

**INTRODUCTION TO:**

# Statutory framework for School Governance

Government legislation and guidance



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The National Governors' Association (NGA) is an independent charity representing and supporting governors, trustees and clerks in maintained schools and academies in England. The NGA's goal is to improve the well-being of children and young people by increasing the effectiveness of governing boards and promoting high standards. It does this by providing information, guidance, research, advice and training. It also works closely with, and lobbies, UK government and educational bodies, and is the leading campaigning national membership organisation for school governors and trustees.

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## Key



Guidance relevant to academies



Guidance relevant to local authority maintained schools



# Statutory Framework for Governance

## Introduction

This section gives an overview of the legal framework in which governing bodies of maintained schools and the board of an academy trust must operate. The regulations and documents listed in this guidance provide the legal requirements that the school's governance arrangements must comply with, particularly in relation to how the membership of the board is decided, how meetings will be held and how decisions will be made. If you are ever in doubt about a procedural aspect of governance, the answer will often lie in one of these documents; if you need some help in locating them, your clerk should be able to point you in the right direction. This page gives an overview of the purpose of each of the documents, and explains their key applications in practice.

### This guidance is for:

- Governors of maintained schools;
- Academy trustees and directors: NGA generally refers to them as trustees;
- Members of local governing bodies in multi-academy trusts.

### Terminology

In this guidance, we use the phrase 'governing board' to cover both the LA maintained governing body and the board of trustees, and only differentiate between the two where we are referring to one but not the other. The word school should be taken to mean school or academy.



There are two key sets of Regulations, which underpin how the membership of governing bodies of maintained schools is composed, and how they conduct their day-to-day proceedings. These are:

- [The School Governance \(Roles, Procedures and Allowances\) \(England\) Regulations 2013](#) – referred to throughout as the Roles, Procedures and Allowances Regulations (as amended)
- [The School Governance \(Constitution\) \(England\) Regulations 2012](#) – referred to throughout as the Constitution Regulations 2012 (as amended)

The Regulations allow governing bodies' considerable flexibility to determine the composition (i.e. the numbers of governors in each category) of their own board in a way that best suits their



circumstances. This information for each governing body is set out in a document known as the [Instrument of Government](#). For more information on this please see below.

## Governing body membership

### Constitution

The [Constitution Regulations 2012](#) explain the obligations that governing bodies must fulfil in terms of the composition of the board. They also lay out the requirements for governors' terms of office, explain who qualifies to be each category of governor, who is disqualified from being a governor and the process for how different categories of governors are appointed and, in some cases removed.

The minimum requirements for the membership of the governing body are:

- A minimum of seven governors in total
  - (higher minimum in some foundation and all voluntary aided schools)
- At least two parent governors
- The headteacher (unless they resign)
- One staff governor
- One local authority governor
- Any number of co-opted governors
- No more than a third of the governing body can also be staff members.

There are additional requirements for foundation, voluntary-aided, and voluntary controlled schools, as they must have a certain number of foundation or partnership governors on the board. This is detailed under [regulation 14](#). You can find more information about categories of governor in the [NGA Guidance Centre](#).

It is the Instrument of Government that will explain the composition of a school's own governing body, for example, how many co-opted governors can be appointed, and whether there are more than two parent governors. NGA does not think that there is an ideal size for a governing body; it must not be so large that it is unwieldy and a barrier to good decision making, but it does need to have enough people to ensure a diversity of opinion and to carry out the tasks required. The key question is what is the optimum size for your governing body to be effective, which is one of twenty key questions for a governing body to ask itself, developed by the All Party Parliamentary Group on Governance (APPG) - see [here](#) for more information.

### Instrument of government



The Instrument of Government is a short document which sets out the name of the school and the constitution of the governing body; in other words, its size, how many of each type of governor is on the board, and what the length of their terms of office are. Governing bodies are legally obliged to have in place an Instrument of Government in line with the provisions made in [regulation 28](#) of the Constitution Regulations 2012.

The governing body is able to review the Instrument of Government at any time. While it would not be sensible to review the constitution of the governing body every year, it is worth doing so on a regular basis. The NGA recommends that governing bodies carry out a [regular skills audit](#) of their governors to help them identify the strengths and weaknesses of the governing body and any skills and knowledge still needed. A review of the composition of the governing body could flow from such a skills audit. Any change to the Instrument **must** be approved by a vote of the whole governing body and then submitted to the local authority for their approval. If a school has a foundation the Instrument of Government has to be approved by them before the governing body submits the draft instrument to the LA. The NGA considers that a review of the Instrument of Government on a four-year cycle should be adequate.

