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**Governance arrangements in the Further Education Sector**

**Results of the Consultation**

**1. INTRODUCTION**

* 1. For many years we have received requests from colleges to make modifications to their instruments and articles of government and in 1999 we made extensive changes ourselves following the Government’s consultation on improving *Accountability in Further Education.* At that time many colleges asked that we replace the instrument rather than issue separate modification Orders. At the time the Secretary did not have the power to do this. However an amendment to section 22 of the Further and Higher education Act 1992 made in the Learning and Skills Act 2000 provided that the Secretary of State could order the replacement of both instruments and articles and therefore to carry out a much needed consolidation. Amendments to the Instrument and Articles would have been necessary in any event in order to reflect provisions in the new Act. This also provided an opportunity to update and clarify certain provisions, a task which previously it would have been too complex to undertake.
  2. In the autumn of 2000 the Department started informal consultations with national bodies about a proposed consolidation of the instruments and articles of government for all further education colleges. We are very grateful to all those who contributed then and in the last few years with ideas and suggestions of issues that might be considered in an overhaul of the Regulations which set out the governance arrangements for all sector colleges. In particular we should like to thank the Association of Colleges (AoC) and the Association of College Registrars and Administrators (ACRA) for their contribution in both the preparation of the draft instruments and articles and for their invaluable help in the Regional conferences during the consultation. We are grateful to all those governors, clerks and principals who have responded and all those who attended the conferences.
  3. Accordingly on 15 December 2000 the Department started a statutory consultation under section 22 of the Further and Higher Education Act 1992 on proposals to replace the Instrument and Articles of Government for all colleges in the FE sector. Copies of the draft replacement Instrument and Articles of Government and a summary of proposed changes were distributed to the governing bodies of all FE sector colleges in England, as well as various organisations with an interest in further education.
  4. The new Instrument and Articles of Government for your college are enclosed and will come into force on 1 April 2001. No action is required by governing bodies in order to achieve this.
  5. As part of the consultation the Department held seven half-day regional seminars at four venues (York, Nottingham, London and Bath). These conferences gave governing bodies the opportunity to send a representative to discuss the proposed changes with representatives from the Department, the AoC and ACRA. Responses and comments about the new instrument and articles were invited by 9 March 2001.
  6. Copies of this summary and the new Instrument and Articles of Government can be found on the Department’s web site at [www.dfee.gov.uk/furthereducation](http://www.dfee.gov.uk/furthereducation).

The Consultation – Main Features

* 1. The main features of the consultation were:
* Clerk to the Corporation – The Department proposed that Clerks who were also employed in another capacity by the college should be treated for the purposes of the instruments and articles of government as holders of senior posts;
* Consequential amendments in respect of provisions in the Learning and Skills Act;
* Rejection of nominated members – clarification of Corporation’s power to reject nominations for membership from local authorities and community bodies;
* Video conferencing – in response to many requests over the last few years attendance and voting at corporation meetings by video conference is to be allowed;
* Dismissal of staff – provision for the Chair, Vice Chair or majority of governing body members to dismiss a senior post holder without the need for prior notice;
* Audit – Corporations will be required to co-operate with the LSC on the audit of student number returns, stipulates that the person who conducts the external audit cannot also carry out internal audit and a proposed clarification that the LSC may appoint external auditors.

Flexibilities in the Instrument and Articles of Government

* 1. We have received some requests for changes to the composition of corporations in response to our paper on possible flexibilities in the instrument and articles of government. This paper was intended to illustrate the areas where flexibility is possible. We will consider requests from corporations for changes to their instrument or articles, which they consider might be beneficial. We had in mind that occasionally a corporation might want to include a key partner by specifying a number of members to be nominated by that partner. Corporations may appoint these members in the business and co-opted categories in any event. Some corporations may wish to establish committees to oversee particular areas of provision or specialism, but again corporations may already do so.
  2. We will of course consider any requests for changes to the instruments or articles if we think that the changes are necessary and will be beneficial. We will include more information on the flexibilities that already exist in the guidance we will publish shortly.

**Summary of responses received during consultation**

* 1. 157 responses were received; 148 responses were received from Further Education Institutions, 2 from trade unions and 7 from representative bodies. 35% of sector colleges responded to the consultation. 200 colleges were represented at the regional conferences.
  2. All those that responded welcomed the Department’s proposal to replace and update the Instrument and Articles of Government.
  3. The Department’s proposals in respect of insurance of individual members against personal liability, the proposals in relation to the dismissal of the holders of senior posts and provision for the LSC to appoint external auditors generated the most comments from respondents.
  4. These concerns were also highlighted by most of those who attended the regional conferences during the consultation exercise. These conferences were well received and we welcomed the chance to listen to the concerns of those who responded in person

**INSTRUMENT OF GOVERNMENT**

**2 Summary of comments received and our response**

* 1. We have listed below the issues raised with us together with our response in the order that they appear in the new Instrument of Government. References to the number of comments are to those made in writing or email form. We have also taken account of and mentioned where appropriate the comments made at the regional conferences.

