



Draft Statutory Guidance on the School Governance (Constitution) (England) Regulations 2003 – Community schools version

Executive summary

Overview

The draft statutory guidance sets out a new framework for the constitution of school governing bodies. All governing bodies will have to choose and adopt a new model for the size and membership of their governing body by 31 August 2006. The size of the governing body ranges from a minimum of 9 to a maximum of 20. Within this range each governing body can adopt the model of their choice, provided it complies with the guiding principles for community schools. The guiding principles prescribe which categories of governor must be represented on the governing body and what the level of representation is for each of the groups.

Action required:

the closing date of this consultation is 29 November 2002.

Further information

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DRAFT GUIDANCE ON THE CONSTITUTION OF SCHOOL GOVERNING BODIES

Community and community special schools version

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DRAFT STATUTORY GUIDANCE ON THE SCHOOL GOVERNANCE (CONSTITUTION) (ENGLAND) REGULATIONS 2003

COMMUNITY SCHOOLS AND COMMUNITY SPECIAL SCHOOLS VERSION

1. SUMMARY

1.1. Introduction

The aim of this statutory guidance is to explain the new framework for governing body constitution to enable governing bodies and LEAs to operate the new arrangements effectively. This guidance refers to the School Governance (Constitution)(England) Regulations 2003. Additional guidance will be put on the DfES governors' website in due course (address: <http://www.dfes.gov.uk/governor/index.cfm>).

1.2 A flexible framework

All governing bodies will have to choose and adopt a new model for the size and membership of their governing body by 31 August 2006. The size of the governing body ranges from a minimum of 9 to a maximum of 20 (not including sponsor governors). Within this range each governing body can adopt the model of their choice, provided it complies with the guiding principles for community schools.

1.3 The guiding principles

The guiding principles prescribe which categories of governor must be represented on the governing body and what the level of representation is for each of the categories. There are four compulsory stakeholder groups for community schools: parents, school staff, the Local Education Authority (LEA) and the community. Sponsors form a fifth, optional group. (See sections 2 and 3 for more detail). The proportions of places on the governing body that must be reserved for the different categories of governor in community schools are as follows:

- Parent governors: at least one- third
- Staff governors: at least two places, but no more than one-third, including the head teacher
- LEA appointed governors: one-fifth
- Community governors: at least one-fifth.

Examples of constitutional models that comply with these principles are set out in annex A.

1.4 The instrument of government

Each school must have an instrument of government. This document records the name of the school and the constitution of the governing body. It is the governing body's responsibility to prepare a draft instrument and submit it to the LEA. (See section 7 for more detail). A model instrument of government is attached at annex B.

1.5 Timing and implementation

The regulations will come into force on 1 March 2003. This will enable governing bodies to choose a new model and formally adopt this by having a new instrument of government in place by the start of the 2003/04 academic year, if they so choose. All governing bodies will have until 31 August 2006 to comply with the new framework. From 1 September 2006 all governing bodies must have new style instruments of government in place. The implementation stages and timescales are:

- **March 2003:** new regulations will come into force and guidance will be published.
- **March 2003 – August 2006:** governing bodies choose a new constitutional model and have a new instrument of government.
- **1 September 2006:** all governing bodies comply with the new regulations on governing body constitution and have a new instrument of government in place.

1.6 Legislative basis

From 1 March 2003 a new framework for the constitution of governing bodies will come into effect. The legislative basis for this will be the School Governance (Constitution) (England) Regulations 2003 which will replace schedules 9 and 12 of the School Standards and Framework Act 1998 and parts of the School Government Regulations 1999.

1.7 Transitional arrangements

All existing governors can serve out their term of office up to 31 August 2006 if they so choose. If the new model chosen by the governing body is such that not all governors presently on the governing body can be part of the new governing body, these governors can serve out their term of office until it expires or until the date when all governing bodies have to formally operate under the new framework: 1 September 2006, which ever is the soonest. Individual governors may, of course, step down before that date if they so choose.

