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CIRCULAR

**THE
FURTHER
EDUCATION
FUNDING
COUNCIL**

**Instrument and Articles of
Government: Modifications**

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To

Principals of colleges
Chairs of governing bodies
Clerks to governing bodies
Chief education officers
Local authorities

Circular type

Information

Summary

Advice on the implementation of
the modifications to the instrument
and articles of government which
come into effect on 1 August 1999

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99/30

Instrument and Articles of Government: Modifications

Introduction

- 1 This circular:
 - provides advice to colleges on the implementation of the changes brought about by the revised instrument and articles of government which come into force on 1 August 1999
 - outlines further modifications to the instrument and articles of government which are intended, subject to statutory consultation, to come into force on 1 October 1999
 - provides, in annexes B and C, guidance to colleges on issues arising from the modification to the instrument and articles of governance.

2 The content of this circular will affect colleges' financial memorandum with the Council and the Council's *Audit Code of Practice*. As a result of the changes to the instrument and articles of government, both documents will be revised in due course.

3 This circular is guidance. It should not be treated as a complete and authoritative statement of the law. Colleges are advised to seek their own professional advice as necessary.

Background

4 Following consultation, the Department for Education and Employment (DfEE) informed colleges in a letter dated 31 March 1999 of the modifications to their instrument and articles of government.

5 Further measures affecting the mode of operation of governing bodies were announced by the government on 28 April 1999. The measures concerned governance and management issues and audit arrangements. The DfEE has established a working group consisting of the Council, the Association of Colleges (AoC), the Catholic Education Service (CES), the Further Education Development Agency (FEDA) and Further Education National

Training Organisation (FENTO) to consider the implementation of the new measures. The group intends to publish an action plan detailing the implementation strategy in mid-July. Some of the new measures are likely to give rise to further modifications to colleges' instrument and articles with effect from 1 October 1999. These changes are identified, for information, in the appropriate sections.

Good governance working group

6 The Council established the good governance working group in February 1999 under the chairship of the Council's chair, Lord Davies of Oldham, with a remit to prepare advice for consideration and publication by the two funding councils; the Further Education Funding Council for Wales and the Further Education Funding Council for England on good governance, with particular reference to the:

- powers of further education corporations and designated institutions
- roles and responsibilities of governors, principals and clerks
- need to ensure accountability and probity and promote effectiveness.

7 To fulfil part of its remit, the good governance working group has assisted the Council with providing the guidance contained in this circular.

8 The group is currently revising the current governance guidance available to colleges. The revised guidance will be comprehensive and will cover all aspects of governance and will include further guidance arising from the modifications to the instrument and articles of government and embracing the current *Guide for Governors* and *Guide for Clerks*. It is intended that initial guidance will be launched at the Council's annual general meeting in November.

Guidance

9 The modifications to the instrument and articles of government relate to all colleges in the further education sector, but vary according to the type of institution. Separate modification orders have been issued for most further education corporations that conduct:

- former further education colleges
- former sixth form colleges

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- former voluntary controlled sixth form colleges.

In a few cases individual orders have been made to encompass earlier amendments. These orders have similar effect to the more general modification orders.

10 In all cases, the changes to the instrument and articles cover in the main the following categories:

- governing body membership
- committee structure
- role of the clerk
- public access to information.

11 The above changes are summarised in paragraphs 15 to 62 and transitional arrangements at paragraphs 29 to 33 and annexes B and C. In addition, in paragraphs 63 and 64, other modifications, which do not easily fall into one of the categories above, are outlined.

12 Similar changes are being implemented for designated sixth form colleges. The main difference is in the area of membership, where foundation governors appointed by college trustees, must form the majority. Due to the individual nature of the membership arrangements of each such college, this circular does not attempt to cover this aspect of their governance.

13 The government is not planning to introduce any changes to the controlling documents of specialist designated colleges, though they have been asked to review their membership to ensure that it remains relevant to the changes outlined in the government's consultation document *Accountability in Further Education*. This circular does not attempt to cover this aspect of their governance.

14 Throughout this circular, for ease of reference, the instrument and articles in force before 1 August 1999 will be referred to as the 'current' instrument and articles. Those which come into effect from 1 August 1999 are referred to as the 'modified' instrument and articles. References are to sections in the modified instrument and articles, unless otherwise specified, and are in the format 'further education college/sixth form' where section numbers differ for these two types of college.

Governing Body Membership

Composition

15 The modifications make significant changes to the composition of governing bodies in order to ensure greater accountability to the local community, in particular:

- by introducing mandatory participation in decision-making by staff, students, local authorities, community interests and, in sixth form colleges, parents
- business governors will continue to have a key role to play, but no longer in the majority
- parents will be able to play a role in decisions that affect their child
- flexibility to involve others with an interest in the college's work through co-option.

16 In summary, the secretary of state has:

- added one new category of membership (local authority members)
- removed one category of member (TEC member)
- specified the minimum and maximum number of governors that a corporation may have in the other categories
- made mandatory some categories of membership that were previously optional.

17 Tables 1 to 3 in annex A illustrate the current and modified frameworks for former further education colleges, former sixth form colleges and former voluntary controlled sixth form colleges.

18 Corporations retain the flexibility to determine the overall balance of their membership within the limits set. The main changes are in the following areas:

- a. the proportion of business members is decreased:
 - in former further education colleges and sixth form colleges, the reduction is to a mandatory one-third of the total membership (rounded up). Previously this was a minimum of half the total membership
 - in former voluntary controlled sixth form colleges, the total of business and

foundation members has been reduced to a mandatory one-third of the total composition (rounded up), in line with the other colleges.