2.2 **Interpretation**

**Provision for Video Conferencing at corporation meetings**

**Comments/responses received** - 14 colleges commented on this proposal, 6 asked for the definition to be extended to telephone conferencing and four commented that the paragraph could be discriminatory for those with visual or hearing disabilities.

**Our response** – We do not regard this new definition of a meeting as discriminatory, people with visual or hearing impairments cannot see or hear those present in the room with them, the principle must be that it is possible for members to see and hear those who may vote at a meeting notwithstanding that some might not be able to do so. We have amended the definition to make this clearer. Colleges are not required to use video conferencing facilities if they do not want to.

We do not consider it appropriate to extend this definition to include telephone conferencing or postal voting. It is important to preserve the principle of attendance at meetings by those who are able to vote. Members may still contribute to meetings by means of telephone conferencing but may not vote. One college asked whether it might allow telephone conferencing or postal voting in its own standing orders. This is not permitted and any vote conducted by these means would be invalid. However members may contribute to meetings in this way providing that the other members present (whether in person or via a video link) form a quorum.

**New Definitions**

We have been asked to define other terms in the instruments and articles for example the term ‘academic’ or ‘academic year’. We have decided not to do so as this would restrict the flexibility available to individual governing bodies.

2.3 **COmposition of the Corporation**

**Additional members nominated by the Learning and Skills Council**

**Comments/responses received** - 10 colleges asked that paragraph 2(1)(i) makes clear that the LSC can appoint up to two members to the Corporation under section 11 of the Learning and Skills Act 2000.

**Our response** – The LSC’s power to appoint additional governors is set out in section 11 of the Learning and Skills Act. The instrument does not need to specify the number of members who may be appointed as this is provided for in the primary legislation.

**New definition of a Community Body**

**Comments/responses received** - Most colleges that commented supported the proposed new definition of a community body, while some asked for more guidance. Some were concerned that any guidance might be too prescriptive.

**Our response** – It is not our intention to produce prescriptive guidance. We will publish a guide to the new instrument and articles of government later in the spring and community bodies will be featured. We will respond individually to all those colleges who asked for the Department’s view on the bodies that they sought nominations from.

2.4 **Appointment of members of the Corporation**

**Comments/responses received** – 22 colleges commented on this clause. 4 welcomed the proposed changes and 11 asked for guidance. Some were concerned that the new provision that requires the appointment of members elected and nominated by staff, students or parents would require corporations to appoint someone who had recently been removed as unfit.

**Our response** - We accept this as a genuine concern, although expect it to rarely be an issue. Accordingly we have made provision for the rejection of an elected nominee if they have been removed from membership of a further education corporation in the previous ten years.

We have also been asked how the requirement to appoint elected members affects those corporations who have made rules under their articles of government that provide that all members only serve a maximum of two four year terms. Accordingly we have added a provision allowing corporations to reject nominees in these circumstances but only if the rule applies to all categories of member.

Corporations should make clear in their election procedures that nominees falling into these categories will not be appointed.

2.5 **Appointment of Chair and Vice-Chair**

**Comments/responses received** – 16 colleges commented on this clause, 3 welcomed the minor changes that provide for selection of the Chair or Vice-Chair at the last meeting of the outgoing incumbent. The remainder asked for clarification on the procedure that should be followed if the corporation considers it to be appropriate to remove the Chair or Vice-Chair from office, and some asked that we specify the term of office of the Chair or Vice-Chair.

**Our response** – although we regard it as not strictly necessary we have made provision setting out that the corporation may remove the Chair or Vice-Chair from office. We have not specified a term of office for the Chair or Vice-Chair because we think this might be too restrictive. Corporations are free to determine the term of office of either the Chair or Vice-Chair as they see fit, but the term should not of course be longer than the individual’s own term of office as a member.

2.6 **Appointment of the Clerk to the Corporation**

**Comments/responses received** – 15 colleges have asked that we provide an explicit power in the instrument for the appointment of a Deputy Clerk; this was also a suggestion that received much support at the regional conferences and from the AoC, ACRA and the LSC. There was support for the inclusion of a provision for a temporary clerk.