2. THE CATEGORIES OF GOVERNOR AND ELIGIBILITY (part 2 and schedules 1–5 of the draft regulations)

2.1. Parent governors. Parents, including carers, of registered pupils at the school are eligible to stand for election for parent governorship at the school. Parent governors are elected by other parents at the school. If insufficient parents stand for election, the governing body can appoint parents.

2.1.1. Schools must make every reasonable effort to fill parent governor vacancies through elections. Only if insufficient parents stand for election can the governing body appoint:

- (a) a parent of a registered pupil at the school, or if that is not possible
- (b) a parent of a former pupil at the school, or if that is not possible,
- (c) a parent of a child of or under compulsory school age.

This also applies to community special schools, but for these schools the appointment criteria are as follows:

- (a) a parent of a registered pupil at the school, or if that is not possible
- (b) a parent of a former pupil at the school, or if that is not possible,
- (c) a parent of a child of or under compulsory school age with special educational needs for which the school is approved, or if that is not possible,
- (d) a parent with experience of educating a child with special educational needs.

2.1.2. Elected members of the LEA and those who work at the school for more than 500 hours (i.e. for more than one-third) in a year are not eligible to be parent governors.

2.2. Staff governors. Both teaching and other staff paid to work at the school are eligible for staff governorship. Staff governors are elected by the school staff and must be paid to work at the school; volunteers are not eligible. All paid staff are entitled to vote by secret ballot for any of the candidates.

2.2.1. At least one staff governor must be a teacher, unless no teacher stands for election. If a governing body has three or more staff governor places, at least one staff governor must be a non-teaching member of staff, unless no such person stands for election.

2.2.2. The head teacher is a member of the governing body by virtue of their office and counts as a member of the staff category. If the head teacher decides not to be a governor they must inform the clerk of that decision in writing, and we recommend that the head teacher does so before circulation of the agenda of the governing body's first meeting after the head teacher's appointment. The head teacher's place remains reserved for them and cannot be taken by anyone else.

2.2.3. The places that must be reserved for the head teacher, a teacher and a member of the support staff on the governing body are also set out in the table below:

Reserved places for staff governors			
Total number of staff governor places on the governing body	Place reserved for the head teacher	Place reserved for a teacher	Place reserved for a member of support staff
2 (minimum)	1	1	0
3 or more	1	1	1

2.2.4. School staff who work at the school for an average of more than one-third of a school year (i.e more than 500 hours in total) are not eligible to serve in any other category of governor at their school. Staff can, however, vote in parent governor elections if they are parents and be governors at another school.

2.3. LEA governors are appointed by the LEA. LEAs can appoint any eligible person as an LEA governor. LEAs are encouraged to appoint high calibre governor candidates to schools that need most support and to appoint candidates irrespective of any political affiliation or preferences. LEAs may appoint minor authority nominees to schools as LEA governors.

2.4. Community governors are appointed by the governing body to represent community interests. Community governors can be persons who live or work in the community served by the school, or persons who do not work or live close to the school but are committed to the good governance and success of the school. The definition of community governor is wide and can include people from a business or professional background, and minor authority nominees.

2.4.1. In community special schools one of the community governors can be appointed by one or more voluntary organisations designated by the LEA, or if the school is based in a hospital, the relevant Primary Care or health service trust.

2.4.2. Registered pupils at the school and staff eligible to be staff governors at the school are not eligible to be community governors at their school. Elected members of the LEA are not eligible to be community governors.

2.5. Sponsor governors. Persons who give substantial assistance to the school, financially or in kind, or who provide services to the school can be appointed by the governing body as sponsor governors. This definition allows for external partners, including other schools, who offer advice and support to a school to be represented on the governing body. These can include governors nominated by the local Education Action Forum if the school is part of an Education Action Zone (EAZ).

