



# Draft Statutory Guidance on the School Governance (Constitution) (England) Regulations 2003 – Foundation 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 foundation 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# DRAFT GUIDANCE ON THE CONSTITUTION OF SCHOOL GOVERNING BODIES

## Foundation and foundation special schools version

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

## FOUNDATION SCHOOLS AND FOUNDATION 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 foundation 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 five compulsory stakeholder groups for foundation schools: parents, school staff, the Local Education Authority (LEA), the community and the founding body, church or equivalent organisation. 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 foundation 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: up to and including one-fifth
- Community governors: at least one-tenth.
- Foundation or partnership governors: at least two but no more than one quarter.

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, whichever 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 foundation 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
<b>2 (minimum)</b>	1	1	0
<b>3 or more</b>	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 foundation 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. Foundation and partnership governors. Foundation governors are appointed by the school's founding body, church or other organisation named in the school's instrument of government. If the school has a religious character the foundation governors must preserve and develop this. They must also ensure compliance with the trust deed, if there is one. If the school has no foundation or equivalent body the foundation governors are replaced by partnership governors appointed by the governing body after a nominations process.

2.5.1. The Instrument of Government for the school sets out who appoints the foundation governors. Where the school was established by the Diocese it is common for the Diocese to appoint all the foundation governors. In some schools, especially very old ones set up under endowments, the foundation governors can be appointed by several groups i.e., the trustees, city council, local landowner and parochial church council. The instrument of government will list each group and the number of foundation governors that group or individual appoints.

2.5.2. Partnership governors are appointed by the governing body, which must seek nominations for partnership governors from the parents of registered pupils at the school.

2.5.1. Registered pupils at the school, their parents, staff eligible to be staff governors, elected members of the LEA and those employed by the LEA in connection with education functions are not eligible to be partnership governors.

2.6. 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).

2.6.1. 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

2.7. 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).

2.8. 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. 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: up to and including one-fifth.
- Community governors: at least one-tenth
- Foundation or partnership governors: at least two but no more than one quarter.
- 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 does not apply to ex-officio foundation governors. For foundation governors the term of office is decided by the person that appoints the foundation governors. If a term of office is less than four years this has to be recorded in the instrument of government. The term of office cannot be shorter than one year (this applies to all categories of governor) 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 and foundation governors may be removed from office by those who appointed them. The governing body may remove from office community governors, sponsor governors and ex-officio governors may be removed at the request of the person named in the instrument of government. 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 partnership or 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.

6.3.2. In the case of the removal of an ex-officio foundation governor, the person that requests the removal has to inform the governing body and the governor in question of the reasons why they are proposing to remove him or her.

## 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 approved by any trustees, Diocese (if appropriate) and foundation interests and then 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. The governing body and the LEA 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 The instrument should also record:

- the name of the foundation body or person (if any) who is entitled to appoint foundation governors and if there is more than one, the basis upon which appointments are made;
- the name of the person entitled to request the removal of any ex-officio foundation governor and to appoint any substitute governor;
- details of any foundation governorship to be held ex-officio;
- the name of any sponsor entitled to nominate sponsor governors, and ;
- details of any trust deed.

7.2.3 The ethos of a school with a religious character should be described on the instrument.

### 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 draft instrument a governing body submits to the LEA should first have the approval of trustees, foundation interests and the Diocese.
- If there is disagreement at the first stage, some other variation can be proposed by any party either solely or in conjunction with another, and all parties should seek to reach an agreement on the revised draft;
- Once an agreement has been reached, the LEA will make the instrument;
- If there is disagreement with the revised draft among foundation interests, trustees or Diocese, any party can refer the draft to the Secretary of State for direction. The directed draft will then be passed on to the LEA for making.

#### 7.4 Reviewing and varying the instrument

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

- The proposing party should inform the other of the proposed variation giving reasons, and expect responses from them with reasons;
- If there is disagreement, some other variation can be proposed by any party either solely or in conjunction with another;
- Any proposed variation (original or revised) should have the approval of all parties, i.e. trustees, Diocese and foundation interests, before the governing body can submit the draft instrument to the LEA;
- A proposed variation from the LEA (original or revised) should be approved by the trustees, foundation interests or Diocese before a governing body can indicate to the LEA whether or not they are content;
- Once all parties have agreed to a proposed variation, the LEA will vary the instrument;
- If there is disagreement among trustees, foundation interests or Diocese about any revised proposal, any party can refer the proposed variation to the Secretary of State for direction;
- The directed variation will then be passed on to the LEA for making;
- 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), to the trustees (if any) and to the appropriate Diocesan authority (if any).

