roles and responsibilities in relation to admissions.

6.5.1 Admissions arrangements

Admission authorities must set admission arrangements annually, notify their LA and publish the arrangements on their website in accordance with the 'Admissions Code'. When changes to the admission arrangements are proposed, admission authorities must consult. Consultation must last at least eight weeks between 1 November and 1 March so that the arrangements are finalised by 15 April. There should be a clear decision by the governing body to determine a set of arrangements. LAs must publish on their website by 1 May, details of where the set arrangements for all schools can be found.

⁸⁵ The Codes are supported by the School Admissions (Admissions Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012, and the School Admissions (Appeal Arrangements) (England) Regulations 2012.

⁸⁶ An LA can delegate admissions to the governing bodies of community and voluntary-controlled schools.

Admission authorities must, as part of setting their admission arrangements, set a pupil admission number (PAN). A governing body of a community or VC school can object to the Adjudicator if they disagree with their PAN (which will be set by the LA as admission authority).

Admission authorities cannot refuse a child a place if the school is undersubscribed (fewer applications than the PAN). The only exception is where the child has been permanently excluded from two or more schools within the past two years or, in the case of selective schools, where the child has not met the required academic standard. Regardless of faith, a child must be offered a place in a faith school if they apply to the school and it is undersubscribed.

Partial selection on the basis of academic ability can continue, provided it was in place at the beginning of the 1997–8 school year. New partial selection, on the grounds of aptitude for certain subjects, is allowed where the school has an agreed specialism. It is limited to 10%.

The infant class size limit is 30 pupils per school teacher. Additional children may be admitted in exceptional circumstances, these are set out in the 'Admissions Code'.

Admission authorities for oversubscribed schools must keep a waiting list for at least the first term in the normal year(s) of admission. They must also give priority on that list according to their oversubscription criteria, regardless of when an application was made.

A place in a nursery class does not guarantee admission to the reception class.

6.5.2 Admission Appeals

Admissions appeal panels are independent panels set up by admissions authorities in line with the 'Admission Appeals Code'. They hear appeals against admission decisions. The 'Admission Appeals Code' provides details on appeal procedures and outlines a parent's or child's right of appeal. Where a panel finds in favour of the parent or child, the decision is binding on the school.

Free training packs for appeal panel members are available from: Information for School and College Governors (ISCG), Avondale Park School, Sirdar Road, London W11 4EE.

6.6 School companies

Governing bodies of maintained schools may, independently or with other governing bodies and/or 'prescribed' third parties, form companies to undertake certain specified activities⁸⁷. This allows schools to purchase goods and services collectively, to provide

⁸⁷Sections 11 and 12 of the Education Act 2002.

services or facilities to other schools, or to carry out functions which an LA is able to contract out.

The existence of a company allows individual school governing bodies to enter into contracts as a group and to pool resources without being part of a formal structural collaboration such as a federation. Schools are able to follow a well-established procedure for forming a company and have considerable flexibility in how the company is run.

Where a company is formed, the governing body remains responsible for the running of the school: a school and a company are separate legal entities. It follows that if the company gets into financial trouble, there will be no risk to the school's assets or the employment of the school's staff. Teachers will not be expected to transfer to the company.

Governing bodies must have the consent of their LA to form or join a company. This can be refused only on certain specified grounds relating to the school's performance or financial management. Each company will have a supervising authority (an LA) to make sure that the company is run on a sound financial footing.

School companies can make a profit. The articles of the company must state whether profits may be distributed to its members in line with the procedures set out in the articles and/or to further the aims of the company.

An academy trust's Articles of Association set out its 'object' and the powers that it may exercise to further that object. These powers include the power to establish or support any charitable companies or trusts formed for the trust's object and to set up subsidiary companies to carry on any trade or business to raise funds for the trust.

The National College ['Partnership working through a school company'](#) provides information about forming a school company. A free member login is needed.

6.7 Duty to have regard to the views of parents

Maintained school governing bodies should reassure themselves that mechanisms are in place to enable all parents to put forward their views at key points in their children's education. They should be able to demonstrate the methods used to seek the views of parents and how those views have influenced their decision making⁸⁸. As part of the wider inspection process, Ofsted considers responses to its online survey [Parent View](#). The views of parents help inspectors form a picture of how a school is performing and

⁸⁸ Section 21(7) of the Education Act 2002 (as inserted by section 38 of the Education and Inspections Act, 2006

Parent View can provide valuable information on how well the school engages with parents. Governors can access the [toolkit](#) Ofsted has developed for schools.