There is no longer a requirement for a TEC nominee, although governing bodies may retain a member with a TEC link in the business or co-opted member category if they are eligible for membership in that category;

- b. all corporations, whether former FE or sixth form college, will be required to have at least one local authority member, one community member, one staff member and one student member. All of these categories were previously optional;
- c. sixth form colleges, including those which are voluntary controlled, must have at least one parent member. Further education colleges may have parent members if they wish;
- d. in sixth form/voluntary controlled sixth form colleges, specific categories of membership are no longer grouped together under the definition of nominee members with a permitted range for the group.

19 The secretary of state has made clear in the covering letter sent with the modification order and directions that, even though it has been decided that a principal may choose not to be a member of the governing body, in normal circumstances principals would be expected to be members. In exceptional cases where a principal was ineligible for membership of the governing body, the secretary of state would expect the principal to be present at all meetings except for items where he or she must withdraw.

New measures

20 *New measures to be introduced, subject to statutory consultation, will give the Council powers to nominate up to two governors to any college governing body. It is intended that these members would be in addition to the governing body's membership, even where this is at the maximum of 20 members.*

21 *In addition, the Council will be able to require that up to two observers attend corporation meetings.*

22 *The Council is currently considering how best to give effect to these new measures. Guidance will be issued if the modification to the instrument and articles is agreed.*

Categories of membership

23 In addition to the numbers in each category of membership, some of the category definitions have also been revised (I 1, 2):

- a. business members
 - following the removal of the TEC member category, the distinction between 'independent' and 'TEC' business members will no longer apply. The new definition of business member is the same as the old independent member;
- b. co-opted members
 - the clause requiring that not more than two co-opted members may be local authority employees other than teachers, members of a fire brigade or elected members of a local authority has been removed
 - as before, other co-opted members of the corporation are excluded from the selection of a co-opted member;
- c. staff members
 - depending on the number of staff members chosen, the governing body may appoint staff members in the combination shown in table 1 below (I 2 4/5);
- d. student members
 - must be elected and nominated by the students at the institution or nominated by a recognised association, chosen by the corporation, which represents the students at the institution;
- e. parent members
 - must now be parents of students under the age of 19 years at the institution (previously no age restriction)
 - must be elected and nominated by other such parents or be nominated by a recognised association chosen by the corporation representing such parents;
- f. local authority members
 - new category
 - the corporation must decide from which local authority/ies to seek nominations. It is for the local authority to decide who to nominate for appointment by the corporation;

- g. local community members
 - no change in definition
 - other local community members are excluded from the corporation’s decision on which local community bodies to nominate;
- h. the principal
 - no change (but see paragraph 19);
- i. foundation members (former voluntary controlled sixth form colleges only)
 - presentational change only.

Table 1. Staff member combinations

<i>Number of staff members</i>	<i>Nominated and elected by</i>		
	<i>Member 1</i>	<i>Member 2</i>	<i>Member 3</i>
1	all staff	–	–
2 or	all teaching staff	all non-teaching/ support staff	–
2	all staff	all staff	–
3 or	all teaching staff	all non-teaching/ support staff	all staff
3	all staff	all staff	all staff

24 The current instrument (I 7.5/9.5) specifies that a student at the college cannot be appointed as a member of the corporation, except as a student member, but an existing member can enrol on a part-time course at the college without being required to resign. The modified instrument (I 7.5/9.5) adds that if an existing member, other than as a student member, enrolls on a full-time course, his or her membership would cease.

Terms of office

25 The modified instrument (I 8.1, 8.2/10.1, 10.2), continues to define the maximum term of office as four years. There remains no limit on the number of terms of office. All appointments are now the responsibility of the full corporation.

Quoracy rules

26 The quoracy rules have been simplified with the requirement for a specified proportion of business members to be present being removed. The modified instrument (I 12.1/14.1) specifies only that at least 40% of the determined total

membership number must be present, regardless of the category of member.

27 The instrument does not refer to quoracy rules for committees, but corporations may wish to review any quorum specified in their standing orders in view of the removal of these restrictions.

28 Further guidance on quoracy matters will be contained in the guidance to be issued in November 1999.

Transitional arrangements

29 Corporations must comply with the current instrument and articles until 1 August 1999. This means that whilst colleges should be moving towards the new requirements as members’ terms of office finish, governing bodies cannot appoint members to the new membership categories or above existing limits within a category until on or after 1 August 1999.

30 The orders modifying colleges’ instrument of government come into force on 1 August 1999. Corporations are required, by the directions, to pass a resolution adopting the modifications to their articles of government at the first meeting of the corporation on or after 1 August 1999. The Council recommends that all members are provided with a copy of the modification order and direction.

31 At the first meeting of the corporation on or after 1 August 1999, the corporation must determine the new constitution of the corporation by agreeing the total membership, the categories of member to be appointed, and the number of members in each category (I 3.1).

32 The modified instrument of government makes it clear that this determination does not mean that the appointment of any member needs to be terminated at the time that the new composition takes effect. Existing terms of membership should run their course unless a member decides to resign from office. However, the instrument states (I 4) that any new appointments must be made so that the composition conforms to the new determination as soon as possible. It is the responsibility of the corporation to ensure that this is done.

33 Further guidance on transitional arrangements for accommodating the changes in membership is contained in annexes B and C.