## 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.*

Foundation Schools: examples of constitutional models										
categories of governor and compliance with guiding principles										
Total number of governors	Parents	principle: 33% or more	Staff	principle: up to and including 33%	LEA	principle: up to and including 20%	Community	principle: 10% or more	Foundation	principle: at least 2 and up to and including 25%
9	3	(33%)	2	(22%)	1	(11%)	1	(11%)	2	(22%)
10	4	(40%)	2	(20%)	1	(10%)	1	(10%)	2	(20%)
11	4	(36%)	2	(18%)	1	(9%)	2	(18%)	2	(18%)
12	4	(33%)	2	(17%)	2	(17%)	2	(17%)	2	(17%)
13	5	(38%)	2	(15%)	1	(8%)	2	(15%)	3	(23%)
13	5	(38%)	2	(15%)	2	(15%)	2	(15%)	2	(15%)
14	5	(36%)	3	(21%)	2	(14%)	2	(14%)	2	(14%)
14	5	(36%)	3	(21%)	1	(7%)	2	(14%)	3	(21%)
15	5	(33%)	3	(20%)	1	(7%)	3	(20%)	3	(20%)
15	5	(33%)	3	(20%)	2	(13%)	2	(13%)	3	(20%)
16	6	(38%)	3	(19%)	1	(6%)	2	(13%)	4	(25%)
16	6	(38%)	3	(19%)	2	(13%)	2	(13%)	3	(19%)
17	6	(35%)	3	(18%)	2	(12%)	2	(12%)	4	(24%)
17	6	(35%)	3	(18%)	2	(12%)	3	(18%)	3	(18%)
18	6	(33%)	3	(17%)	2	(11%)	3	(17%)	4	(22%)
18	6	(33%)	4	(22%)	2	(11%)	2	(11%)	4	(22%)
19	7	(37%)	3	(16%)	2	(11%)	3	(16%)	4	(21%)
19	7	(37%)	4	(21%)	2	(11%)	2	(11%)	4	(21%)
20	7	(35%)	3	(15%)	2	(10%)	3	(15%)	5	(25%)
20	7	(35%)	4	(20%)	2	(10%)	2	(10%)	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: FOUNDATION AND FOUNDATION SPECIAL SCHOOLS

1. The name of the school is.....
2. The school is a foundation/foundation 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 *[up to and including 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 governors referred to in paragraph 6 below *[at least one tenth of the places]*;
  - e. X foundation/partnership governors *[delete whichever is not applicable]* governors *[at least two but no more than one quarter of the places]*.
  - f. *[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 foundation 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. *[Where the school is to have foundation governors]* set out the name of any foundation body or person entitled to appoint foundation governors. If this is more than one person set out the basis on which appointments are made.
9. *[where applicable]*
  - (a) the holder of the following office shall be a foundation governor ex-officio:  
*[name of office]*

- (b) The foundation body or person named in paragraph 8 shall be entitled to appoint a foundation governor to act in the place of the ex-officio foundation governor whose governorship derives from the office named in (a) above, in the event that that ex-officio foundation governor is unable or unwilling to act as a foundation governor, or has been removed from office under regulation 28 (2) of the Regulations.

*[Repeat 9(a) and (b) as necessary where there is more than one ex-officio foundation governorship].*

10. Set out the name of any person entitled to request the removal of any ex-officio foundation governor and to appoint any substitute governor.
11. *[Where the school has a trust deed]* Set out details of the trust deed
12. *[If the school will have a religious character]* Describe the ethos of the school].
13. *[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]*.
14. This instrument of government comes into effect on [.....]
15. This instrument was made by order of ..... Local Education Authority on .....
16. A copy of the instrument must be supplied to the trustees under any trust deed and to the appropriate Diocesan Authority if the school is a Church of England or Roman Catholic Church School.

\* delete as appropriate

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