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Department for
**Employment
and Learning**
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Proposed amendments to The
Further Education (Northern
Ireland) Order 1997 to alter the
composition of governing bodies
of colleges of funding education
Consultation

CONSULTATION PAPER

The Department for Employment and Learning is inviting responses from a range of organisations (listed at annexe A) and from the general public on the following governance issue in the further education sector in Northern Ireland. This consultation document has also been placed on the DEL website (www.delni.gov.uk/index/consultation-zone).

Proposed amendments to The Further Education (Northern Ireland) Order 1997 to alter the composition of governing bodies of colleges of further education.

Responses should be returned in writing (hard copy or e-mail) by 2 May 2007 to:

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We may not be able to consider responses received after 2 May 2007.

EXECUTIVE SUMMARY

1. The further education sector in Northern Ireland is currently undergoing a period of wide-ranging restructuring. Part of this process involves amalgamations of the sixteen existing colleges to create six larger college units by August 2007. It is one of the requirements of The Further Education (Northern Ireland) Order 1997 that new governing bodies are appointed before the merger takes place and this consultation presents recommendations by the Department to ensure the composition of the governing bodies most effectively meets the needs and aims of the Department's further education strategy, through an amendment to Paragraph 2 of Schedule 3 to the 1997 Order.
2. The Department is making the following recommendations:

Recommendation 1	No changes should be made to the legislation concerning the business, industrial and professional category of governor.
Recommendation 2	The principal should retain membership of the governing body.
Recommendation 3	Staff representation on the governing body should consist of two seats.
Recommendation 4	Student representation on the governing body should be increased from one to two members.
Recommendation 5	The category of members nominated by the education and library boards should be removed.

Recommendation 6	The category of members co-opted by the governing body should be removed.
Recommendation 7	A new category of governor should be created to represent the needs of the community served by the college.
Recommendation 8	A new category of temporary governor should be created which will allow the Department to appoint members where it considers the college requires assistance to effectively discharge its responsibilities.
Recommendation 9	The minimum size of the governing body should be increased to sixteen; the maximum should be increased to twenty-two.

3. Taken together, it is the Department's view that the proposals contained in this consultation paper will help to prepare the sector for the pivotal role it will play as part of the growth of the Northern Ireland economy and the society which will benefit from that growth as set out in the *Further Education Means Business* strategy: that the needs of business and the community served by the colleges are increasingly met by the education and training provided by the sector.

BACKGROUND

4. The further education (FE) sector in Northern Ireland is currently undergoing a major restructuring process: by August 2007, the sixteen existing colleges will have merged to form six regional colleges.
5. The Department first raised the idea of such restructuring as part of a review of the further education sector which resulted in *Further Education Means Business* (March 2004), produced partly in response to a 2001 report of the Assembly Committee for Employment and Learning into education and training for industry. The sector and other stakeholders were given the opportunity to comment on the strategy set out in that document both before and after its publication. There was widespread support expressed for fewer, larger colleges; reasons cited included efficiency, economies of scale and to achieve a critical mass for each merged college to better respond to and appropriately plan for future developments.
6. The central aim of *Further Education Means Business* is to establish a common purpose for the sector and a new set of strategic partnerships to help colleges deal more effectively with the problems facing them. The sector's distinguishing role is to support economic and workforce development in Northern Ireland, while partnerships with schools, universities, the voluntary and community sector and private sector training organisations will help to create a holistic regional training system.
7. Following the publication of *Further Education Means Business*, the Department commissioned the consultants BDO Stoy Hayward to conduct an economic appraisal of the proposal and to examine a range of possible options. The sector and stakeholders were again consulted before the final report was published. The outcome was a six-college model, which would be implemented through a series of mergers, as follows:

- Armagh College, Newry & Kilkeel Institute and Upper Bann Institute (Southern Regional College);
 - Belfast Institute and Castlereagh College (Belfast Metropolitan College);
 - Causeway Institute, East Antrim Institute and North East Institute (Northern Regional College);
 - East Down Institute, Lisburn Institute and North Down & Ards Institute (South Eastern Regional College);
 - East Tyrone College, Fermanagh College and Omagh College (South West College); and
 - Limavady College and North West Institute (North West Regional College).
8. The process of merger is explicitly addressed by The Further Education (Northern Ireland) Order 1997 (“the 1997 Order”): Article 7 sets out the process by which amalgamations are to be effected. There are two particular requirements which must be in place before a merger can proceed: that a governing body is established for the new institution and that an instrument of government and articles of government are made for the new institution (Article 7(5)).
9. The Department is appointing governors in the business, industrial and professional category (see below for details of governing body composition) and will appoint other governors following the outcome of this consultation. The Department is also currently reviewing the instrument and articles of government — of which this current consultation is one part — which set out the constitution and conduct of the governing bodies, respectively, and will conduct a separate consultation on these governance documents once that review process has been completed.

PROPOSED AMENDMENTS TO THE COMPOSITION OF GOVERNING BODIES

10. The duties of the governing body of a further education (FE) college are set out in Article 13 of the 1997 Order: to secure the efficient and effective management of the college and to ensure that the college provides suitable and efficient further education to its students, with regard to the existing provision of education and the needs of industry, commerce and the community in the area served by the college. The role of the governing body is essentially to ensure that the college is managed appropriately, to agree the college's strategic plans and objectives and to oversee its progress in meeting them, and to conduct appointments procedures for college senior management.

11. The current composition of the governing bodies varies from college to college and is set out in each college's instrument of government. The composition is bounded by the terms of Paragraph 2(1) of Schedule 3 to the 1997 Order as follows:

"2.—

(1) The instrument of government of an institution of further education shall provide for the governing body to consist of not less than 12 nor more than 18 member [*sic*], of whom—

- (a) not less than one-half shall be persons appearing to the Department [for Employment and Learning] to be, or to have been, engaged or employed in business, industry or any profession;
- (b) one shall be the principal of the institution;
- (c) not less than one nor more than two shall be elected by persons employed at the institution from among such persons;
- (d) one shall be elected by students of the institution from among such students;
- (e) two shall be persons nominated by the [education and library] board for the area in which the institution is situated;

(f) not more than two may be persons co-opted by the other members of the governing body.”

12. Legislation has been passed as part of the Department of Education’s Education (Northern Ireland) Order 2006 to give the Department for Employment and Learning the power to amend this paragraph by means of an affirmative resolution order, rather than through primary legislation as would have been the case previously.

13. The Department is now proposing to amend this paragraph to ensure that the college governing bodies are best equipped to deal with the post-merger situation. A number of factors come into play when considering the best way in which this can be done.

14. Most obviously, the new colleges will, on average, be considerably larger and, at least early in their life, more complex institutions than before; for example the population served by each college ranges from 175,000 to almost 400,000. Each new college will also consist of a number of campuses, while each governing body will be responsible for handling multi-million pound budgets of largely public money.

15. A number of developments flowing from the Review of Public Administration (RPA) are also relevant. In particular, the dissolution of the five education and library boards and their replacement by the Education and Skills Authority, and the policy on public appointments as enshrined within The Public Authorities Reform (Northern Ireland) Order 2007, will both have a direct impact upon the current composition of the college governing bodies. In the future, the statutory rights of bodies to nominate members to publicly-appointed bodies will be removed and all public appointments will come under the remit of the Commissioner for Public Appointments for Northern Ireland, which means that all appointments will be based on open competition, with

merit as the overriding principle, and be regulated by the Commissioner's office (OCPA NI).

16. It is also important that the views of the college's main direct stakeholders — the staff and the students — are represented at governing body meetings, as it is essential for the success of a governing body to carry the college with it to meet its strategic aims.

17. Above all, the Department's main aim in amending the composition of the governing bodies is for them to be best placed to deliver the objectives of *Further Education Means Business*: to match the education and training a college delivers to the needs of the regional economy and of the community which it serves. The governing body should be able to understand these needs from a variety of perspectives and have the necessary skills and experience to be able to institute an effective strategy to ensure that the college meets the Department's, and its own, overarching aims.