Committee Structure

34 The modified articles remove the requirement for a remuneration committee and one or more committees to deal with employment policy and finance matters. Corporations are required to establish two new statutory committees: a search committee and an audit committee.

Remuneration and finance committees

35 The Council's financial memorandum with colleges is detailed in Circular 98/30. The financial memorandum, annex B, paragraph 11, requires that colleges shall establish, amongst others:

- a remuneration committee
- a committee or committees to advise on financial matters and employment policy.

36 In the light of the modification to the instrument and articles of government, these requirements will cease to be mandatory from 1 August 1999. The Council will amend its financial memorandum with colleges to reflect these new arrangements.

37 Although the requirement for the corporation to have in place a remuneration and finance committee is removed, the Council would encourage colleges to continue with the current practice. Colleges can still, if they wish, have such committees in place.

Search committee

38 In respect of the search committee, the modified article (A 5.3/4.3) specifies that the corporation:

- shall establish a search committee to advise on the appointment of members of the corporation and other matters relating to membership and appointments which the corporation may remit to them
- shall consider the advice of the search committee before appointing any member of the corporation (other than the principal)
- may make rules specifying the procedures for the conduct of the search committee
- shall make available for inspection by any member of the public during normal office hours a copy of any such rules, the remit of the committee and its advice to the corporation.

39 The search committee will need to bear in mind the revisions to the terms of appointment of particular categories of governors, as detailed in paragraph 23.

40 Further guidance on the role of search committees will be contained in the governance guidance to be issued in November 1999.

Audit committee

41 The modified articles (A 5.4/4.4) specify that the corporation must establish an audit committee which:

- will advise on matters relating to the corporation's audit arrangements and systems of internal control
- must consist of at least three persons
- may include employees of the corporation other than those in senior posts (that is, senior postholders are excluded but other staff are not)
- shall operate in accordance with any requirements of the FEFC.

42 The establishment of an audit committee is already a requirement under the terms of the financial memorandum between colleges and the Council (Circular 98/30, annex B, paragraph 11). Further details are given in the Council's *Audit Code of Practice* (paragraphs 31 to 36 and supplement A) which specifies that the audit committee:

- should have terms of reference set by the corporation (model terms of reference are contained in paragraph 2 of supplement A to the *Audit Code of Practice*)
- should consist of between three and five members, with a minimum of three.

43 The *Audit Code of Practice* recommends that, to maximise the audit committee's independence and objectivity, the following people should not be members of the audit committee (paragraphs 13 to 17 of supplement A of the *Audit Code of Practice*):

- those with executive responsibilities in the college at senior level (as well as the principal and the senior management team, this may include other senior staff with significant responsibilities, for example, for college financial, personnel or student record systems)
 - members of the college finance committee or equivalent
-

- the chair of the governing body
- governors with significant interests in the college.

Membership of committees

44 The restrictions on the membership of committees for categories of governing body members and external members (persons who are not members of the corporation) have been removed in the modified articles, with the following exceptions:

- the principal and other senior postholders (whether governing body members or not) may not be members of the **audit committee** (A 5.4/4.4)
- the principal, staff and student members may not be members of a **special committee** convened to examine the case for dismissal of senior postholders. The chair and vice-chair of the corporation are also not eligible for membership of this committee (A 12.5/11.5). Persons who are not members of the corporation (that is, external members) are also excluded (A 5.5/4.5).

45 It should be noted that there is no change in the circumstances under which staff and student members are required to withdraw from meetings. These are described in I 13/15. In the event of the principal not being a member of the corporation, he or she would be required to withdraw from a meeting in line with I 13 (4) as if he or she were attending as a member.

46 The composition of the **selection panel** required to appoint a principal and the **special committee** appointed to examine the case for the dismissal of a senior postholder have both been changed. The revised membership requirements are:

- the selection panel for the appointment to the post of principal is increased to a minimum of five members of the corporation, including the chair and/or vice-chair. For other senior posts, the minimum is four, made up of three corporation members and the principal (A 7.1(b)/6.1(b))
- for the special committee for the dismissal of a principal or other senior postholder, at least three corporation members (from a previous membership of five) (A 12.5/11.5).

Other non-statutory committees

Standards committee

47 In a letter dated 9 February 1999 to chairs of governors, Baroness Blackstone, minister for further and higher education, emphasised the role of governors in ensuring that standards are raised and stated that she would like to see:

all governing bodies at the very least designating a specific governor who will have responsibility for pursuing standards issues; although you may consider that it would be even better to establish a 'standards committee' along the lines of existing financial committees, to reflect the importance of this issue.

48 The Council fully supports this recommendation and would encourage all colleges to introduce arrangements to ensure that members are well-placed to monitor the quality and standards of the provision on offer in the college.

The Role of the Clerk

49 In response to a recommendation of the education and employment select committee, as detailed in paragraph 169 of its sixth report on further education (May 1998), that the appointment of an independent clerk to the governing body should be made a statutory requirement, the government has modified the instrument and articles to strengthen the role of the clerk as a provider of independent advice and information to the corporation by making the clerk responsible solely to the governing body.

50 There are three main changes relating to:

- employment of the clerk
- attendance of the clerk at corporation meetings
- a requirement that the clerk keep a register of members' interests.

