



## **Delegated Authority Report**

### **Making of Instruments of Government.**

**Date:** 11 May 2021

**Key decision:** Yes

**Class:** Part 1. Crofton Park, Lewisham Central

**Contributors:** Head of Schools Services, Director of Law, Governance and Human Resources

### **Outline and recommendations**

The governing board of The Leathersellers' Federation of Schools have resolved to embed the executive headteachers role into their Instrument of Government and have asked the Local Authority to make a variation to note the change to their current Instrument of Government.

The purpose of this report is to seek agreement to vary the Instrument of Government for the governing board of The Leathersellers' Federation of Schools.

The Executive Director of Children and Young People is recommended to approve that the Instrument of Government for the governing board listed below be made by Local Authority order dated 11 May 2021 as set out in Appendix 1.

- The governing board of The Leathersellers' Federation of Schools

## **Timeline of engagement and decision-making**

The Instrument of Government for the governing board of The Leathersellers' Federation of Schools was last made on 7 September 2016 by Mayor and Cabinet.

### **1. Summary**

- 1.1. The governing board of The Leathersellers' Federation of Schools have resolved to amend their Instrument of Government and have asked the Local Authority to make a variation to their Instrument of Government.

### **2. Recommendations**

- 2.1. The Executive Director of Children and Young People is recommended to approve that the Instrument of Government for the governing board listed below be made by Local Authority order dated 11 May 2021 as set out in Appendix 1.
  - The governing board of The Leathersellers' Federation of Schools

### **3. Policy Context**

- 3.1. Each maintained school has to have an Instrument of Government. The Local Authority must satisfy itself that the Instrument of Government for each maintained school conforms to the legislation. The Local Authority must also agree its content
- 3.2. The report is consistent with the third priority identified in the 2018-2022 Corporate Strategy listed below.

“Giving children and young people the best start in life - Every child has access to an outstanding and inspiring education and is given the support they need to keep them safe, well and able to achieve their full potential”

### **4. Background**

- 4.1. The governing board of The Leathersellers' Federation of Schools have agreed to embed the role of the Executive Headteacher in the Instrument of Government for the reasons below.
- 4.2. The School Governance (Federations) (England) Regulations 2012 provide that “the governing body of a federation must include ... the head teacher of each federated school unless any such head teacher resigns the office of governor” (Part 4, 21. (3) (b)).
- 4.3. No specific provision is made in the regulations for the role of an Executive Headteacher.

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- 4.4. Given that headteachers are entitled to be governors, it has been the practice of the governing board to appoint the Executive Headteacher as a co-opted governor.
- 4.5. Accepting the rationale for the Executive Headteacher to be a governor, there are weaknesses in using the co-opted mechanism:
- a) it means the appointment as governor is not an entitlement of the office, but rather is subject to a vote of governors (at initial appointment and every four years thereafter)
  - b) there is no requirement on an office holder to resign their governorship when they leave office
- 4.6. Although in the normal course of events neither of these weaknesses presents a problem, it is not difficult to conceive circumstances in which they might. It would be better to formalise the governorship as an ex-officio role.
- 4.7. The 2012 Regulations provide for an ex-officio foundation governor. “ex officio foundation governor” means a person who is a foundation governor by virtue of an office held by the person” (Part 3, 17. (1) (b))
- 4.8. “An ex officio foundation governor is, upon ceasing to hold the office from which the governorship derives, disqualified from continuing to hold office as such a governor.” (Part 3, 17. (2))
- 4.9. The governing board have proposed to revise their Instrument of Government in order to formalise their current practice by reducing the number of co-opted governors by one (from eight to seven) and creating an ex-officio foundation governor for the executive headteacher of the federation (in the event the executive headteacher declined the governorship, the Leathersellers’ Company would be able to appoint an substitute governor).
- 4.10. Other relevant restrictions on the governing board’s membership are:
- They must have at least two foundation governors (Part 4, 22. (7)).
  - No more than one third of governors may be employees of the federation (Part 4, 21. (5), amended by The School Governance (Constitution and Federations) (England) (Amendment) Regulations 2014 3. (8))
- 4.11. The governing body or local authority can review and vary the instrument of government at any time after it is made.
- 4.12. The governing body must be constituted in accordance with regulations made by virtue of section 24 of the Education Act 2002 namely, The School Governance (Federations) (England) Regulations 2012, as amended by The School Governance (Constitution and Federations) (England) (Amendment) Regulations 2014, 2016 and 2017 respectively (The Federation Regulations).
- 4.13. The Regulations set out the arrangements for establishing statutory federations of governing bodies in maintained schools in England, the constitution of the federated governing body of those maintained schools, the procedures for a school to leave the federation and the procedures to dissolve the federation. They apply to federations which are established on or after 1 September 2012
- 4.14. The governing body of every federation must be constituted in accordance with the Federation Regulations. The total membership of the governing body of a federation must be no fewer than seven governors.