6.8 Parent councils

A Parent Council is a body of parents that represents parents and allows them to put forward their views to the headteacher and the governing body of their children's school. A Parent Council can be less formal and require a lesser commitment than being a member of the governing body. It allows more parents to contribute to their child's school. Governing bodies of a 'majority governance Trust school'⁸⁹ must establish a Parent Council⁹⁰. Other maintained schools are free to choose whether to establish a parent council and determine its membership. This includes foundation schools in which the foundation or Trust appoints a minority of foundation governors.

The governing body must decide which pupils (or groups of pupils) will require special consideration and whose parents should be represented on its Parent Council to meet the local needs of the school. The governing body must also decide how parents are appointed or elected to the Parent Council and the term for which they should serve as members

The Parent Council, in consultation with the governing body, agrees how it will operate. Whilst many Parent Councils manage themselves, the governing body should provide the information, support and assistance it reasonably needs to perform.

The governing body must consult the Parent Council of its conduct of the school and carrying out its powers under section 27 of the Education Act 2002. The governing body decides how, when and on which issues to consult the Parent Council, and is a matter for the individual school. The governing body must take into account any advice or views expressed to it by the Parent Council when it is conducting the school or exercising its powers⁹¹.

⁸⁹ Where the Trust or Foundation appoints the majority of governors on the governing body.

⁹⁰Section 23A of the Education Act 2002 (as inserted by section 34 of the Education and Inspections Act 2006).

⁹¹Section 27 of the Education Act 2002.

Section 7 - School finance

This section explains the financial responsibilities of governors. Section 7.1 provides information about financial requirements for academies. Sections 7.2 – 7.6 provide information about the financial accountability arrangements for maintained schools. Sections 7.7 onwards cover topics that apply to both maintained schools and academies.

7.1 Financial requirements for academies

Legally, academy trusts are companies limited by guarantee and, under the terms of the Academies Act 2010, exempt charities. Academy governors, therefore, are subject to the duties and responsibilities of charitable trustees and company directors. Academy governors have wide discretion over their use of the academy's funds but are responsible for the proper stewardship of those funds and for ensuring economy, efficiency and effectiveness in their use – the three key elements of value for money. Governors must ensure they use their discretion reasonably taking into account any and all relevant guidance on accountability or propriety. Governors should therefore also be aware of the Charity Commission's guidance for academies in '[Academy Schools: guidance on their regulation as charities](#)' and two guidance notes, which are relevant for academy governors. These guidance notes are '[CC3 - The Essential Trustee: What you need to know](#)' and '[CC8 - Internal Financial Controls for Charities](#)'. Governors should also be aware of the statutory duties of company directors, which are set out in the Companies Act 2006 and include the duties to:

- exercise their powers only for a proper purpose;
- promote the company's success;
- exercise independent judgement;
- exercise reasonable care, skill and diligence; and
- avoid conflicts of interest.

Academy trusts have a number of other characteristics, which distinguish their financial management arrangements from those of local authority maintained schools, including:

- Academy trusts must appoint a senior executive (usually the Principal) as Accounting Officer who will carry an overriding and personal responsibility for the proper stewardship of public funds, including the securing of propriety, regularity and value for money;
- Academy trusts are required to establish an audit committee, or otherwise have a committee which will discharge the responsibilities of an audit committee.
- Because academies have been designated as part of central government, they need also participate in annual exercises to consolidate their accounts with those of the DfE.

Financial requirements on academy trusts are set out in the Education Funding Agency's (EFA) '[Academies Financial Handbook](#)' and in their funding agreement. Academies and their auditors should also read the '[Academies Accounts Direction](#)', when preparing and auditing annual reports and financial statements.

7.2 The accountability system for governors of maintained schools

7.2.1 Accountability of governing bodies through LAs

LAs have to account for expenditure by maintained schools. They must publish these accounts and have them audited by external bodies. For this reason each LA has to put in place a system of financial controls which apply to maintained schools in its locality. Governors of foundation schools, voluntary-aided (VA) and voluntary-controlled (VC) schools are also charity trustees and must comply with charity law, in addition to any requirements placed upon them by their LA. They may also have to work with a separate foundation which holds the land and buildings on trust for educational or religious purposes.

LA systems of accountability for schools are based on the principles of regularity, propriety and value for money. Guidance is available on the [Treasury website](#). Each LA has an officer appointed by law (the 'section 151' officer) to make sure that its financial affairs are properly managed. This includes making sure that schools act within the agreed local financial framework, and that the authority has proper oversight of the funds it distributes to schools. LAs must report on their use of education grants to the Department for Education.