Employment of the clerk

51 The modified instrument of government set out the following requirements relating to the employment of the clerk to the corporation:

- the corporation shall appoint a person to serve as clerk to the corporation (I 6A.1/8A.1)
- the clerk cannot be a member of the corporation (I 7.6/9.6)
- the corporation is responsible for the appointment, grading, suspension and determination of the pay and conditions of service of the clerk (A 3.1)
- the corporation may not delegate the appointment or dismissal of the clerk (A 5.6/4.6)

Attendance at meetings

52 The clerk will be entitled to attend all meetings of the corporation (including committee meetings) but must withdraw from any meetings or part of a meeting where his or her own remuneration, conditions of service, conduct, suspension, dismissal or retirement are to be considered (I 6A.2/8A.2).

53 In these circumstances:

- the members shall select one of their number to act as clerk for the duration of the meeting or part of the meeting (I 6A.2/8A.2)
- the chair shall send the agenda item and any relevant papers to the members at least seven days before the meeting (I 11.3/13.3)
- separate minutes of the meeting or part of the meeting will be prepared (I 14.2/16.2)
- the clerk is not entitled to see these minutes (I 14.2/16.2).

54 In addition to the above, the Council has recommended¹ in order to ensure the independence of the clerk to the audit committee, that the audit committee should not be serviced by a clerk who has significant financial responsibilities at senior management level within the college. This recommendation will not change in the light of the modified instrument and articles of government.

Maintain a register of interests

55 The modified instrument requires that the clerk maintain a register of the financial interests of the corporation members that must be available to members of the public during normal office hours (I 10.3/12.3).

¹in *Guide for Clerks*, section 7.28, and *Audit Code of Practice*, supplement A paragraph 23

56 The Council has recommended² that corporations consider extending the scope of the register to include members' non-financial interests and the interests of senior postholders and members' families.

57 The modified instrument also contains a revision in respect of declarations of members' financial interests at meetings (I 10.2/12.2). Members will have to declare the nature and extent of their financial interest rather than simply the fact that they have such an interest.

Public Access to Information

58 The current instrument and articles specify that the following documents should be made available at the college during normal office hours to any person wishing to inspect them:

- for any meeting of the corporation, where the documents do not contain matters which the corporation has identified as confidential or which name current/future students or employees (I 16.1/18.1):
 - the agenda
 - the draft minutes (if they have been approved by the chair of the meeting)
 - the signed minutes
 - any report, document or other paper considered at the meeting
- a written statement of policy on attendance at committee meetings by persons who are not committee members (A 5.7/4.7)
- a written statement of policy regarding the publication of minutes of committee meetings (A 5.7/4.7)
- colleges must also comply with the Council's directions as to the content, presentation and time and manner of publication of an annual statement of the college's accounts (I 21.2 (b)/23.2).

59 The current articles also require that copies of the instrument and articles for the college and any rules and bye-laws agreed by the corporation shall be available for inspection on request during normal office hours at the institution to every member of staff and to students (A 18/20).

²in *Guide for Clerks*, paragraph 6.18 and annex D

60 The modified instrument and articles retain the above requirements, to which are added public access during office hours to:

- the register of financial interests of members of the corporation (I 10.3/12.3)
- any rules specifying the conduct of the search committee, together with its remit and advice to the corporation (A 5.3/4.3).

61 Colleges are also required to publish information, for example, under:

- the *Charities Act 1993*. Colleges are required to supply any person with a copy of the college's most recent accounts within two months of a request (see paragraph 14 of the appendix to annex B of Circular 98/30)
- the *Disability Discrimination Act 1995*. Colleges must publish an annual disability statement which outlines the nature and range of provision available for students with learning difficulties and/or disabilities
- the *Charter for Further Education*. Colleges are expected to:
 - publish a college charter
 - publish in the charter details of their arrangements for handling formal complaints
 - publish governors' names, explain their role and how to contact them (normally through the clerk to the governors).

62 Further guidance on public access to information will be contained in the governance guidance to be issued in November 1999.

Other Modifications

63 There are a number of other modifications to the instrument and articles which do not fall within the above four categories. These include:

- to the requirement that members shall not be bound in their speaking and voting by mandates given to them by others, has been added the express requirement that members must act in the best interests of the corporation (I 11.5/13.5). This means, for example, that nominating bodies cannot require their nominees to vote in a

particular way. Members must make up their own minds on issues, taking into account only what is in the best interests of the corporation itself

- voting: to the prohibition against voting by proxy, has been added the restriction that members cannot vote by post (I 13.2/15.2)
- minutes of corporation meetings: these no longer need to be considered as the first item on the agenda; they can be considered anywhere on the corporation meeting agenda (I 14.1/16.1)
- delegation by the corporation: the corporation may not delegate to the principal the power to determine an appeal in respect of the dismissal of a member of staff who is not a senior postholder under article 13.3/12.3 unless the principal has previously delegated his or her power to dismiss such member of staff to a senior postholder under A 13.1/12.1 (A 5.6A/4.6A). This is intended to ensure that an appeal against a decision made by the principal is not also considered by the principal
- delegation by the principal: the principal may delegate to a senior postholder any of his or her functions (A 5.8/4.8). Previously it was unclear whether this power was restricted to functions under (references are to current articles) article 7 (selecting members of staff), 10 (suspension of staff) and 12 (dismissal of staff).