2.5.1. The governing body can seek nominations from the sponsor body and appoint a maximum of two persons as sponsor governors. It is at the governing body's discretion whether they choose to appoint sponsor governors or not.

2.6. Associate members Governing bodies benefit from being able to draw on expertise and experience from outside their formal governor membership from time to time. The governing body

can appoint associate members to serve on one or more governing body committees and attend full governing body meetings. Associate members are persons interested in contributing to the work of the governing body, but who are, for various reasons, not able or reluctant to become governors. The definition of associate member is wide and can include pupils, school staff and persons who want to contribute specifically on issues related to their particular area of expertise (for instance finance).

2.7. Associate members are not governors. Associate members can attend governing body meetings, but they do not have any voting rights in these meetings. They will not be able to vote on staffing, finance, admissions and discipline matters and on election or appointment of governors. The governing body can appoint pupils to committees as associate members, but those under eighteen will have no voting rights at all. Pupils aged 18 or over can be given voting rights on committees, as any other associate member. Associate members are not recorded on the instrument.

3. THE COMPOSITION OF THE GOVERNING BODY (part 3 of the draft regulations)

3.1. The number of governors must be no fewer than 9 and no more than 20, excluding sponsor governors. The guiding principles that determine the level of representation prescribe that the proportions of places taken by each of the categories are as follows:

- Parent governors: at least one-third.
- Staff governors: at least two but no more than one-third, including the head teacher.
- LEA appointed governors: one-fifth.
- Community governors: at least one-fifth.
- Up to two sponsor governors.

3.2 Proportions and percentages must be rounded to the nearest whole number. Annex A gives examples of models that comply with the principles. These examples are not exhaustive and governing bodies are free to adopt alternative models that comply with the guiding principles.

4. TERMS OF OFFICE (regulation 25)

4.1. The maximum term of office for all categories of governor (other than the head teacher) is four years, but the governing body can decide to set a shorter term of office for one or more categories of governor. This has to be recorded in the instrument of government. The term of office cannot be shorter than one year and cannot be varied for individual governors.

4.2. Any governor may at any time resign by giving written notice to the clerk. We recommend that the bodies responsible for elections and appointments make it clear to prospective governors that they can resign before their term of office ends, and that not being able to serve the full term should not discourage them from becoming a governor.

4.3. Staff governors are required to resign when they cease to work at the school. Parent governors are not required to resign, and may serve out their term of office, even if they no longer have a child at the school.

5. QUALIFICATIONS AND DISQUALIFICATIONS (schedule 6)

5.1. A governor must be aged 18 or over at the time of their election or appointment. Pupils may be governors if they meet this, and all other, requirements.

5.2. A person is disqualified from being a governor or associate member if they:

- Have a mental disorder and are liable to be detained under the Mental Health Act 1983;
- already hold a governorship at the school;
- are a governor at two schools already (unless as a temporary governor or an additional governor at a school causing concern);

- have failed to attend the governing body meetings for a continuous period of six months without the consent of the governing body. ('meetings' refers to full governing body meetings and not to committee meetings). This provision does not apply to the head teacher;
- are bankrupt;
- are subject to a disqualification order under the Company Directors Disqualification Act 1986 or to an order made under section 429 (2) of the Insolvency Act 1986;
- have been removed from the office of charity trustee or trustee for a charity by the Charity Commissioners or High Court on grounds of any misconduct or mismanagement, or under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 from being concerned in the management or control of any body;
- are included in the list of teachers or workers prohibited or restricted from working with children or young people;
- are disqualified from working with children;
- are disqualified from being an independent school proprietor, teacher or employee by the Secretary of State;
- have been sentenced to 3 months or more in prison (without the option of a fine) in the 5 years before becoming a governor or since becoming a governor;
- have received a prison sentence of 2½ years or more in the 20 years before becoming a governor;
- have at any time received a prison sentence of 5 years or more;
- have been fined for causing a nuisance or disturbance on school premises during the 5 years prior to or since appointment or election as a governor; and
- refuse to make an application being made to the Criminal Records Bureau for a criminal records certificate;

6. REMOVAL FROM OFFICE (part 4 of the draft regulations)

6.1. LEA governors may be removed from office by those who appointed them. The governing body may remove from office community governors and sponsor governors. The governing body may also remove any parent governor they have appointed, but they may not remove an elected parent governor. The governing body may not remove any staff governor.