7.2.2 Responsibilities of charity trustees

Since 1 August 2011 academies, sixth-form colleges, voluntary and foundation schools are 'exempt charities'. Unlike most other charities, schools that are charities do not have to register with the Charity Commission because they are exempt. As the principal regulator, we monitor charitable schools to make sure that they comply with charity law. Governors of charitable schools must make sure that they:

- comply with requirements in the governing document;
- act responsibly and in the interests of the charity and its beneficiaries (who will be specified in the governing document);
- manage any conflicts of interest; and
- exercise reasonable care and skill, taking professional advice where necessary.

The Charity Commission document '[Charities and charity trustees – an introduction for school governors](#)' provides further information. The [Charity Commission website](#) contains

further information for charitable trustees. Information on the [‘regulation of exempt charities’](#) is also available on our website.

7.2.3 The school budget

Maintained schools receive a delegated budget from their LA. More detail about the way this is calculated is provided in section 7.4. LAs are required to maintain a scheme for financing schools which sets out the framework for the financial relationship between them and the schools they maintain⁹² (the Scheme). The Scheme must include procedures for maintaining effective financial management, securing value for money and providing financial information to the LA. The LA must consult the governing body and headteacher of every school maintained by the LA on any proposal to revise the Scheme, before submitting a copy of its proposal to the Schools Forum for approval⁹³. Section 7.7 provides more information about the Schools Forum. The Scheme must cover specific matters set out in regulations⁹⁴. The current version of the Scheme must be published on a website. Our website has [statutory guidance](#) about schemes for financing schools.

Under the Scheme, a LA’s responsibilities are:

- reviewing schools’ budget plans;
- carrying out high level monitoring of school budgets;
- agreeing a deficit reduction programme with schools in deficit;
- challenging excess surplus balances held by schools without good reason;
- planning and carrying out an audit programme for schools, taking into account their SFVS returns (see section 7.3); and
- intervening in schools causing financial concern.

These arrangements enable the governing body to spend the delegated budget, within the parameters of the Scheme and other statutory requirements. Governors can spend the budget delegated under the Scheme:

- for the ‘purposes of the school’⁹⁵ (usually taken to mean for the ‘educational benefit of the school’s pupils’);
- for the benefit of pupils in other schools⁹⁶; and
- to provide community facilities or services⁹⁷.

⁹² Section 48(1) of the School Standards and Framework Act 1998.

⁹³ Schedule 14 to the School Standards and Framework Act 1998.

⁹⁴ The School and Early Years Finance (England) Regulations 2012.

⁹⁵ Section 50(3)(a) of the School Standards and Framework Act 1998.

⁹⁶ School Budget Shares (Prescribed Purposes) Regulations 2002 made under section 50(3)(b).

Schools can raise extra funds for example, by inviting donations from parents, businesses and others, by renting out premises, and undertaking other income generating activities. Governing bodies must not use their budget share to subsidise the costs of activities which are not covered by the list of permitted activities.

7.2.4 LA requirements that ensure schools spend money in accordance with Schemes

School governing bodies must comply with the requirements set by their LAs. Although these will vary in detail they are likely to require governing bodies to:

- cooperate with the audit regime set by the LA;
- use financial controls which meet LA requirements;
- seek to achieve value for money, for example by following LA tendering requirements;
- hold the school senior leadership team to account for expenditure;
- submit an annual budget plan and provide monitoring data;
- complete a Consistent Financial Reporting return annually;
- keep an up-to-date register of business interests for all governors;
- maintain a fixed asset register; and
- comply with LA rules for unusual payments such as write-offs and severance payments.

In order to meet these requirements governing bodies need to:

- assure themselves that the school keeps accurate accounting records;
- manage the school budget and agree expenditure in a way that meets LA requirements for financing schools within the financial year;
- decide how far to delegate to the headteacher their powers to spend the delegated budget. They should set the financial limits of this delegated authority;
- determine the staff complement and a pay policy for the school (in line with STPCD);
- make sure no governor, employee or related party has benefited personally from the delegated budget, other than under agreed arrangements such as a contract of employment;
- make sure the school's assets are under their control and measures are in place to prevent losses or misuse.

⁹⁷ Section 27 of the Education Act 2002.

The full governing body must approve the budget each year and is accountable for managing the finances of the school. Governing bodies generally scrutinise the budget through a finance committee. This allows governors to retain oversight of the decision-making process and to ensure the headteacher accounts regularly for the school's spending. Governors must assure themselves that the school is securing value for money and acting with financial probity. We strongly recommend that schools recruit one or more governors with sufficient financial skills and experience to undertake effective financial scrutiny.

7.2.5 Whistleblowing

All schools should have whistleblowing arrangements in place and governing body minutes should record that they do. For maintained schools, the arrangements should be based on the LA policy (which applies to all schools within their remit) and can be tailored as appropriate for your school. The governing body should agree one or more members of the school's staff and of the governing body to whom staff can report concerns. Also, maintained schools should make known to staff one or more people at the LA whom their staff can report concerns to if they feel a need to go outside the school. All school staff should be made aware of this information.