Business, Industrial and Professional Members

18. The first category of governor is currently appointed through an open competition, monitored by OCPA NI, and drawn from applicants with a background in business, industry or any profession. The Department is of the view that this criterion continues to be sufficiently broad to attract a wide range of people with relevant experience to contribute to the workings of a governing body, particularly in the light of the aim of the *Further Education Means Business* strategy that the training and education provided by the colleges is more closely aligned to the needs of local employers.

19. The Department is appointing a total of ten governors in this category, including the chair, through the current appointment process. The legislation is not at the moment prescriptive as to numbers, although at least half of all

governors must be drawn from this category. This affords flexibility, while ensuring that most of the members of a governing body are selected through rigorous, criteria-based procedures and have therefore demonstrated that they have the necessary skills and experience to make excellent contributions to the work of the governing body.

20. It is therefore the Department's **first recommendation** that no changes are necessary to the legislation concerning the business, industrial and professional category of governor.

The Principal

21. The college principal or director has been a full member of the governing body since incorporation in 1998, albeit with certain restrictions to ensure that conflicts of interest do not arise: the principal may not vote on or take part in discussions concerning the senior staff's pay and conditions, for example.

22. The Department feels firstly that it is essential that the principal retains a seat on the governing body, as its chief adviser, and this is our **second recommendation**.

23. We have also considered the voting rights of the principal as part of this review. Such considerations included the nature of the executive/non-executive relationship, with the principal as the person making proposals on strategy and overall operation of the college to the governing body, which then discusses and, if necessary, votes on these proposals. It may appear incongruous for the principal to have a vote in these circumstances. Conversely, it is proposed below that the student and staff members will have voting rights, and to withdraw such rights from the principal may serve to undermine his/her authority.

24. The Department would be keen, therefore, to hear respondents' views on the specific issue of the voting rights of the principal/director.

Staff Members

25. The staff members, of whom one is usually drawn from the teaching staff and one from the non-teaching staff, provide an input to governing body deliberations from the perspective of college employees.

26. One point for consideration when looking at this category of governor is that, at present, the articles of government of the governing bodies forbid members from speaking or voting as a result of mandates given to them by the groups they represent. Accordingly, the staff representatives are members of the governing body in a personal capacity rather than a representative one and cannot act as a representative of, or present the views of, their colleagues.

27. To address this, we considered the setting up of some form of consultative committee to replace staff membership of the governing body, but feel that such a framework could prove excessively bureaucratic and likely to lead to delays in the decision-making process. It is therefore the Department's **third recommendation** that staff representation should continue on the governing body in the form of two members, one drawn from the teaching staff, one from the non-teaching staff. Note that this is a change from previous arrangements, where there were either one or two staff members on the governing body.

28. Increasing the number of staff representatives beyond two was also considered; because this would, in the context of the rest of the proposals in this document, lead to a very large governing body. This approach was rejected, however, as the total representation of key internal stakeholders

(principal, staff and student members) in aggregate, will constitute approximately one third of the new governing bodies.

The Student Member

29. As with the staff, it is the Department's view that the primary user group of the colleges, the student body, must have their views taken into account when the governing body is considering its business, if it is to ensure that the best decisions are made for the good of the college and its community.

30. A problematic issue specific to the student member relates to timing of appointment and availability for all governing body meetings. Student members are elected at the start of each academic year and their term of office runs from 1 August to 31 July. Because of the need to complete checks under The Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003 before appointments can be made, student members are usually not appointed until the academic year is well underway and the governing body has held several meetings (governing bodies meet, on average, six times a year). The student perspective is therefore absent for a significant proportion of the governing body's meetings.

31. Options to address this are restricted to increasing the student representation on the governing body and making appointments at different points in the year to ensure that there is always a student member available to attend meetings, or to institute a formal committee to take the student body's views into account, which would then have an input into governing body decision-making.

32. On balance, because it is felt that setting up a formal representative body with an input into governing body decisions could, as with a similar approach to staff representation, create an overly bureaucratic governance system, it is

the Department's view that the best option is to increase student representation from one to two members and this is our **fourth recommendation**.

Nominated, Co-opted Members and the Community Dimension

33. It is a consequence of the Review of Public Administration that public appointments will in the future fall under the remit of the Commissioner for Public Appointments for Northern Ireland. Each appointment will be made on the basis of merit and there will no longer be any automatic statutory nominating rights. In terms of governing body composition, this has a direct impact on those members nominated by the relevant education and library board and those co-opted by the governing body itself (heads (e) and (f) in paragraph 11, above).