6.2. A governing body's decision to remove a governor must be confirmed at a second meeting not less than 14 days after the first meeting and at both meetings the removal of the governor in question must be specified as an item of business on the agenda.

6.3. In the case of the removal of a community governor, the person(s) proposing the removal must give their reasons at the second meeting and the governor proposed for removal must be given the opportunity to make a statement before the removal is confirmed at that meeting.

6.3.1. In the case of sponsor governors, the body that nominated the sponsor governor for appointment and subsequently for removal, must inform the governing body and the sponsor governor in writing of the reasons for proposing to remove the sponsor governor. The process for removal of sponsor governors is the same as for community governors, except that it is the clerk who, at the second meeting, will give the reasons for removal provided by the nominating body. If the governing body proposes the removal of a sponsor governor they should inform the sponsor body of this before they start the removal procedures.

7. INSTRUMENT OF GOVERNMENT (part 5 of the draft regulations)

7.1. Summary

This section of the guidance explains what the new regulations say about the content, making, reviewing and varying of instruments. The instrument of government is the document which records the name of a school and the constitution of its governing body. Once a governing body has prepared a draft instrument, it must be submitted to the local education authority who will check if it complies with the statutory requirements, including the relevant guiding principles for the constitution of governing bodies. Governing bodies and LEAs can review and change the instrument at any time. The same procedures will be followed each time any detail on the instrument is to change, including the name of the school.

7.2 Contents and form (regulation 33)

7.2.1 The instrument should set out:

- the name and category of school;
- the categories of governor
- the number of governors in each category;
- the total number of governors,
- the term of office of any category of governor, if less than four years;
- where the school has sponsor governors, the name of the sponsor(s); and
- the date the instrument takes effect.

7.2.2 For community special schools, the instrument should also record details of the appropriate body that has the right to nominate a person for appointment as a community governor.

7.3 Making the instrument

7.3.1 When a draft instrument has been prepared by the governing body, this should be submitted to the LEA who will then approve the draft if they are content that it complies with the relevant statutory provisions. The LEA will inform the governing body if they are not content, giving them reasons and reasonable opportunity to reach an agreed revised draft between them. Where there is no agreement, the LEA will produce a final draft for the school as they think fit, and make the instrument.

7.4 Reviewing and varying the instrument

7.4.1 The governing body or LEA can review and vary the instrument at any time. The requirements are as follows:

- each party should let the other know what item on the instrument they propose to vary and give reasons;

- the other party should then respond, with their objections (if any), and give reasons;
- if there is disagreement, some other variation can be proposed by either party;
- if the LEA is not content with the governing body's revised proposal, they should: (a) inform the governing body giving reasons, or; (b) propose their own variation giving reasons, and in each case give the governing body reasonable opportunity to reach an agreed revised draft between them.
- once an agreement has been reached, the LEA can vary the instrument;
- in the absence of an agreement, the LEA will vary the instrument as they think fit;
- each varied instrument should record the date the variation takes effect.

7.5 Copies of the instrument of government

7.5.1 The LEA must supply a copy of the instrument of government - or a consolidated version where there has been a variation - to each member of the governing body (and the head teacher if they are not a governor).

7.6 Ensuring Compliance

7.6.1 Local education authorities are responsible for ensuring that their schools have instruments of government in place that comply with the School Governance (Constitution)(England) Regulations 2003 by 1 September 2006.