7.2.6 Personal liability

Governors are not personally liable for anything done 'in good faith' as they exercise their power to spend a school's budget share, or in delegating that power to the headteacher⁹⁸. An example of an act not done in good faith is fraud or expenditure that is authorised to be spent in a way that does not comply with the scheme of delegation.

7.3 Efficiency and value for money

7.3.1 Ensuring value for money

In schools, 'value for money' means achieving the best education for children in relation to budget spent on the school.

7.3.2 LA responsibilities including the Schools Financial Value Standard

LAs have a statutory responsibility to ensure that they secure good value for money in the use of their resources⁹⁹. This includes resources retained centrally for the provision of

⁹⁸ Section 50(7) of the School Standards and Framework Act (SSFA) 1998.

⁹⁹ The Local Government Act 1999

services to schools as well as expenditure by schools. The requirement to secure good value for money is also a condition of their receiving the dedicated schools grant (DSG). This is the main source of LA funding for schools and is explained further in section 7.4.

All maintained schools must complete The Schools Financial Value Standard (SFVS) each year. The purpose of SFVS is to help schools manage their finances, to support them in securing value for money across all of their spending, and to give assurance that secure financial management arrangements are in place. The SFVS should be considered by governors, the headteacher and senior staff annually. The standard does not say what evidence the governing body should consider but governors must be confident that their response has a firm grounding. The school must send a copy of the signed standard to their LA's finance department. Schools must complete the SFVS for the first time by 31 March 2013, with an annual review thereafter. More information on SFVS is on [our website](#).

LA and other auditors will have access to the SFVS returns. When they conduct an audit they may check whether a governing body's self-assessment is in line with their own judgement. Auditors should make the governing body and the LA aware of any major discrepancies in schools' judgements.

7.3.3 Tools to help governing bodies achieve value for money

There is a wide range of tools available to support governing bodies achieve value for money from a school's resources. Some of the most effective are listed below.

Benchmarking

We publish schools' spending data annually in the [performance tables](#). The data is grouped into categories of income and expenditure alongside measures of attainment. This allows schools, parents and the wider public to compare how schools spend their money with the outcomes they achieve. The [Schools Financial Benchmarking website](#) enables schools to compare their spending in detail with other schools, consider their comparative performance and think about how to improve their efficiency.

Procurement

As well as complying with basic procurement rules, schools should make sure they are getting the best deal when buying goods and services. Schools can then reinvest these savings in their priorities for teaching and learning. Our website has detailed advice on [buying goods and service](#).

School business managers

Skilled school business managers (SBMs) have a big impact on the effective financial management of a school. They save headteachers' and teachers' time and help to ensure that resources are deployed effectively. The National College has a role in promoting and developing the role of SBMs and their website has more information.

Collaboration

Schools working together have greater opportunities to generate efficiencies as they can pool funding, purchase services jointly and share staff, functions, facilities and technology across sites. Collaboration can also help schools raise standards and maintain local provision. The National College provides advice and guidance for schools thinking about collaborative models.

The [efficiency and value for money in schools](#) section of our website provides more information.

7.3.4 Loss of the right to a delegated budget

The LA may suspend a school's right to a delegated budget¹⁰⁰ in certain circumstances. These are where a school's governing body:

- has persistently or substantially breached a requirement or restriction relating to its delegated budget;
- has not managed its budget share satisfactorily; or
- has not managed satisfactorily its expenditure or sums received in the exercise of its power to provide community facilities and services.

The LA must serve a notice to the chair of governors specifying the grounds for suspension and give the governing body and headteacher a copy of the notice. An LA may also intervene to suspend a school's right to a delegated budget where there are concerns about standards¹⁰¹. The LA is required to review the suspension within a specified period.

The principal effects on a school of suspension are:

- loss of the right to decide how the delegated budget should be spent; and
- loss of powers in relation to staffing matters.

As a matter of best practice, schools and LAs ought to discuss problems that might lead to suspension and try to solve any problems before the need for formal action arises. Schools should co-operate with LA monitoring of financial issues and take a proactive approach to their resolution.

¹⁰⁰ Schedule 15 to the School Standards and Framework Act 1998.

¹⁰¹ Sections 59–66 of the Education and Inspections Act 2006.