## Terms of office

In September 2015, [amendments](#) to the [Constitution Regulations 2012](#) came into force which allows governing bodies of maintained schools to set different terms of office for different individuals within the same category of governor. Previously it was only possible to have different terms of office for different categories of governors. Governing bodies can amend their Instrument of Government to allow them establish terms of between one and four years for any category of governor, and they are also able to amend their Instrument to allow the term of office to be set by those appointing the governor at the time.

The NGA advises caution over routinely offering single year terms for a number of reasons. The governing body needs to consider the message it would send to individuals concerned; it could suggest that you don't really value the experience and skills the individual will bring and that s/he is something of a stop gap until you can find a better candidate. Depending on their previous experience of governing, it can take a while for an individual to understand the context of the situation and a year may not be long enough to develop the understanding and contribute meaningfully. If too many individuals are offered short terms it could also create instability on the governing body. Governance requires commitment and offering someone a year term of office may send the wrong message about what is required. If you really need expertise on a particular issue over a fairly short time-frame then it is probably better to approach someone to be an [associate member](#) with that specific remit.



However, for some skilled individuals who may be put off by the commitment of the four year term, being able to offer shorter terms if between one and two years could make the idea of governing more appealing.

In line with good practice in the charity sector the NGA thinks that governors should limit their length of service in any one school – we recommend that governors should serve no more than two terms of office (eight years) at the same school.

NGA does not think that it is good practice for any individual to serve on more than two governing boards at one time unless there are exceptional circumstances (e.g. being requested to sit on an [Interim Executive Board](#)).



## Governing body structure

### Committees

It is common practice for governing bodies to put in place a committee structure to manage their business effectively.

The [Roles, Procedures and Allowances Regulations](#) state that the full governing body must determine the constitution, membership and terms of reference for all committees and review this annually. In other words, each year, the governing body must determine how many members each committee should have, who will be the members of the committees, and what responsibilities will be delegated to those committees. The tasks and decision-making powers assigned to a committee will be detailed in a document called the [terms of reference](#), which should be produced by the [clerk](#) and must be approved by the full governing body. It is also a legal requirement that a clerk be appointed to any committee of the governing body; while the regulations allow for this to be a member of the governing body (with the exception of the headteacher), the NGA's view is that committees should be clerked by the clerk to the full governing body.

### Chairs and Vice Chairs

The governing body must elect a chair and a vice chair in accordance with the [Roles, Procedures and Allowances Regulations](#). The Regulations also set out in what circumstances the Chair has the power to act without the prior authority of the governing body. The vice-chair must fill in for the chair wherever there is a vacancy for the position of chair, or the chair is absent.

The governing body also has the authority to vote to remove a chair or a vice chair, and the Regulations set out the procedure for doing this under [regulation 9](#).

Although there is no legal constraint on the length of time a chair of governors can serve, NGA's view is that an element of regular reappraisal and renewal is beneficial to all schools, and that all chairs should normally expect to step down after a maximum of six years in post.

Further information on the role of the chair can be found in the [NGA Guidance Centre](#).

### Role of the clerk

All governing bodies are required to appoint a clerk to the governing body. The governing body must ensure that the clerk is not a governor or the headteacher of the school. If the clerk for





whatever reason fails to attend a meeting, the governing body may appoint any governor except for the Headteacher to act as the clerk for that meeting. [The Roles, Procedures and Allowances Regulations](#) provide a very brief description of the essential functions of the clerk:

- Attendance at meetings and writing the minutes
- Maintaining a register of the members of the governing body including associate members and noting any vacancies
- Performing such other tasks as determined by the governing body

Whilst the above is set in the regulations and provides a basic guideline, the role of the clerk is invaluable to the governing body and a good clerk will provide much more including providing advice to the governors on constitutional issues, statutory duties and powers. For more information on the role of the clerk see the [NGA Clerk's job description](#).

## Responsibilities of the governing body

The [Roles, Procedures and Allowances Regulations](#) set out the key functions of the governing body, which are to:

- ensure that the vision, ethos and strategic direction of the school are clearly defined;
- ensure that the head teacher performs his or her responsibilities for the educational performance of the school; and
- ensure the sound, proper and effective use of the school's financial resources.