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- 4.15. The governing body of a federation must include the following:-
- (a) two parent governors;
  - (b) the Headteacher of each federated school unless any such Headteacher resigns the office of governor in accordance with regulation 19 of the Constitution Regulations 2012;
  - (c) one staff governor, and
  - (d) one local authority governor
- 4.16. The governing body may in addition appoint such number of co-opted governors as they consider necessary provided the requirement in paragraph 4.17 are met in respect of governing bodies of maintained schools.
- 4.17. The total number of co-opted governors who are also eligible to be elected or appointed as staff governors (when counted with the staff governor and the headteacher/s) must not exceed one third of the total membership of the governing body.
- 4.18. In addition, federations comprising foundation and voluntary schools are required to have foundation or partnership governors. In the case of the The Leathersellers' Federation of Schools, the governing body of a federation comprising more than one category of school including at least one foundation, foundation special or voluntary aided school must also include at least two foundation governors (or partnership governors as appropriate in respect of any school without a foundation).
- 4.19. Appendix 1 details the Instrument of Government the Local Authority is proposing to make by order.

## **5. Financial implications**

- 5.1. There are no financial implications arising from this report

## **6. Legal implications**

- 6.1. Section 24 of the Education Act 2002 requires all maintained federated schools to have an Instrument of Government which determines the constitution of the governing body and other matters relating to the school.
- 6.2. The federation must have an Instrument of Government detailing the name of the school, the type of school and the membership of the Governing Body. The category of governor and the number in each category is specified in the The School Governance (Federations) (England) Regulations 2012, as amended by The School Governance (Constitution and Federations) (England) (Amendment) Regulations 2014 and 2016 respectively.
- 6.3. The Instrument of Government proposed for the governing board of The Leathersellers' Federation of Schools conforms to The School Governance (Federations) (England) Regulations 2012 as amended.

## **7. Equalities implications**

- 7.1. The Equality Act 2010 (the Act) introduced a public sector equality duty (the equality duty or the duty). It covers the following protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation
- 7.2. In summary, the Council must, in the exercise of its functions, have due regard to the need to:

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- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
  - advance equality of opportunity between people who share a protected characteristic and those who do not.
  - foster good relations between people who share a protected characteristic and those who do not.
- 7.3. It is not an absolute requirement to eliminate unlawful discrimination, harassment, victimisation or other prohibited conduct, or to promote equality of opportunity or foster good relations between persons who share a protected characteristic and those who do not. It is a duty to have due regard to the need to achieve the goals listed at 7.2 above.
- 7.4. The weight to be attached to the duty will be dependent on the nature of the decision and the circumstances in which it is made. This is a matter for the decision maker bearing in mind the issues of relevance and proportionality. The decision maker must understand the impact or likely impact of the decision on those with protected characteristics who are potentially affected by the decision. The extent of the duty will necessarily vary from case to case and due regard is such regard as is appropriate in all the circumstances
- 7.5. The Equality and Human Rights Commission has issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at
- <https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-codes-practice>
- <https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-technical-guidance>
- 7.6. The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:
- [The essential guide to the public sector equality duty](#)
  - [Meeting the equality duty in policy and decision-making](#)
  - [Engagement and the equality duty: A guide for public authorities](#)
  - [Objectives and the equality duty. A guide for public authorities](#)
  - [Equality Information and the Equality Duty: A Guide for Public Authorities](#)
- 7.7. The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at:
- <https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality->

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[duty-guidance#h1](#)

## 8. Climate change and environmental implications

8.1. There are no climate change or environmental implications arising from this report]

## 9. Crime and disorder implications

9.1. There are no crime and disorder implications arising from this report

## 10. Health and wellbeing implications

10.1. There are no health and wellbeing implications arising from this report

## 11. Appendices

- Appendix 1 Instrument of Government for the governing board of The Leathersellers' Federation of Schools

## 12. Background papers

12.1.