7.4 The school budget

The funding system for maintained schools is based on the dedicated schools grant (DSG) and pupil premium. Most funding is provided through the DSG which is currently allocated to LAs on the basis of historic data. From April 2013, LAs are required to pass on most of the money directly to schools and are only allowed to retain funding centrally under certain circumstances. Most of the DSG is distributed to maintained schools using locally determined formulae. To date, there has been significant variation in how LAs allocate funding to schools. In order to move to a more consistent, comparable and transparent system, from April 2013 LAs will be required to use much simpler formulae. They will be limited to a maximum of 12 factors in their formulae, which relate largely to pupil characteristics and pupil numbers (taken from the Annual School Census data), and less so on the circumstances of the school. Funding is available for pupils with high needs in special schools or mainstream school, based on the needs of the pupil.

The pupil premium is a separate funding stream to be used solely for the educational benefit of children eligible for free school meals at any time during the last six years, or those who have been in continuous public care for six months. The purpose of the pupil premium is to narrow attainment gaps between those children and their peers. Governors should ensure that pupil premium funding is being spent on improving attainment for eligible pupils. Schools must publish online¹⁰²:

- the amount of the school's allocation from the pupil premium grant for the current academic year;
- how it is intended that the allocation will be spent;
- how the previous academic year's allocation was spent; and
- the impact this expenditure has had on the educational attainment of pupils who were allocated the pupil premium.

Service premium payments are also made for children whose parents are currently serving in the armed forces, to address the emotional and social well-being of these pupils.

More information about the DSG and pupil premium, including allocations to LAs, is on [our website](#).

The year 7 literacy and numeracy catch-up premium is additional funding which enables schools to provide literacy and numeracy catch-up support for year 7 pupils. It enables those pupils that did not achieve level 4 in reading and/or mathematics at key stage 2 to be given the opportunity to catch up as quickly as possible. As for the pupil premium,

¹⁰² The School Information (England) Regulations 2008 as amended by the School Information (England) (Amendment) Regulations 2012

governors should ensure that year 7 catch-up premium funding is being spent on improving attainment for eligible pupils. More information and advice is available on [our website](#).

7.5 Charging for school activities

Academies should refer to their funding agreement.

The law allows governing bodies and LAs of maintained schools to opt to charge for some activities, provided they have first drawn up charging and remissions policies¹⁰³. These policies should be made available to parents on request. Further [detailed information and examples](#) of what the school can and cannot charge for are on our website.

7.5.1 School minibuses

Schools may only charge for transport in their minibuses if they hold a permit issued under section 19 of the Transport Act 1985. In some cases, the permit exempts the school from Public Service Vehicle (PSV) operator and driver licensing requirements. A permit is not required if no charge is made in cash or kind. Schools should apply to their LA for a permit for each minibus they operate individually.

Any charges made may be used to recover some or all of the costs of running the vehicle, including loss of value. The school may not make a profit, even if it is intended to go towards the school's other running costs or charitable purposes. Further information is available from LAs or the regional Traffic Commissioners.

7.6 Governor allowances and expenses

The law¹⁰⁴ allows governing bodies in maintained schools with a delegated budget to choose whether to pay allowances to governors and associate members of the governing body. Where they choose to do so, it must be in accordance with a policy or scheme. Payments can only be paid for expenditure necessarily incurred to enable the person to perform any duty as a governor. This does not include payments to cover loss of earnings for attending meetings. Travel expenses must not exceed the HM Revenue and Customs (HMRC) approved mileage rates which are changed annually and are on [HMRC website](#). Other expenses should be paid on provision of a receipt (at a rate set out in the scheme) and be limited to the amount shown on the receipt.

¹⁰³ Sections 449-462 of the Education Act 1996.

¹⁰⁴ The Education (Governors' Allowances) (England) Regulations 2003.

Where a governing body does not have a delegated budget allowances and expenses may be paid by the LA at a rate determined by them.

Governing bodies in academies are free to determine their own policy on the payment of allowances and expenses.

7.7 Schools forums

Each LA must establish a schools forum¹⁰⁵. It advises the LA on the operation of the local Schools Budget. The forum has limited powers to make decisions about central expenditure by the LA from the schools budget.

The schools forum¹⁰⁶ consists of members elected by the headteachers and school governors of maintained schools, academies and pupil referral units. In addition, there are other non-schools members to represent other relevant interests such as private, voluntary and independent early education providers and the local 14-19 partnership. Local authorities must also consider whether diocesan authorities should be represented. Whilst the balance between headteachers and governors on the forum is for local decision, both governors and headteachers of maintained schools can expect to be involved in electing members to the forum.

7.8 School premises

7.8.1 Ownership of land and buildings

Governors should know who owns the land and buildings from which their school operates. School land is usually freehold. However leasehold interests are possible and there may be several parcels of land with different ownership arrangements that together constitute the school site.