**Our response** – Corporations may appoint a Deputy Clerk if they wish. However we think that prescribing a power of this sort in the instrument might raise the expectation that such an appointment should be made. This might have cost implications for some colleges. It is of course good practice to ensure that the Clerk has adequate support in their functions and that systems are in place to provide an acting Clerk when required.

We have clarified that the Principal must not be appointed as the Clerk or as a temporary Clerk.

2.7 **Persons Ineligible to be members**

**Comments/responses received** – 24 colleges responded to the proposed change to the existing provision that makes those over age 70 ineligible for membership unless appointed by an absolute majority of the corporation or by the Secretary of State. There was overwhelming support for this proposal. A very few colleges said that they would like to keep the provision as it helped to ensure a turn over of membership.

We have been asked by 11 colleges and the AoC and ACRA to consider altering the ineligibility criteria to recognise convictions in the EU rather than just the UK, Channel Islands or the Isle of Mann. There was some support for this at the regional conferences.

**Our response** – We are satisfied that there should not be provision which discriminates against an individual because of their age. Colleges may of course make rules that apply to all members that restrict the maximum number of terms of office that any member may serve.

While we agree that it is not right for an individual, recently convicted of a criminal offence that carries a sentence of imprisonment to be appointed to corporations, wherever that conviction might be made, we consider that it is too complex at this at this stage to widen the provision in the instrument. However corporations have the power to refuse to appoint members in the business or co-opted categories that have such convictions. They could also ask nominating bodies not to nominate individuals who have convictions.

2.8 **Determination of Membership**

**Comments/responses received** – 29 colleges responded about the proposed new provision dealing with the term of office of student members. This proposal would allow a student member to remain in office for the whole academic year rather than the existing arrangement where the student must be enrolled and consequently in many cases ceased to be a student in June. Concerns were raised with us that the new definition might allow a student who had been expelled from the institution to remain a member of the corporation. It also did not recognise the arrangements at colleges where terms of office were not aligned to the academic year.

**Our response** - this new provision was inserted at the request of colleges and national bodies. It was not our intention to place further restrictions on the appointment of student members. A student member may still be appointed for any term of office as the Corporation sees fit. The amended provision deals with the effect of a student member ceasing to be a student. The student member who ceases to be enrolled may continue to be a member of the corporation until the end of the academic year or at any other time after he has ceased to be a student before the end of the academic year. Student members who are appointed for a term that ends before the he ceases to be a student, for example at the end of the spring term, are unaffected by this provision. The appointment will end automatically if the student is expelled from the institution.

2.9 **Members not to hold interests in matters relating to the Institution**

**Comments/responses received** – 102 colleges asked that the provision allowing Corporations to pay for insurance premiums for individual members against personal liability should be restored. This was also a major theme of the regional conferences. Colleges also asked that references to ‘other interests’ should be consistently used throughout this clause.

**Our response** – we recognise and accept the concern that colleges have about the insurance of individual members against personal liability. While we consider that corporations can still do this we have restored this provision to the instrument. We have also referred to other ‘interests’ throughout the clause and have amended the title in recognition of the wider meaning of the provision.

2.10 **Quorum**

**Comments/responses received** – 7 colleges asked that more flexibility should be given to the rules relating to quoracy. Some asked that 40% of the members entitled to be present at a meeting should represent a quorum. This issue was raised by some at the regional conferences.

**Our response** – we consider that existing quoracy arrangements are adequate given the number of likely full corporation meetings each year it is not unreasonable to expect members to attend. Corporations may of course make their own quoracy rules in relation to committees.

2.11 **Proceedings of Meetings**

**Withdrawal of staff and student members from meetings**

**Comments/responses received** - 17 colleges commented on the proposed amended provisions, which clarify that staff members should only withdraw if their own personal employment is to be discussed or that of a member of staff senior to them. An equal amount (5) expressed support and opposition to the proposed changes and 7 asked for further clarification or amendments to be made. Two colleges asked if they could require staff to leave in other circumstances in their standing orders.

We have also been asked to make clear that the provisions relating to the withdrawal of members from meetings should also apply to committee meetings.

Several colleges have asked that we amend the provision that allows one member alone to ask for the student member(s) to withdraw from a meeting to require instead a majority of members present to resolve that a student member should leave a meeting.

**Our response** – Clearly the majority of colleges support the inclusion of staff and student members at meetings wherever possible. We regard all members as having a vital role to play in governing body business. However we have made a minor change to the provision to make clear that staff members are only required to leave meetings when staff matters relating ‘solely’ to them are to be discussed. Colleges should not seek to restrict the rights of individual members for attending meetings through rules made under article 21 or their own standing orders.

We have amended these provisions to include meetings of committees.