7.7 Model instrument of government

7.7.1 A model instrument is attached as annex B.

ANNEX A: EXAMPLES OF CONSTITUTIONAL MODELS

Please note that this annex gives examples. This is not an exhaustive list; governing bodies are free to adopt alternative models, provided these comply with the guiding principles set out in section 3.

Community Schools: examples of constitutional models									
categories of governor and compliance with principles									
Total number of governors	Parents	principle: 33% or more	Staff	principle: up to and including 33%	LEA	principle: 20% (rounded)	Community	principle: 20% or more	
9	3	(33%)	2	(22%)	2	(22%)	2	(22%)	
10	4	(40%)	2	(20%)	2	(20%)	2	(20%)	
11	4	(36%)	2	(18%)	2	(18%)	3	(27%)	
12	4	(33%)	3	(25%)	2	(17%)	3	(25%)	
12	4	(33%)	2	(17%)	2	(17%)	4	(33%)	
13	5	(38%)	2	(15%)	3	(23%)	3	(23%)	
14	5	(36%)	3	(21%)	3	(21%)	3	(21%)	
14	5	(36%)	2	(14%)	3	(21%)	4	(29%)	
15	5	(33%)	3	(20%)	3	(20%)	4	(27%)	
15	6	(40%)	3	(20%)	3	(20%)	3	(20%)	
16	6	(38%)	2	(13%)	3	(19%)	5	(31%)	
16	6	(38%)	3	(19%)	3	(19%)	4	(25%)	
17	6	(35%)	4	(24%)	3	(18%)	4	(24%)	
17	6	(35%)	3	(18%)	3	(18%)	5	(29%)	
18	6	(33%)	4	(22%)	4	(22%)	4	(22%)	
18	7	(39%)	3	(17%)	4	(22%)	4	(22%)	
19	7	(37%)	4	(21%)	4	(21%)	4	(21%)	
19	7	(37%)	3	(16%)	4	(21%)	5	(26%)	
20	7	(35%)	5	(25%)	4	(20%)	4	(20%)	
20	7	(35%)	4	(20%)	4	(20%)	5	(25%)	

Note: figures have been rounded up or down to the nearest whole number. .5 has been rounded up.

ANNEX B: MODEL INSTRUMENT OF GOVERNMENT

INSTRUMENT OF GOVERNMENT: COMMUNITY AND COMMUNITY SPECIAL SCHOOLS

1. The name of the school is.....
2. The school is a community/community special school.*
3. The name of the governing body is "The governing body of....."
[insert the name of the school as set out in paragraph 1. above].
4. The governing body shall consist of:
 - a. X parent governors *[at least one third of the places];*
 - b. X LEA governors *[one fifth of the places];*
 - c. X staff governors *[at least two, up to and including one third of the places and including the head teacher (except at any time when the head teacher has given notice that he chooses not to be a governor under Regulation 5 of the School Governance (Constitution) (England) Regulations 2003)]*
 - d. X community governors including any governor referred to in paragraph 6 below *[at least one fifth of the places];*
 - e. *[where applicable]* X sponsor governors *[up to two].*
5. Total number of governors [.....] except at any time when the head teacher has given notice under Regulation 5 of the Constitution Regulations that he chooses not to be a governor, when the total number of governors will be [.....].
6. *[Applicable only to community special schools]* The body/ies entitled to nominate a person for appointment as a community governor under schedule 3 to the Regulations is/are *[Insert here the name of the body designated by the LEA].*
7. The sponsor[s] entitled to nominate person[s] for appointment as sponsor governors under schedule 5 of the Regulations is/are *[insert name here].*
8. *[applicable if the term of office of one or more categories of governor is shorter than four years:]* The term of office of [x category of governor] is *[insert period between one and four years].*
9. This instrument of government comes into effect on *[insert date]*
10. This instrument was made by order of Local Education Authority on *[insert date].*

* delete as appropriate

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