Governors who are considering academy conversion should refer to our detailed [departmental guidance](#) on our website. As part of this process they should be aware of the need to consider transfer of land and buildings, in particular the need to engage trustees where appropriate.

In the majority of schools set up through private finance initiatives (PFI), the construction of the buildings are funded by a private sector contractor and their funders. The buildings are then operated and maintained by that private sector contractor for an agreed period, typically 25 years. The PFI contract will set out the maintenance programme. These

¹⁰⁵ Section 47A of the School Standards and Framework Act 1998.

¹⁰⁶ The Schools Forums (England) Regulations 2012 set out the required membership for Forums.

contracts will remain in force even if the LA transfers its interest in the school land to the governing body, where the school changes status. The LA's interest in such a case is the freehold and the provision for the buildings to revert at the end of the contract term.

7.8.2 Disposal and protection of publicly funded school land

VA, VC and foundation schools have particular protection for their school playing field land. [Guidance](#) on the disposal and protection of publicly funded land is on our website. Full information is available in our '[Advice on the protection of school playing fields and public land](#)'.

7.8.3 Closure of a foundation or voluntary school

The governing body, foundation body or trustees must¹⁰⁷ apply to the Secretary of State when a foundation or voluntary school is to be closed. The Secretary of State will consider making a legal decision ('direction') about what should happen to that land, which was bought or improved at public expense.

7.9 Funding for capital investment

We provide different kinds of capital funding to LAs and schools as follows:

7.9.1 Condition Maintenance Capital

Maintenance funding is provided to LAs and schools to support them in maintaining the condition of the school estate. Funding is allocated on a purely formulaic basis for LAs, including community and VC schools, VA schools, non-maintained special schools and sixth-form colleges. The formula uses pupil number data taken from the Annual School Census, as a proxy for building need.

For academies, allocations for condition needs are made using a national maintenance budget. The budget is administered by the EFA and accessed through a bidding process.

Maintenance funding for VA schools is made available via the 'Locally Co-ordinated Voluntary-aided Programme' (LCVAP). The LA, in discussion with the voluntary sector, agrees which projects from their maintenance allocation should be prioritised for funding. The EFA administers LCVAP payments.

¹⁰⁷ Part 2 of Schedule 22 to the School Standards and Framework Act 1998.

7.9.2 Basic Need Capital

'Basic need' supports the capital requirement for providing additional pupil places both in new or expanded maintained schools, and academies. Basic need funding is allocated on a purely formulaic basis using data from the Annual Schools Capacity Survey. It is made available to LAs in the first instance and it is for each LA to decide how basic need allocations should be prioritised at local level. Further information on the planned use of basic need funding can be supplied by the LA officer with responsibility for pupil place planning.

7.9.3 Devolved Formula Capital

Devolved Formula Capital (DFC) is capital funding that is allocated, via LAs, on a purely formulaic basis and is made available to schools for their own use, in line with our departmental guidance. DFC is based on the Annual Schools Census data set, collected in January. The level of DFC, as calculated for each school by us, should be passed on by LAs to their maintained schools and by the EFA for academies. DFC is normally used for smaller capital purchases, including information and communication technology.

DFC is calculated for all maintained mainstream primary and secondary schools, special schools, pupil referral units, academies, community technical colleges and non-maintained special schools. Independent schools and nursery (direct grant) schools do not receive DFC.

Details of the capital programmes available to LAs and schools are available on our website. The arrangements for VA schools are explained in the *Blue Book* guidance on capital funding for VA schools in England. Detailed [guidance](#) on each type of allocation, how it is determined and how it should be spent, is available on our website.

Further information on capital funding, including specific advice on academies, VA schools and the 16-19 sector capital, can be accessed by email to: enquiries.efacapital@education.gsi.gov.uk

7.9.4 Developments at schools

The Building Regulations 2010 set standards for the design and construction of buildings in England and Wales. Their prime purpose is to ensure the safety and health of people in or around buildings, but they also cover energy conservation and accessibility. They cover the construction of new schools and many alterations of, and improvements to, existing school buildings. As with other building types, developments at schools are bound by normal planning controls. Information on these building regulations and associated guidance are on the government [Planning Portal](#).

7.9.5 Arrangements for funding premises-related work at VA schools

Responsibility for capital work to VA school premises is shared between the governing body and the LA. The standard rate of grant support to VA school governing bodies from us is 90 per cent. LAs are able to help governing bodies with their 10 per cent contributions, subject to their own spending priorities and budget availability.

There are special arrangements for the proceeds of sale of school land in voluntary schools, which can be found at [Sale of School Land](#) on our website.