They also set out that the headteacher is responsible for the internal management, control and educational performance of the school and make clear that s/he is accountable to the governing body in relation to all her/his responsibilities and must comply with any reasonable request of the governing body. NGA has produced a document in collaboration with the National Association of Headteachers, the Association of School and College Leaders and the Local Government Association on where the division of responsibility lies between governing bodies and the senior leadership team, entitled, [What governing boards should expect from school leaders and what school leaders should expect from governing boards](#).



## Proceedings at meetings



The [Roles, Procedures and Allowances Regulations](#) set out the basic legal framework under which governing bodies must operate. Within this framework, governing bodies are themselves best placed to decide how they operate when it comes to procedures at meetings. Key points included in the regulations include:

- The clerk must convene meetings of the governing body, although at least three governors or the chair can request that the clerk convene a meeting, and the clerk would have to comply.
- The governing body must hold at least three meetings in every school year
- The relevant papers and notice of the meeting must be distributed to governors at least seven \*clear days in advance of the meeting, although in exceptional circumstances the chair can determine a shorter period.

*NB: clear days in relation to the period of a notice means the period excluding the day when the notice is given or deemed to be given and the day on which it is given or on which it is to take effect.*



There are a number of key documents, which underpin the workings of academy governance. These documents will be specific to academy trusts, and the provisions made in them will vary between different academy trusts.

- [The funding agreement](#) – the formal contract signed by the academy trust and the Secretary of State for Education when it is first established. It will contain some conditions that the academy trust must abide by in order to comply with the terms of their funding.
- [Memorandum and articles of association](#) – each academy has its own articles of association which set out the purpose of the academy trust (known as the trust's objects) and the composition of the board of trustees (or governors).
- [Scheme of delegation](#) - the role of any local governing body (or local advisory board) and the responsibility delegated to them should be set down in a scheme of delegation, set by the board of trustees of the academy.

Academy trusts are charitable companies limited by guarantee, which means that the trustees are subject to both the Companies Act 2006 and the Charities Act 2011. Academies are exempt rather than registered charities. This means that they are accountable to a principal regulator rather than



the Charity Commission. This power is exercised by the Education Funding Agency on behalf of the Secretary of State for Education.

Academies are publically funded independent schools, and must also abide by relevant sections of the [Education \(Independent School Standards\) \(England\) Regulations 2014](#) – referred to throughout as the Independent School Regulations 2014. These regulations make specifications about the day-to-day running of the school. Academies must also comply with any requirements in relation to grant funding set out in the [Academies Financial Handbook](#) and have regard to any guidance set out in it as a requirement of their funding agreements. The Academies Financial Handbook is a key document which sets out the financial framework for academy trusts, addressing key aspects of academy accountability and it also contains some requirements in relation to governance.



## Structure and membership of the academy trust

### Members and Trustees

The articles of association set out the structure of the governance of the academy trust, as well as the criteria for membership of the board of trustees.

Academy trusts are made up of the 'members' and the board of trustees who are also directors, because as explained above, academies are subject to both charity and company law. Members have a different status from the trustees. They have oversight of the governance arrangements, and will have the final say over whether any amendments are made to the articles of association. Often, the articles of association will specify that the members are responsible for appointing a certain number of the trustees/directors. In some academy trusts the members are also trustees, however, the [Academies Financial Handbook](#) now recommends that there is a separation between these two roles in order that the members can carry out their responsibility for oversight of the governance arrangements independently.

Trustees are the individuals appointed or elected to the academy trust's board. They will enact the responsibilities of the academy trust as defined under the articles of association, ensuring the trust complies with law whilst conducting the strategic operations of the trust.

If academy trust boards wish to alter the composition of the board of trustees, they will need to amend their articles of association. Any amendment to the articles must first be determined by a majority vote of the full trustee board. This must then be submitted for approval by the members of the trust, who must pass a special resolution (which requires a majority vote of at least 75% of the members) to amend the articles; further guidance on this can be found on the Department for Education's [website](#). Academy trusts may also require the permission of the Secretary of State for the amendment to be made, and it will state in the academy's funding agreement if this is the case.