34. The Department's **fifth** and **sixth recommendations** are therefore that the categories of membership at heads (e) and (f) — education and library board nominees and co-opted members, respectively — be removed. This is a direct consequence of policy changes to the public appointments system being made as part of the RPA, which will remove the statutory right of any bodies to nominate people to serve on public bodies. All future public appointments will be made on the principle of merit and by open competition, principles which conflict with the continuing existence of both nominated representatives and co-opted members.

35. In practice, these categories of governor have often included local political representatives or other people with a strong link to the community served by the college. The Department believes that this link is an important one that should be maintained — it is also a commitment of *Further Education Means Business* to have some form of community representation on the governing

bodies — and it is therefore the Department's **seventh recommendation** that a new category of member be created to meet this commitment.

36. The precise nature of this category will be set out in each college's instrument of government, but members will need to apply through an open public competition regulated by OCPA NI and will need to demonstrate that they have the appropriate skills and commitment to provide a perspective from the community served by the college, as well as a proven interest in education and training. The Department is recommending that three governors be appointed under this new category, to ensure that a breadth of experience and backgrounds are represented.

Temporary Members Selected by the Department

37. It is the Department's **eighth recommendation** that another new category of member be created of up to two people to be selected and appointed by the Department in the event that it appears that the affairs of the college are not being managed effectively. These appointments would be temporary and the Department thinks it highly unlikely that it would need to make them but also that it is desirable, in the interests of safeguarding the proper use of public money, to have such a facility in place.

Overall Size of the Governing Body

38. To enable the recommendations contained in this consultation paper to be implemented, as well as to allow for some flexibility in the size of a college governing body — which the Department appreciates can vary from college to college — it is our **ninth recommendation** that the maximum size of the governing body be increased to twenty-two and that the minimum size be increased to sixteen.

SUMMARY AND CONCLUSIONS

39. The Department's aim in issuing the current consultation paper is to gain an insight into the views of a very broad range of organisations with a stake in the future of the further education sector. This breadth reflects the Department's aims for the sector itself and it is therefore very important that the governing bodies of the new colleges meet the needs and expectations of those organisations who will be dealing with them.

40. Our aim in presenting these nine recommendations is to ensure that a balance exists between the representational nature of the governing body and its effectiveness. This is not, however, a dichotomous distinction; a governing body which provides a channel for employees, students and people reflecting the area in which the college is situated is, by its very nature, a more effective governing body than one that does not.

41. The Department is therefore proposing through the current set of recommendations to introduce a formal community dimension into the activities of college governing bodies, and to ensure that other stakeholder groups have access to the decision-making process in a meaningful way. By increasing student representation and consolidating staff numbers, the new college governing bodies will better reflect the views of the people studying and teaching at the college, while introducing governors with a background in working in the college's local community will extend that representational aspect to include the college's immediate environs.

42. The Department feels it is essential to maintain the majority of governors as externally-appointed people who have demonstrated they possess a broad range of business and professional skills to furnish the college with effective governance experience. This will ensure that the college is being led by

people who understand what is required to ensure that public funds are effectively spent by the college to train the next generation of skilled workers.

43. A draft form of the legislation required to make the changes proposed in this document is set out at annexe B.

List of Organisations and Individuals Being Consulted

16 further education college governing bodies
16 further education college principals
6 chairs (designate) of the merged colleges
6 principals (designate) of the merged colleges
5 education and library boards

Action Mental Health
Age Concern
Alliance Party
Association of Northern Ireland Colleges
Barnardos
The British Council
Business in the Community
Carafriend
Carers' National Association Northern Ireland
The Cedar Foundation
Central Appointments Unit (OFM/DFM)
Challenge
Chambers of Commerce (NI)
Children's Law Centre
Chinese Welfare Association
CIPFA
Citizens' Advice Bureau
Coalition on Sexual Orientation
The Commissioner for Public Appointments for Northern Ireland
Committee on the Administration of Justice
Community Foundation for Northern Ireland
Community Relations Council