7.9.6 School premises regulations

Regulations set minimum standards for the premises of all existing and new schools in England¹⁰⁸. The regulations cover toilet and washing facilities; medical accommodation; health, safety and welfare; acoustics; lighting; water supplies and; outdoor space.

¹⁰⁸ As set out in the School Premises (England) Regulations 2012 and Part 5 to Schedule 1 of the Education (Independent School Standards) (England) Regulations 2010, as amended in 2012. The latter cover academies and free schools.

Section 8 - Information sharing

This section details the roles and responsibilities of governing bodies, headteachers, LAs and other educational establishments in giving information to each other, parents, pupils and the Secretary of State for Education.

Any reference to parents in this section includes all adults with parental responsibility. It also acknowledges the rights, duties, powers, responsibilities and authority that parents have by law.

8.1 Information from the governing body to the Secretary of State for Education

Information from the school performance tables and RAISEonline provide a valuable tool to help governors monitor and compare school performance. The governing body must reassure itself that its school takes part in performance tables data checking exercises, run during September each year, to either confirm data accuracy or provide changes when required. We let headteachers know in advance when each checking exercise will start and when the checking website will become available.

The governing body must reassure itself that mandatory data collections and statistical returns requested by the Secretary of State are given to the relevant timescales and security standards. We publish a [summary of data collections](#) on our website.

The governing body of an academy must also refer to its funding agreement and Articles of Association for details of information to be given to the Secretary of State.

8.2 Information given to the governing body by the LA

When a maintained school governor is appointed, they should receive background information from the LA¹⁰⁹. This should include a copy of the instrument of government for the school, which sets out the composition of the governing body.

The LA gives the governing body and the headteacher financial information concerning the school.

8.3 Information from the governing body to the LA

The governing body of a maintained school must give the LA any relevant information or

¹⁰⁹ Regulation 31 of the School Governance (Constitution) Regulations 2012 or regulation 33 of the School Governance (Constitution) Regulations 2007.

reports in connection with the discharge of the governing body's functions that the LA may need.

Governing bodies of all schools, including community and foundation special schools and academies must on request, provide certain information¹¹⁰ to parents of pupils or prospective pupils, to LAs and to primary care trusts, including:

- basic information about the school's SEN provision;
- information about the school's policies for the assessment and provision for all pupils with SEN; and
- information about the school's staffing policies and partnership with bodies beyond the school.

Further information is available in the '[SEN Code of Practice](#)'.

The governing body must publish the information in a single document and make copies available free of charge to parents, the LA and the primary care trust. The LA may publish the information referred to above if the governing body agrees. Where there is an agreement, the governing body must supply the LA with the information, which must be published without alteration.

8.4 Information from the headteacher to the governing body

The headteacher must give the governing body any information asked for to help it carry out its functions.

An academy headteacher has a contractual relationship with the governing body. As the employer, the governing body would expect requests for information to be met.

8.5 Annual reports to parents

Before the end of the summer term of each school year, headteachers of maintained schools are responsible for preparing and providing parents of all children in the reception year and above with a written report on their child's achievements. The information to be included in the annual report to parents is set out in legislation¹¹¹.

¹¹⁰ Education (Special Educational Needs) (Information) (England) Regulations 1999.

¹¹¹ Schedule 1 of the Education (Pupil Information) (England) Regulations 2005 (and the 2008 amendments to the Regulations).

8.6 Information from the governing body to parents

8.6.1 School prospectus and publishing school information on the internet

Governing bodies of maintained schools are required to publish on a website the information specified in the School Information Regulations¹¹². These regulations were amended¹¹³ to remove the requirement for maintained schools to publish an annual prospectus. Schools keep the freedom to choose whether they wish to continue marketing themselves through a prospectus and/or publish on a website additional information they feel is necessary to meet the needs of parents and the wider community.

Maintained schools governing bodies will need to reassure themselves that the school continues to meet any legislative requirements in developing specific policies and communicating them to parents. We publish on our website the list of statutory policies and documents that schools must have.

Academies must, by their funding agreements, comply with the relevant sections of independent schools standards prescribed under section 157 of the Education Act 2002.

The current model funding agreement requires academies to publish the same information on their website as maintained schools. Any academy should refer to its funding agreement for specific requirements.

[More information](#) on the regulatory obligations, including frequently asked questions about the School Information Regulations, is available on our website.

8.6.2 Publishing School Performance Information

Schools must publish whole-school results from key stages 1–3¹¹⁴. We also publish national analyses of the results.

The headteacher must send the Early Years Foundation Stage Profile (EYFSP) results to the LA. The governing body must send teacher assessment results for key stage 1 to the LA (or, in the case of academies, the LA or another accredited provider). We will also expect the results of the phonics screening check to be sent to the LA. Key stages 2 and 3 results must be sent to the STA. The LA collects the EYFSP, phonics screening check and key stage 1 results and sends them on to us.