We agree that it is wrong for one member alone to have the right to exclude another from a meeting. We have therefore amended the provision to provide that a majority of members other than student members is required to exclude student members.

**Withdrawal of the Clerk from meetings**

**Comments/responses received** - 8 colleges commented asked that the provisions relating to the Clerk should remain in the clause dealing with the appointment of the Clerk.

**Our response** – The provisions dealing with the withdrawal of the clerk form meetings should properly be dealt with where all other similar provisions appear.

2.12 **Minutes**

**Comments/responses received** – some colleges and ACRA have asked that we specify that the Chair of the meeting concerned must sign minutes.

**Our response** - we have accepted this and made the change, which should reflect existing good practice.

**ARTICLES OF GOVERNMENT**

**3 Summary of comments received and our response**

3.1 We have listed below the issues raised with us together with our response in the order that they appear in the new articles of government. References to the number of comments are to those made in writing or email form. We have also taken account of and mentioned where appropriate the comments made at the regional conferences.

3.2 **Responsibilities of Corporation, Principal and Academic Board**

**Comments/responses received** - Of the 33 written responses that were received on this clause, 11 commented on the provisions that treat the Clerk as a senior post holder for the purposes of the articles. 5 opposed this change. There were also 8 requests to clarify the term “academic work” in this article and a further 8 requests to add the word “ensuring” in the article that provides that the Corporation is responsible for the effective and efficient use of resources, the solvency of the institution and the Corporation and for safeguarding their assets.

Sixth Form Colleges have pointed out that there are references in the draft articles for sixth form colleges to the Academic Board.

**Our response** – The provisions relating to the Academic Board do not apply to sixth forms we apologise for the drafting error that included some references to this in the articles for those colleges. These have been removed.

We consider that a definition of ‘academic work’ in the articles might restrict the flexibility open to corporations. We are clear that the Corporation is responsible for the effective and efficient use of resources, the solvency of the institution and the Corporation and for safeguarding their assets, and consider that adding the word ‘ensuring’ is unnecessary.

3.3 **Academic Board (Does not apply to sixth form colleges)**

**Comments/responses received** - 16 colleges asked that the mandatory requirement for an Academic Board be removed, and would prefer the establishment of a standards and curriculum committee. However some colleges commented that they found the Academic Board a useful tool. The Department also received some requests to remove the requirement for the Corporation to approve the establishment of committees of the Academic Board.

**Our response** – We recognise that some colleges do have difficulty with the Academic Board. There is nothing to prevent Corporations from establishing committees to consider standards or curriculum issues; indeed we would encourage them to do so. However the Academic Board is intended to advise the Principal on academic issues. We consider that the Academic Board has an important role to play in promoting a debate and encourage the involvement of academic staff in curriculum development and quality issues.

There have been some minor changes made to provisions relating to the Academic Board:

Students

In the article dealing with student matters the requirement to consult the Academic Board and the students before making rules concerning the conduct of students has been removed.

The provision in the same article requiring the Academic Board to advise the principal on procedures for the expulsion of students for academic reasons has been removed. This is an unnecessary provision already covered in article 3.

Many colleges have asked us to remove the requirement for the Corporation to approve the establishment of committees by the Academic Board; we are pleased to do so.

3.4 **Delegation of Functions and Committees**

**Comments/responses received** - 14 colleges responded and only 1 college opposed the clarification that the Principal should not delegate his responsibilities for the management and budget of resources. Some asked for clarification of the remit of the Search Committee.

**Our response** - we shall cover the Search committee in guidance to be published later in the spring. We are clear that a principal should never delegate his responsibilities as Accounting Officer.

3.5 **Appointment and Promotion of Staff**

**Comments/responses received** – there were 4 comments on this Article. We were asked to clarify that where a post is designated by the corporation as a senior post for the purposes of the articles of government and where there is an individual in post at the time of this determination that national advertising is not required. Some concern was expressed that vacant designated senior posts have to be advertised even if redundancies in other senior posts were planned in a restructure.

We have also been asked to clarify that a member of staff appointed as acting Principal is member of the corporation while the temporary arrangement exists.

**Our response** – We shall include material on this article in the guidance we will publish later in the spring. However only vacancies in senior posts that are determined as such under article 1 need be advertised nationally. During a re-structure of senior posts those already in posts determined under article 1 as senior posts for the purposes of the articles may be offered other similar posts. However senior staff that are not already occupying such determined senior posts must compete for those posts, which must be advertised nationally.

An acting principal appointed under the articles of government, for whatever period, has all the rights and responsibilities of a permanent holder of that post; including membership of the corporation (unless he chooses not to be a member).