Community Relations Training and Learning Consortium
Confederation of British Industry (NI)
Construction Employers' Federation
Construction Industry Training Board NI
Democratic Unionist Party
Department of Education
Department of Education and Science (Republic of Ireland)
Department of Enterprise, Trade and Investment
Department for Education and Skills (England)
Disability Action
Bishop of Down and Connor
Dungannon Development Association Training Services
Chief executive (designate) of the Education and Skills Authority
Educational Guidance Service for Adults
Engineering Training Council NI
Enterprise Northern Ireland
Enterprise, Training and Lifelong Learning Department (Scottish Executive)
Equality Commission for Northern Ireland
Federation of Small Businesses
Gairm
Gay Lesbian Youth Northern Ireland
Gingerbread Northern Ireland
Greater Shankill Community Council
The Guide Dogs for the Blind Association
Help the Aged Northern Ireland
Indian Community Centre
Institute of Directors
Invest NI
Law Society of NI
Learning and Skills Development Agency (NI)
Lesbian Line

Lifelong Learning UK Sector Skills Council
The Local Government Staff Commission for NI
Magherafelt Women's Group
Mencap
Methodist Church in Ireland
The Momentum Team
Multicultural Resource Centre
NASUWT
National Board for Nursing, Midwifery and Health Visiting for Northern Ireland
National Union of Students/Union of Students in Ireland
Newry and Mourne Women
Newtownabbey Senior Citizens' Forum
NIACRO
NIC/ICTU
North West Forum of People with Disabilities
Northern Ireland Anti-Poverty Network
Northern Ireland Business Education Partnership
Northern Ireland Council for Ethnic Minorities
Northern Ireland Council for Voluntary Action
Northern Ireland Gay Rights Association
Northern Ireland Higher Education Council
Northern Ireland Human Rights Commission
The Northern Ireland Open College Network
Northern Ireland Public Services Alliance
Northern Ireland Statistics and Research Agency
Northern Ireland Union of Supported Employment
Northern Ireland Women's Aid Federation
Northern Ireland Women's European Platform
Northern Ireland Youth Forum
The Open University
PCM Associates

POBAL

Presbyterian Church in Ireland

Progressive Unionist Party

The Queen's University of Belfast

The Rainbow Project

Review of Public Administration team

RNIB

Royal College of Nursing

Royal Institute of Chartered Surveyors

Royal National Institute for Deaf People

Royal Society of Ulster Architects

Rural Support

St. Mary's University College

The Sales Institute of Ireland

Save the Children

Sector Skills Development Agency NI

Sinn Féin

Skill Northern Ireland

Social Democratic and Labour Party

Staff Commission for Education and Library Boards

Stranmillis University College

Tourism Training Trust

Training for Women Network

Travellers' Movement Northern Ireland

Ulster Farmers' Union

The Ulster People's College

Ulster Unionist Party

Unison

University and Colleges Union

University of Ulster

Venture

Welsh Assembly Government

West Belfast Economic Forum

Women's Forum Northern Ireland

Women's Resource and Development Agency

Women's TEC

Workers' Educational Association (NI)

The Workers Party

Youth Action Northern Ireland

The Legislative Mechanism

Replace Paragraph 2(1) of Schedule 3 to The Further Education (Northern Ireland) Order 1997 with:

(1) The instrument of government of an institution of further education shall provide for the governing body to consist of between 16 and 22 members, of whom—

- (a) at least half shall be persons appearing to the Department to be, or to have been, engaged or employed in business, industry or any profession;
- (b) three shall be persons appearing to the Department to have experience in working for the good of the community in which the college is situated;
- (c) one shall be the principal of the institution;
- (d) one shall be elected by teachers employed at the institution from among such teachers and one shall be elected by other persons employed at the institution from among such other persons;
- (e) two shall be elected by students of the institution from among such students;
- (f) up to two may be appointed by the Department for a specified length of time, if it appears to the Department that the affairs of the governing body are being, or have been, mismanaged.

Remove paragraph 2(b) of Schedule 3 to The Further Education (Northern Ireland) Order 1997.

Re-number paragraph 2(c) of Schedule 3 to The Further Education (Northern Ireland) Order 1997 as paragraph 2(b).

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