New measures: suspension of staff

64 *New measures to be introduced, subject to statutory consultation, propose the removal of the requirement that the suspension of senior postholders by the chair of the corporation (A 11.1/10.1) and other staff by the principal (A 11.2/10.2) shall be with pay. Staff will be able to be suspended with or without pay. This change is not intended to rewrite, retrospectively, existing contracts of employment.*



Composition of the Corporation

Table 1. Former further education colleges

<i>Membership category</i>	<i>Before 1 August 1999</i>	<i>From 1 August 1999</i>
Total membership	10 – 20	12 – 20
Business/independent members	At least half but not more than 13	Must be equal to one-third of total rounded up (that is, between 4 – 7 members)
Business/TEC member	1	No requirement to have a TEC member
Co-opted members	0 – 5	0 – 3
Staff members	0 – 2	1 – 3
Student members	0 – 1	1 – 3
Parent members	0	0 – 2 (parents of students under 19)
Local authority (LA) members	0 (although up to two co-opted members may have LA connections)	1 – 3
Community members	0 – 2	1 – 3
Principal	Unless he or she chooses not to be a member	Unless he or she chooses not to be a member

Table 2. Former sixth form colleges

<i>Membership category</i>	<i>Before 1 August 1999</i>	<i>From 1 August 1999</i>
Total membership	10 – 20	12 – 20
Business/independent members	At least half but not more than 12	Must be equal to one-third of total rounded up (that is, between 4 – 7 members)
Business/TEC member*	1	No requirement for a TEC member
Co-opted members	0 – 3	0 – 3
Staff members*	0 – 2	1 – 3
Student members*	0 – 1	1 – 3
Parent members*	0 – 2	1 – 2 (parents of students under 19)
Nominee members	3 – 6	No nominee member group
Local authority (LA) members	0 (although up to two co-opted members may have LA connections)	1 – 3
Community members	0	1 – 3
Principal	Unless he or she chooses not to be a member	Unless he or she chooses not to be a member

* *nominee members*

Table 3. Former voluntary controlled sixth form colleges

<i>Membership category</i>	<i>Before 1 August 1999</i>	<i>From 1 August 1999</i>
Total membership	10 – 20	12 – 20
Business and foundation members	Minimum half of total	Must be one-third of total rounded up (that is, between 4 – 7 members)
Foundation members*	Minimum 2 (if total 10) Minimum 3 (if total 11 – 14) Minimum 4 (if total 15 – 20)	Minimum 3 (if total 12 – 14) Minimum 4 (if total 15 – 20)
Co-opted members	0 – 3	0 – 3
Staff members*	0 – 2	1 – 3
Student members*	0 – 1	1 – 3
Parent members*	0 – 2	1 – 2 (parents of students under 19)
Nominee members	4 – 10	No nominee member group
Local authority (LA) members	0 (although up to two co-opted members may have LA connections)	1 – 3
Community members	0	1 – 3
Principal	Unless he or she chooses not to be a member	Unless he or she chooses not to be a member

* *nominee members*

Transitional Arrangements – Achieving the New Composition

Detailed below are a number of suggested steps that a college may wish to consider in moving towards its new composition. The steps are illustrative and are not exhaustive. In the appendix is an illustrative example of how the introduction of the new composition may be achieved.

Stage 1: Determining the new composition

The corporation needs to consider and agree what its new composition will be in compliance with the modified instrument and articles.

A Preparations

- 1 How will the decision be reached?
 - will it involve any consultation? (for example, with staff or students, with external bodies)
 - what will the governing body base its decision on (for example, a search committee recommendation, a full governing body activity, a management report)?
- 2 How will the decision process be recorded:
 - in reports to the governing body
 - in the minutes of governing body and committee meetings?
- 3 What information will the governing body need to make the following decisions:
 - who are the college's principal stakeholders
 - which skills and expertise will the governing body need most over the next few years
 - have the tasks of the governing body changed?

B Determining the new composition

- 1 What is the minimum legal requirement for the corporation in terms of:
 - total membership
 - number of members in each category?

2 In which categories do you wish to increase the membership beyond the minimum in order to represent key interest groups/stakeholders appropriately? By how many members?

3 In which categories do you wish to increase the membership beyond the minimum in order to bring in the skills/expertise the corporation needs? By how many members?

4 How does the number in each category derived from steps 2 and 3 compare with the category maximum? Adjust to fall within the permitted range within each category.

5 How does the proposed total membership thus derived compare with:

- the maximum legal membership
- the current size of the corporation?

Stage 2: Moving towards the new composition

Once the new composition has been determined, the corporation will need to consider the options available to achieve this composition.

A Preparations

- 1 Have you identified all the factors that will need to be taken into account? For example:
 - the requirement to achieve the new composition as soon as possible
 - the need to manage the work of the governing body over the transitional period
 - that the timing and the order in which the vacancies arise will determine the options open to the governing body at each stage.
- 2 Have you agreed what the respective roles of the search committee, the clerk and the corporation will be in this process? For example:
 - what should/should not the governing body delegate to the search committee
 - how often will the search committee need to meet
 - how and when is the search committee going to report to the governing body?

3 Have any other changes affected your membership, which you will need to take into account? For example:

- do you wish to retain TEC representation among your business members (or in another category)
- are any of your parent members parents of students aged 19 or over
- do your arrangements for electing and nominating staff members comply with the new requirements
- have you decided whether to choose student and/or parent associations to elect and/or nominate student and/or parent members?

4 Do you wish to review any of the terms of office for particular categories of membership:

- to stagger periods of office so that periods of office across the governing body or within particular categories do not come to an end at the same time
- to take account of new categories of member?

B To achieve the new composition

1 Compare the numbers in each category of membership between the current and new composition. Which categories are most different?