3.6 **Suspension of Staff**

**Comments/responses received** - 9 colleges opposed the proposal that the Chair must report to the LSC in writing any suspensions of senior post holders. Some colleges asked whether this was necessary and suggested that the monitoring of suspended Principals only in the sector would suffice.

**Our response** – The Public Accounts Committee at its hearing on Halton College expressed concern about the time that suspensions with pay could last. This concern applies to all senior post-holders. We consider that the LSC should be able to monitor all suspensions of senior post holders.

3.7 **Dismissal of Staff**

**Comments/responses received** - These articles received the most responses, of the 125 written responses received, 95 were opposed to the proposed changes regarding the dismissal of staff and in particular article 12(10) *(11(10) for former sixth form colleges)* which provides for the dismissal of senior post-holders by the Chair or Vice-chair or Corporation. Some colleges expressed concerns that 12(10) in particular could lead to challenges at Employment Tribunal or under the Human Rights Act. 4 college supported the changes and 26 colleges asked the Department to amend or clarify our proposals, especially with regards to the time frame and some colleges suggested that these proposals should be dealt with in the Department’s guidance on the Instrument and Articles rather than being prescribed in the Articles. Several colleges suggested that there should be a statutory appeal procedure for senior post-holders.

**Our response** – The time scales set out in the articles in respect of the special committee procedure are intended to satisfy the concerns of the Public Accounts Committee and Ministers. We do not consider that failure to meet these time limits will result in challenges at Employment Tribunal. We also do not consider that guidance alone will resolve the delays, which have been experienced in the sector in resolving cases for dismissal, and that provision in the articles is now necessary.

We recognise the concerns expressed about the new provision in the articles for dismissal of senior post-holders by the Chair, Vice-chair or corporation. However the articles also provide that the principal may dismiss members of staff other than holders of senior posts without the need for prior notice and with immediate effect if it is justified by virtue of the conduct of that member of staff. We consider that a similar provision should apply to senior post holders. We also consider that corporations should ensure that there are agreed procedures to deal with such dismissals. However, we recognise the concern about the proposal and have therefore provided for a statutory appeal process. The new provision will allow dismissal by the Chair or in his/her absence the Vice-Chair only. We have added a right to make representations before any dismissal can be made under these provisions. There is also a right of appeal to the corporation, and a requirement that rules are made after consultation with staff dealing with the dismissal of senior post holders, in the same way as there is for other staff. There will be a time limit of 14 days in which an appeal must be made and a further requirement that the corporation meets to consider the appeal within another 14 days. We realise that this will mean that in the very rare cases that this provision is used that corporations will have to meet at short notice, however we are sure that corporations will agree that the dismissal of a senior post holder is a serious enough issue to warrant an urgent meeting. The same time limits will also apply to other staff in article 13.

3.8 **Co-operation with Council Auditor**

**Comments/responses received** – 5 colleges commented on this new provision. 2 were opposed to the amendment and the remaining 3 responses requested clarification on the meaning of the term “co-operate” in the Article.

**Our response** – this provision is intended to support the decision that the LSC should be responsible for the audit of student number returns, and that corporations should cooperate with the Council in the discharge of this function.

3.9 **Internal Audit**

**Comments/responses received** - 6 colleges commented on this issue and all the responses indicated their opposition to the Department’s proposals and felt that colleges should no longer be subject to internal audit.

**Our response** – this provision reflects the Ministerial decision that the same person should not undertake internal and external audits. It is also clear that corporations must ensure that there are systems in place to audit their accounts internally as part of sound financial management.

3.10 **Accounts and Audit of Accounts**

**Comments/responses received** - Of the 114 responses received on this Article, 106 responses indicated their opposition to the Department’s proposal for the LSC to have the power to appoint external auditors.

**Our response** – The proposal that the LSC should have the power to appoint external auditors was intended to clarify explicitly that the LSC might do this. It would not require the LSC to make the appointments. However we accept the concern, and the change was not intended to change the autonomous nature of colleges. We have therefore removed the explicit power and replaced it with the provision in the existing instrument that the appointment of external auditors shall be in accordance with any requirements of the Council.

4 **NEXT STEPS**

Guidance on the new instruments and articles of government

* 1. As we have promised we will be working on guidance for the new instrument and articles of government and we hope to issue this to all colleges later in the spring. There are clearly many areas we should cover in this guide, and we will use the responses to this consultation and the notes of the regional consultation events when deciding what to include, and will also consult national bodies. However we would also welcome any suggestions from colleges.

Contacts at the Department

* 1. The responsibility for further education governance will transfer to the Department’s office in Sheffield from 1 April. Any comments on this paper or questions on the new instrument and articles should be directed to:

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