NGA recommends that academies review the composition of the board of trustees regularly in conjunction with carrying out a [skills audit](#). Ideally, the board will consider whether their [governance arrangements](#) are effective on an annual basis, with a more in depth [review](#) taking place once every four years or so. New academies are required by the Academies Financial Handbook to review their governance on conversion and the action that has been taken in this regard will have to be detailed in the first set of accounts that they produce.

### Committees and local governing bodies

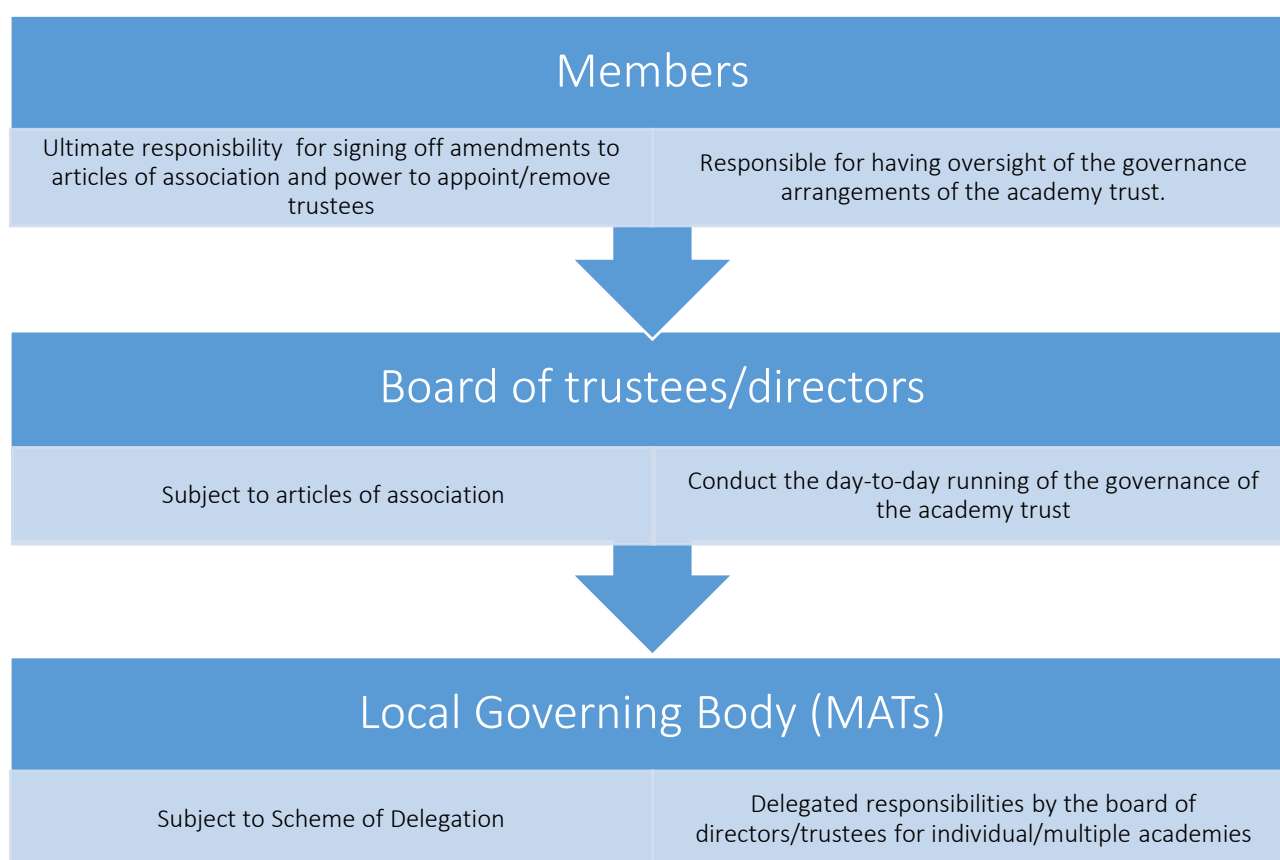
The articles of association set out in broad terms what the trust board can delegate and to whom. Although each trust's articles are different, the vast majority allow a considerable degree of flexibility for delegation to individuals or committees. The decision about what can be delegated is



for the trustee board to determine and must be recorded. It is also for the trustee board to determine the remit and membership of any committees.

In MATs, there may also be local governing bodies (LGBs) which are, in reality, committees of the trustee board. The articles usually require the remit and membership of any committees, including local governing bodies to be reviewed annually. More information about the use of local governing bodies in MATs can be found in the NGA [Guidance Centre](#).

