EXPLANATORY MEMORANDUM TO

THE SCHOOL GOVERNANCE (FEDERATIONS) (ENGLAND) (AMENDMENT) REGULATIONS 2015

2015 No. 1554

1. This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

These Regulations amend the School Governance (Federations) (England) Regulations 2012 ("the Federations Regulations 2012") The purpose is to enable a maintained school within a federation to make an application to become an academy if at least 50% of the prescribed description of governors agree to do so, thus preventing individual prescribed governors from overriding the majority view.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1. The Department is mindful of the recommendation in Statutory Instrument Practice to avoid laying instruments during recess, and also of recent difficulties the Secondary Legislation Scrutiny Committee has experienced in commenting on statutory instruments laid shortly before dissolution. In this case, unfortunately it would not have been possible to lay the instrument any earlier because it was only in May 2015 that the difficulties arising out of Regulation 46 of the Federations Regulations 2012 were brought to the Department's attention.

3.2. The Department is also mindful of its commitment to the Secondary Legislation Scrutiny Committee that instruments requiring implementation by schools should be laid by 1st April with a commencement date of 1st September. In this case the Department considers that the number of schools affected by the change is so small that departing from that commitment is appropriate.

4. Legislative Context

4.1. The Federations Regulations 2012 set out procedural and constitutional arrangements for federations of maintained schools in England and those considering or establishing a federation. Federation is a shared governance structure whereby two or more maintained schools come together under a single governing body under the provisions of section 24 of the Education Act 2002.

4.2. Section 3 of the Academies Act 2010 enables the governing body of a maintained school in England to apply to the Secretary of State to make an Academy Order in respect of the school (i.e. to become an academy). In the case of a federated school, the proportion and description of governors of the federation who must make the application are prescribed in regulation 46 of the Federations Regulations 2012. As originally made, each of the prescribed descriptions of governors (set out below in paragraph 7) must make the application. The effect of this is that an individual prescribed governor may override the views of the majority of governors and block an application. The amendment made to the Federations Regulations 2012 requires that any application must be made by at least 50% of the prescribed description of governors at the federated school.

5. Territorial Extent and Application

This instrument applies to England.

6. European Convention on Human Rights

As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1. Currently, the Federations Regulations 2012 require that all the prescribed governors of a school in a federation need to support an application for an academy order for the school. The prescribed governors are:

- the head teacher of the federated school unless the head teacher has resigned the office of governor
- any parent governor elected by parents of registered pupils at the federated school or appointed to represent the federated school
- any staff governor employed by the federated governing body or local authority to work at the federated school; and
- where the proposed application for an academy order is in respect of a foundation or voluntary school, any foundation governors appointed in respect of the federated school.

7.2. The Department has been made aware that the effect of the regulations has been to enable individual prescribed governors to override the majority view of others and block an application The Department considers this to be undesirable and the amendment ensures an application need only have the support of at least 50% of the prescribed governors.

8. Consultation outcome

8.1. The proposed amendments were subject to a targeted consultation with members of the Department for Education's Advisory Group on Governance (AGOG), national

organisations representing the interests of academies and a number of Multi-Academy Trusts..AGOG includes representatives of the Catholic Church, the Church of England, the National Governors' Association, the head teacher associations, Freedom and Autonomy for Schools National Association, Information for School and College Governors, National Co-ordinators of Governor Services, Ofsted and SGOSS (Governors for Schools). The consultation ran from 12 June 2015 to 3 July. We do not consider that a 12 week public consultation would have been proportionate for this proposal. The amendment will only affect a small number of schools

8.2 The consultation elicited 7 responses, from individual governors, governor organisations, a head teacher union and the Catholic Education Service and several Catholic Diocesan Education Boards. A majority of responses supported the proposal and agreed with the principle underpinning the change with only one rejecting the proposal.

8.3 From several of the responses it appeared that there was a misunderstanding of a federated governing body's constitution. Reference was made to several parents, or foundation governors from an individual school and the effect of a reduction to 50% of these prescribed governors may have. This was especially highlighted by Diocesan Education Boards who stated that a reduction in the number of foundation governors giving consent could possibly lead to a school converting to an academy against the wishes of the foundation. However, this cannot happen because section 3(4) of the Academies Act 2010 provides that an application for an academy order may only be made by a foundation or voluntary school if the school's foundation/Trust has give its consent. Comment was also made that a federated school may not have any governors on the federated governing body; however, this is inaccurate because regulation 21 of the Federations Regulations 2012 includes a requirement for a parent governor from each school and the head teacher from each school to serve on the governing body).

8.4 It was also commented that a reduction to only 50% of the governing body having to agree to an academy application being made was too low, it should be 75%. As the proposal is to reduce the number of 'prescribed' governors who must give agreement to the application and not the governing body this is not appropriate.

9. Guidance

Statutory guidance on the School Governance (Constitution) (England) Regulations 2012 and the Federation Regulations 2012 published on GOV.UK website will be amended to incorporate this proposed change. The Governors' Handbook, which provides governors with all the information they need to know about their roles and responsibilities, will also be amended to reflect the change being made by these regulations.

10. Impact

An impact assessment has not been prepared for this instrument. The proposal has no cost implications for governing bodies or local authorities.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

12.1 These regulations are not subject to the duty (provided for by sections 27 to 32 of the Small Business Enterprise and Employment Act 2015) to include a review provision or to publish a statement that such a provision is not appropriate. Regulation of maintained schools and federations of schools is not regulation of business activity for the purposes of that duty.

12.2 The intended outcome of the amendment is that individual prescribed descriptions of governors of a federation of schools should not override the majority view of governors.

12.3 We will monitor the operation of these regulations through contact with the Departnment's Academy Group.

13. Contact

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