2 Map out when membership vacancies will arise, and identify any constraints:

- do you have any vacancies at 1 August 1999
- when will existing members' terms of office come to an end
- which existing members are eligible for reappointment
 - in the light of the new composition
 - in relation to the number of periods of office served
- do you have any early indications of members' willingness to be considered for reappointment
- are you clear how the expiry of individual members' terms of office will affect the work of the governing body; for example, are the chair or vice-chair involved? How will these committees be affected?

3 Taking the vacancies in the order in which they arise, consider:

- which options are available
- which factors need to be taken into account
- which appointments the corporation wishes to make.

4 Consider the arrangements needed to make these appointments:

- how will this affect the schedule of meetings:
 - of the search committee
 - of the governing body
- when and how will nominating bodies be approached
- will any new elections need to be arranged?

Example

A former further education college has a total corporation membership of 18. All members have three-year terms of office with the exception of student and parent members who have/will have one-year terms.

Step 1. Compare current and new membership

	<i>Business</i>	<i>Co-opted</i>	<i>Staff</i>	<i>Student</i>	<i>Parent</i>	<i>LA</i>	<i>Com'ty</i>	<i>Principal</i>	<i>Total</i>
Current	9	4	1	1	0	0	2	1	18
New	6	2	2	2	1	2	2	1	18
Difference	-3	-2	+1	+1	+1	+2	=	=	=

Step 2. Identify when existing members' periods of office are due to expire

	<i>Business</i>	<i>Co-opted</i>	<i>Staff</i>	<i>Student</i>	<i>Parent</i>	<i>LA</i>	<i>Com'ty</i>	<i>Principal</i>	<i>Total</i>
Current vacancies		X		X					2
1999-2000	XX			X					3
2000-01	XXX	XX	X	X					7
2001-02	XXXX	X		X			XX		8

Step 3. Agree the order of appointments to achieve the new composition

Adjustments will need to be made for any unplanned resignations and to take account of the wishes of members eligible for reappointment.

A 31 July 1999 – vacancies:

- 1 student member
- 1 co-opted member

Options:

- replace student member, and appoint to one of the staff, parent or local authority vacancies
- do not appoint another student member but fill two out of the staff, parent and local authority vacancies

Factors considered:

- cannot appoint another co-opted member because need to reduce the number in this category by two
- student and parent members have a shorter term of office and need to fit into teaching year pattern
- one student member will provide interim student representation until both members are appointed
- already have staff representation

Decision:

- appoint one **student** member and one **parent** member as soon as possible after start of teaching year
- co-opt **external person** to membership of corporation audit committee to replace audit skills lost.

	<i>Business</i>	<i>Co-opted</i>	<i>Staff</i>	<i>Student</i>	<i>Parent</i>	<i>LA</i>	<i>Com'ty</i>	<i>Principal</i>	<i>Total</i>
After A	9	3	1	1	1	0	2	1	18
New	6	2	2	2	1	2	2	1	18
Difference	-3	-1	+1	+1	=	+2	=	=	=

B 30 September 1999 – periods of office due to expire:

- one independent **business** member
- one business/TEC member

Options:

- can appoint to additional membership numbers in staff, student or local authority categories

Factors considered:

- cannot appoint/reappoint two business members because need to reduce numbers in this category by three
- cannot appoint a TEC member as category withdrawn
- already have some staff and student representation
- need additional time to make alternative arrangements for two student members to be nominated and elected rather than one

- neither the independent business member nor the TEC member fulfil the criteria for consideration for appointment as a student, staff or local authority member, so could not retain their expertise at this point; if still interested, as both only had one term of office, will reconsider at a later date when a suitable vacancy arises for example, for a co-opted member

- need to replace expertise lost due to large capital project about to start

Preferred option:

- appoint two **local authority** members
- co-opt two **external** members on to finance and estates committees to replace business and surveying expertise lost.

	<i>Business</i>	<i>Co-opted</i>	<i>Staff</i>	<i>Student</i>	<i>Parent</i>	<i>LA</i>	<i>Com'ty</i>	<i>Principal</i>	<i>Total</i>
After B	7	3	1	1	1	2	2	1	18
New	6	2	2	2	1	2	2	1	18
Difference	-1	-1	+1	+1	=	=	=	=	=

C 30 September 2000 – periods of office due to expire:

- three **business** members
- two **co-opted** members
- one **staff**, one **student** and one **parent** member

Options:

- can appoint two business members (rather than three)
- can appoint one co-opted member (rather than two)

- can replace staff member and appoint second staff member
- can replace student member and appoint second student member
- can replace parent member

Preferred option:

- appoint two business members
- appoint one co-opted member
- replace staff member and appoint second staff member

- appoint second student member (at same time as replacing first student member)
- replace parent member

- one co-opted member may not be reconsidered as has already had one term of office; skills needed will need to be reviewed depending on skills/expertise brought in by previous appointments.

Factors considered:

- all business members have had only one term of office, so are all, in principle, eligible for reappointment; search committee to consider in comparison to responses to advertisement for new business members

	<i>Business</i>	<i>Co-opted</i>	<i>Staff</i>	<i>Student</i>	<i>Parent</i>	<i>LA</i>	<i>Com'ty</i>	<i>Principal</i>	<i>Total</i>
After C	6	2	2	2	1	2	2	1	18
New	6	2	2	2	1	2	2	1	18
Difference	=	=	=	=	=	=	=	=	=

Questions and Answers

Detailed below are questions and answers that provide guidance on the implementation of the modifications to the instrument and articles of government. The list is not exhaustive, but reflects a number of questions raised with the Council on this matter. Further guidance and good practice will be issued as part of the work of the good governance working group in November 1999.