### Academy trust governance structure:



### Composition of the academy trust board

The number of each category of trustee/director on the board will be specified in the articles, and will vary between academy trusts. Generally, the following categories of trustee/director will constitute the board:

- Parent
- Staff
- Co-opted
- Member-appointed
- Sponsor or governors appointed by academy trust



- Governors appointed by foundation bodies

In MATs the membership of local governing bodies (LGB) should be set out in a formal scheme of delegation or [terms of reference](#). Often the categories of governors on an LGB will mirror that of the academy trust itself. Whether or not the local governors are appointed by the local governing body or the board of trustees will be dictated in the scheme of delegation. Whilst the board of an academy trust must include two elected parents, in MATs, the parents may be represented either at local governing body level or on the trust's board.

## Terms of Office

The terms of office of trustees on the governing board, will be set out in academies' articles of association. The starting point in the model articles of association is for four-year terms, and this is common practice amongst academies. It is possible for academies to make alterations to their articles of association to allow them greater or less flexibility over governors' terms of office (see above about amending articles of association). The NGA advises exercising caution over particularly short terms, for example, those of two years or less, due to this limiting governors' capacity to be effective or have any significant oversight over time. Furthermore, for some new governors, it can take at least a year for them to understand the role of a school governor and begin to participate to their full potential. Academies should also avoid terms of office that exceed four years, in order to avoid allowing individual governors too much influence, and to allow sufficient rotation of governors to allow for fresh ideas, input and skills into the governing board.

In line with good practice in the charity sector the NGA thinks that governors should serve no more than two terms of office (eight years) in any one school. NGA does not think that it is good practice for any individual to serve on more than two governing boards at one time – unless there are exceptional circumstances (e.g. being requested to sit on an [Interim Executive Board](#)).

## Responsibilities

Role of trustees and directors

Academies have three legal identities; they are:

- independent state schools;
- exempt charities (charities that do not need to register with the [Charity's Commission](#));
- and companies limited by guarantee (a company with members who act as guarantors).

This means that there are some legal implications upon the duties that apply to governors of academy trusts; namely that as charity trustees they are subject to the [Charities Act 2011](#) and as company directors, they are subject to provisions in the [Companies Act 2006](#). These Acts make more specific provisions about the duties required of academy governors, in addition to those



made in the articles of association and the funding agreement. The provisions are varied but most significantly from an academy trustee's perspective is that they make specifications about the liability of trustees.

Furthermore, the trustees must be registered as directors of the academy trust with Companies House. The Academies Financial Handbook explains that as directors, the Companies Act 2006 requires that academy trustees/directors:

- act within their powers;
- promote the success of the company;
- exercise independent judgement;
- exercise reasonable care, skill and diligence;
- avoid conflicts of interest;
- not to accept benefits from third parties; and
- declare interest in proposed transactions or arrangements (see the [Guidance Centre](#) for more detail).

More information about academy trustees' role within the remit of charity law can be found in the Charity Commission's guidance, [The Essential Trustee](#).

## Role of a Governor on an LGB

Different LGBs will have varying degrees of responsibility, as determined by the multi-academy trust trustee board. In some MATs, LGBs will act solely in an advisory capacity. In others, they will have responsibility for determining the school budget and staffing arrangements. The extent of the LGB's responsibilities will be contained within the scheme of delegation. If governors of LGBs are not clear on their responsibilities, they should either consult the scheme of delegation, or get in touch with their contact at the MAT.

## Additional Requirements

There are certain terms that academy trusts must comply with as a condition of their receipt of funding from the Education Funding Agency (EFA). These are contained within the academy's funding agreement. For the most part, the funding agreement details financial processes that academies must fulfil to receive their funding. However, it will usually also include some other specifications in relation to, for example:

- The length of the school day and year
- School meals
- Admissions
- The conditions on which the academy would cease to qualify for its funding.



The specifications made in funding agreements will vary between academy trusts and academy trustees can only really gain clarity over them by consulting their own funding agreements.

The Independent School Standards Regulations place some additional requirements on academies that governors will need to have a mind to:

- Spiritual, moral, social and cultural development of pupils
- Welfare, health and safety
- Academy premises
- Provision of information, in particular on the [school website](#)
- Handling [complaints](#)

These are all requirements that academy trustees should bear in mind when exercising their powers of oversight.