¹¹² The School Information (England) Regulations 2008.

¹¹³ The School Information (England) (Amendment) Regulations 2012.

¹¹⁴ The School Information (England) Regulations 2008 as amended by the School Information (England) (Amendment) Regulations 2012.

8.6.3 The Home-School Agreement

All governing bodies of maintained schools and academies should reassure themselves that a written home-school agreement is in place¹¹⁵. Schools should consider the [statutory guidance](#) on our website when drafting their agreements.

8.7 Pupils' information

The governing body of a maintained school should reassure itself that its school¹¹⁶:

- keeps pupils' curricular and educational records;
- provides access to these records to parents;
- reports at least annually on their pupils' progress and educational achievements;
- provides a report to school leavers; and
- makes sure that the pupils' educational records and common transfer file (CTF) is transferred securely.¹¹⁷

[Further information](#) and guidance on each of these responsibilities is on our website.

The statutory duties described in the Pupil Information Regulations, such as those to provide parents with access to their child's educational records, do not apply to mainstream academies.

In an academy, the Data Protection Act 1998 (DPA) gives pupils the right to a copy of their own educational information. In certain circumstances, requests for this information may be made by a parent on behalf of their child. The DPA's subject access rights only give parents the right to see personal information about their child when the child is unable to act on their own behalf, or gives their consent.

The academy's funding agreement itself does not place any statutory requirements on academy Trusts about providing information to parents for individual pupils. Academy trusts must, however, meet the Education (Independent School Standards) (England) Regulations (SI 2010/1997). Paragraph 24(1) (f) in Part 6 of Schedule 1 requires them to issue an annual written report of a pupil's progress and attainment in the main subject areas.

The provision in the Pupil Information Regulations for the secure transfer of educational records applies to all schools throughout the United Kingdom. This includes transfers from maintained schools to academies, free schools and independent schools. However,

¹¹⁵ Sections 110 and 111 of the School Standards and Framework Act 1998.

¹¹⁶ The Education (Pupil Information)(England) Regulations 2005.

¹¹⁷ For example, by using our 'school 2 school' system (DfE's S2S) as pupils change schools.

the Pupil Information Regulations and the need to transfer educational records and CTF do not apply where a child changes schools between an academy or free school, or from an academy or free school to a maintained school.

8.8 Retention of pupil educational records

All schools as independent public bodies are directly responsible under the DPA for the collation, retention, storage and security of all information they produce and hold. This includes educational records, headteacher's reports and any other personal information of individuals - pupils, staff and parents. As such, many schools should consult their legal advisers and develop a data retention policy in accordance with the DPA.

8.9 Data Protection Act (DPA) 1998

We do not advise schools on data protection policy. Schools have direct responsibility for ensuring that they comply with the DPA and handle personal data in line with it.

The DPA places certain statutory obligations on schools. These include:

- notifying the Information Commissioner's Office (ICO) of the school's register entry (name and address of the data controller and a general description of how personal information is processed);
- providing a statement or 'privacy notice' to individuals, such as pupils and parents, whose personal data is being processed or held; and
- responding to requests for personal data or 'subject access requests' within 40 calendar days.

Schools should also consider:

- obtaining their own data protection and/or legal advice;
- formulating their own data protection or data handling policies;
- making sure that staff understand or follow policy when handling personal data.

Data protection advice for schools is on the [ICO website](#).

8.10 Freedom of Information Act 2000

Since 1 January 2005, there has been a legal right under the Freedom of Information Act 2000 (FOIA) for any person to make a request to a public authority for access to information held by that authority. This includes governing bodies of maintained schools and academies. Governing bodies are responsible for making sure that a school complies with the FOIA. They should also reassure themselves that the school has in place a Freedom of Information publication scheme. The legal presumption of openness makes it more important that a school decides its policies and conducts its day-to-day

operations in a way that stands up to public scrutiny.

As requests for information can be directed to the school through anyone who works there, the governing body should make sure that all members of staff are aware of the FOIA and how the school handles requests for information. Governing bodies may choose to charge a fee, which must be calculated according to the Freedom of Information and Data Protection (Appropriate Limits and Fees) Regulations 2004. The ICO publishes [guidance](#) on charging a fee on its website.

Schools are under a duty to provide advice and assistance to anyone requesting information and must respond to the enquiry promptly, and in any event, within 20 working days of receipt (not including school holidays¹¹⁸).

¹¹⁸ The Freedom of Information (Time for Compliance with Request) Regulations 2004, 2009 and 2010 exclude days that are not school days from the 20 working day period.



Department
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