Q1 Which options are open to corporations when vacancies arise before 1 August 1999? In particular, to what extent can/should the corporation extend existing terms of office beyond 1 August, appoint or reappoint to the 'old' composition?

A1 A number of options are available, including:

- to appoint/reappoint to the 'old' composition before 1 August with the usual term of office
- to appoint/reappoint to the 'old' composition before 1 August with a shorter term of office, with a view to reaching the 'new' composition more quickly
- to leave the vacancy unfilled until after 1 August and then use it to move towards 'new' composition.

It is up to the corporation to decide in each case which option is in its best interests, bearing in mind that it is a requirement that the corporation adheres to the 'old' composition before 1 August 1999 but moves to achieve the 'new' composition as soon as possible thereafter.

Q2 If there are a number of vacancies in different categories, is there any particular order in which the vacancies should be filled? For example, should a category where the revised instruments require a minimum of one member, and there is no existing member, be filled before categories where the corporation has a choice whether to have a member, or where the corporation already has a member?

A2 Vacancies may be filled in any order, subject to the requirement that the corporation moves towards its 'new' composition as quickly as possible.

For example, if a corporation had decided to have two staff members and two local authority members,

and at present it has only one staff member and no local authority members, there is no legal requirement that the next appointee must be a local authority member. The corporation is in default of the modified instrument (or would be but for the transitional arrangements) just as much in having only one of its two staff governors as it is in having none of its two local authority governors. Appointing either a staff governor or a local authority governor is therefore equally moving towards the new composition.

In choosing which member to appoint, the corporation should look to the best interests of the college in the particular circumstances of each case. The corporation should bear in mind that it would be more representative of the college's key stakeholders with one staff member and one local authority member. The corporation should also consider how each prospective member would complement and add to the skills of existing members.

Q3 Can a corporation 'transfer' an existing member from one category of membership to another? For example, could an existing business member become a co-opted member or a co-opted local authority officer be redesignated as a local authority member?

A3 Members cannot be transferred from one category to a new category in the middle of their term of office. Members hold office in accordance with their terms of appointment, and these cannot be varied without their consent.

However, there may be circumstances in which a member in one category whose term of office comes to an end (or who resigns) can be reappointed in another category. For example, a corporation may wish to retain the expertise of a business member whose period of office has come to an end, but who cannot be reappointed under the business category due a decrease in numbers, as a co-opted member.

In doing this, the corporation will need to comply with the rules and procedures that apply to appointments/reappointments to the particular category of membership. In the case of a vacancy for a co-opted member, as with any reappointment, the search committee would need to be involved to evaluate whether the person's skills are those most needed by the governing body. This evaluation should take into account a skills audit of the governing body and the merits of appointing a new

person to the governing body. As a local authority member would need to be nominated by a selected local authority, the search committee would need to contact the local authority in question to see if it wished to nominate this, or some other person to the vacancy.

Q4 If an existing governing body member is appointed to a new category at the end of his or her period of office, would this count as a reappointment (and as such be subject to any restrictions on the numbers of terms of office that the governing body have agreed)?

A4 A member who retires from one category of membership and is appointed in another category of membership would count as having been reappointed.

Q5 When seeking nominations, for example, from local community bodies, can the corporation seek nominations from more groups than there are members and then choose between them or does the number of nominations sought have to match the number of vacancies available?

A5 For each local community member post, the corporation can only nominate one body or group of bodies who will collectively propose nominees. It is not acceptable for a corporation to invite nominations from more local community bodies than there are membership vacancies and then choose which local community body nominees to accept. In seeking nominations, the governing body may wish to indicate the skills it requires.

Q6 To what extent can the corporation specify particular skills and expertise when seeking members?

A6 This will depend on whether or not the vacancy is for a post which has to be filled by a member nominated by a third party. If not, the corporation can be as prescriptive as it likes (within reason, and always bearing mind that the corporation has a duty to fill any vacancies as soon as possible). If the post is for a nominated member, the choice of nominee is up to the nominating body. However, nominating bodies may be willing to discuss the skills needs of the corporation before making a nomination and the search committee would be well advised to take up this option, where offered. In seeking nominations, the governing body may wish to indicate the skills it requires.

In the case of elections for staff, student or parent members, it is of paramount importance that such elections are free, open and democratic and a corporation should not try to influence the results by specifying particular skills and expertise.

Q7 When can a corporation reject a nomination?

A7 A corporation should only reject a nominee if it believes on the basis of cogent evidence that the nominee is unlikely to be able to fulfil his or her responsibilities as a member of the corporation or is ineligible for membership.

If a nomination is rejected, the corporation is not free to appoint someone who has not been nominated in their place; another nomination from the existing nominating body would need to be sought. Only if that nominating body refused to make another nomination could an alternative nominating body be chosen.

Q8 How should elections for students, staff and parent governors be carried out?

A8 To fulfil the requirements of the instrument and articles, elections need to be open and democratic. This means that everyone eligible to vote needs information about the election and the candidates and has a way of registering their choice. The corporation needs to consider what is most suitable, bearing in mind the frequency of the election, the type of voter and the numbers involved.