Short Title of Document	Date	File Location
The School Governance (Federations) (England) Regulations 2012	2012	<a href="https://www.legislation.gov.uk/uksi/2012/1035/regulation/21/made">https://www.legislation.gov.uk/uksi/2012/1035/regulation/21/made</a>
The School Governance (Constitution and Federations) (England) (Amendment) Regulations 2014	2014	<a href="https://www.legislation.gov.uk/uksi/2014/1257/contents/made">https://www.legislation.gov.uk/uksi/2014/1257/contents/made</a>
The School Governance (Constitution and Federations) (England) (Amendment) Regulations 2016	2016	<a href="https://www.legislation.gov.uk/uksi/2016/204/contents/made">https://www.legislation.gov.uk/uksi/2016/204/contents/made</a>
The School Governance (Constitution and Federations) (England) (Amendment) Regulations 2017	2017	<a href="https://www.legislation.gov.uk/uksi/2017/487/made">https://www.legislation.gov.uk/uksi/2017/487/made</a>

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## 13. Glossary

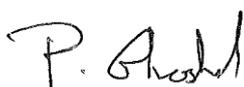
13.1.

Term	Definition
Instrument of Government	An Instrument of Government is the legal document for Local Authority schools that records the constitution of the governing body and the term of office for each category of governor as well as the name of the school.

## 14. Report author and contact

14.1. Suhaib Saeed, Head of School Services [suhaib.saeed@lewisham.gov.uk](mailto:suhaib.saeed@lewisham.gov.uk)

Signed under Delegated Authority



14<sup>th</sup> June 2021

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Pinaki Ghoshal

.....  
Date

Executive Director for Children and Young People

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## Appendix 1

### **INSTRUMENT OF GOVERNMENT FOR FEDERATED GOVERNING BODIES**

1. The name of the federation is: **The Leathersellers' Federation of Schools**
2. The names and categories of the schools in the federation are:

Name	
1. Prendergast Ladywell School	Foundation
2. Prendergast School	Voluntary Aided
3. Prendergast Vale School	Foundation

3. The name of the Governing Board is: "The Governing Board of The Leathersellers' Federation of Schools"
4. The Governing Board shall consist of the following:

Category of Governor (state where the term of office is less than four years)	No. of Governors in each category	Name of School (for Headteacher and Foundation Governors)	No. of Governors for each School
Parent Governors	2		
Headteacher Governors	3	Prendergast Ladywell School	1
		Prendergast School	1
		Prendergast Vale School	1
The Executive Headteacher of The Leathersellers' Federation of Schools (foundation governor ex officio) (or such other person appointed to act in the place of the ex officio foundation governor under 7 b)	1		
Foundation Governors	6		
Staff Governor	1		
LA Governor	1		
Co-opted Governors	7		

5. Total number of governors: **21**
6. The Leathersellers' Company is entitled to appoint the Foundation Governors
7.
  - a. The holder of the following office shall be a foundation governor ex officio (by virtue of their office): The Executive Headteacher of the Leathersellers' Federation of Schools
  - b. The Leathersellers' Company shall be entitled to appoint a foundation governor to act in the place of the ex officio foundation governor named above, (a), in the event that:
    - i. They are unable or unwilling to act as a foundation governor

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ii. They have been removed from office under regulation 21(1) of the School Governance (Constitution) (England) Regulations 2012

8. Prendergast School is supported by a trust.
9. This Instrument comes into effect on **2 June 2021**
10. This Instrument was made by order of Lewisham Local Authority on **11 May 2021**
11. The variation to the Instrument of Government comes into effect on **2 June 2021**
12. A copy of the instrument must be supplied to every member and associate member of the Governing Board (and the headteacher if not a governor) and any trustees

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