There are a number of alternative arrangements, including one of, or a mixture of, the following:

- a. a postal ballot of all those eligible to vote. This may be the only way of involving students who do not attend college centres (for example, distance learning students). The disadvantage of this approach is that it can be extremely expensive and time-consuming to arrange if undertaken for large numbers, for example, for all students;
- b. publish information about the election and the candidates in all college centres and/or through electronic media and have a number of central voting points (for example, learning resource centres, students' union or personnel offices) where votes can be checked off against a list of voters on proof of identity. Care would have to be taken to have a long enough voting period to cater for part-time attendance of students or staff. Alternative arrangements would have to be made for distance learning or outreach students;

- c. information and ballot papers could be circulated using the college's internal systems, for example, with payslips to staff or through tutors to students and their parents. This mechanism has the advantage of saving postage, but requires a comprehensive tutorial system that includes part-time as well as full-time students.

Q9 Can a corporation appoint a member of college staff as a co-opted member of the corporation and/or its committees?

A9 College staff are only eligible for corporation membership either as a staff member or in the capacity of principal (I 7.4/9.4). Staff can, however, be co-opted onto corporation committees, with the exception of special committees to dismiss senior postholders. In addition, senior staff cannot be co-opted onto the audit committee.

In respect of co-opted members, a number of local bodies may provide possible nominations. These include 'local' universities, local schools, and the regional TUC.

Q10 Can a college which has decided to have more than one student member specify different categories, for example, one aged 16 to 18 and one 19+? If so, how would this affect arrangements for elections or nominations?

A10 No. Student bodies should be representative of all students.

Q11 If all students must be able to vote does this mean students on all types of courses, for example, those studying on evening classes only, on franchised courses, on short courses or by open distance learning?

A11 Yes. Colleges with a complex curriculum offering and a widely dispersed student body will need to make arrangements to include all its students.

Q12 If staff members must be nominated and elected by all staff (or by all teaching or all support staff), does this include staff employed on a casual basis, or on short part-time contracts (for example, two hours a week for a term) and agency staff?

A12 Agency staff are not college employees and, as such, do not count as members of staff for these purposes. However, all staff who are employees of the corporation, regardless of the numbers of hours

they work and the length of their contract, are eligible to be nominated and to vote in the elections.

Q13 Can a governing body place any conditions on which members of staff may become staff members, for example, only those employed on full-time or substantial part-time contracts or who have been employed at the college for a minimum period?

A13 No. The Council has been advised that the corporation cannot impose any conditions whatsoever on which members of staff may become staff members.

Q14 To be eligible for appointment, a parent member must be a parent of a student under the age of 19 at the institution. How is 'under the age of 19' defined? (For example, does this mean under 19 at the start of the course, at the time of appointment or for the whole of the period of appointment?)

A14 While there is no definition in the instrument and articles, the Council has been advised that the relevant date when calculating the student's age in this context is the date of the parent's appointment. Once a parent has been appointed, he or she can continue to a member even if his or her child attains the age of 19. In addition, parent members do not become ineligible if their son or daughter leaves the college during their term of office (unless the corporation makes this part of the terms of appointment).

Q15 Can the corporation chose any local authority from which to invite a nomination?

A15 A local authority is defined in the *Education Act 1996* as a county council, county borough council, district council, London borough council or the common council of the City of London. This definition includes unitary authorities but excludes parish councils.

In the best interests of the college, the corporation should approach the local authority or local authorities that can best contribute to the work of the college. It would be inappropriate to approach a local authority with which the college has no involvement.

The Council, in conjunction with the Local Government Association, would strongly encourage colleges to include local education authority representation, where possible.

Q16 Are there any restrictions on whom a local authority can nominate?

A16 No. A local authority can nominate elected members, or local authority officers, or anyone else it chooses.

Q17 Can a committee meeting be quorate with only the principal and staff members attending?

A17 The removal of any restriction on categories of member that need to be present means that it could be possible for a committee to be quorate with only, for example, the principal and staff members present. The Council would strongly advise that a corporation, when reviewing its quoracy rules for committee meetings, should consider whether this would be in the best interests of the corporation. Any decisions made at such a committee or governing body meeting could be open to a charge of being unrepresentative.

Q18 Can a committee meeting be quorate with only external members, that is, members of the committee who are not members of the corporation? For example, an audit committee which has a number of external members co-opted for their expertise in this area?

A18 Yes, there is nothing in the articles to preclude a committee being quorate even if no members of the corporation are present. This may in fact be to the corporation's advantage where the committee is working in an advisory capacity only, but may not be in the best interests of the corporation if the committee was exercising delegated decision-making authority.

Q19 What does 'independent' mean in relation to the role of the clerk?

A19 In some instances, 'independent' has been interpreted as being synonymous with 'not a member of staff of the college'. The Council's view is that the role of the clerk can be compatible with being employed by the college in another role, including in a senior post, so long as the person can act independently in their capacity as clerk; for example, they must be able to commission independent advice on behalf of the governors, in particular from the corporation's legal and other professional advisers.

Further guidance on this matter will be published with other guidance on governance matters in November 1999.

Q20 What right of access should members of the public, students and/or staff have to individual members of the governing body? For example, would it be legitimate, where a college's mechanism for contacting governors is through the clerk to the corporation, for the clerk to choose which correspondence to forward to individual governors?

A20 The instrument and articles of government do not give any particular right of access to individual governors to the public, students or staff.

Colleges should have a mechanism for ensuring that governors are provided with the information they require to undertake their duties as governors. In many cases the clerk will be responsible for the mechanism for passing correspondence or information to individual governors, subject to any instructions that the governing body or individual governors may wish to give.

In the spirit of open governance, a corporation would be ill-advised to restrict access unnecessarily and should consider, if it has not already done so, agreeing and publishing its policy on when access to individual governors would and would not be appropriate.

