

Consultation

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The Way Forward – A Modernised Framework for School Governance

Contents

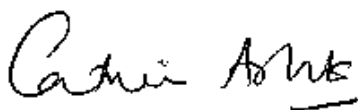
Foreword	2
Executive Summary	3
Section 1: The Context	6
1. School governors and effective schools	6
2. Recent developments	6
3. The case for change	7
Section 2: The Constitution of Governing Bodies	9
4. The stakeholder model for the constitution of governing bodies	9
5. Additional members of governing bodies	10
6. The stakeholder groups	12
7. Governing bodies for maintained nursery schools	13
8. Collaboration between schools	14
9. Tackling school failure	15
Section 3: Governing Bodies' Responsibilities	18
10. Governing bodies' responsibilities	18
11. Governing bodies' staffing responsibilities	19
12. Governing bodies' other statutory responsibilities	21
13. New discretionary powers for governing bodies	22
Section 4: Governing Body Procedures	24
14. Deregulating governing body procedures	24
Section 5: Timing and Conclusion	27
15. Transitional Arrangements for Implementation	27
16. Conclusion: modernising school governance	27
Appendix: Illustrations of the principles outlined in 4.3	29

Foreword

I know from my experience as a school governor of seven years – three as a chair – how challenging and rewarding the role can be. Governors know that the life chances of every child depend on the quality of our education system and their achievement at school. That is why they give so generously of their time to help schools achieve the highest possible standards. Being a governor requires tremendous commitment and dedication and I would like to pay tribute to everyone who plays a part in the governance of schools for their contribution to the education of our young people. On average a school will benefit from a thousand hours of governor time every year. That is an incredible investment of time and testament to the importance that we all attach to the role.

The challenge facing us is to ensure that every hour that a governor gives freely to their school makes a difference. That means we must free governors from activities that distract them from their primary role. We must give schools the scope to choose arrangements that suit their particular circumstances. The governance framework needs to be more capable of accommodating the ever-increasing pace of change so that it can continually adapt to meet the fresh challenges that arise in schools every day. All this must sit alongside better training and support for school governors, as we promised in the manifesto.

This consultation paper describes a package of proposals to meet these aims. We are most grateful to the governor organisations, headteacher associations, representatives of local government, the main Churches and the other members of the Way Forward Group on School Governance, for working with us on many of the ideas contained here. The Group's constructive discussions have done much to advance thinking beyond the proposals set out in last November's Consultation on School Governing Bodies. We look forward to receiving the views of the wide range of people with an interest in governance on these new proposals. We believe they represent a fresh approach to school governance that presents the real prospect of securing the best of the current arrangements while providing for local discretion and innovation.



Catherine Ashton

Parliamentary Under-Secretary of State for Early Years and School Standards

Executive Summary

INTRODUCTION

Governors represent a powerful force in the drive for school improvement. The Government is committed to searching continually for ways to increase the scope for them to have a positive impact on school life. Education law is complex and prescriptive with a great deal of detail set out in primary legislation. This is particularly the case for governance legislation. This restricts the scope for innovation and for the system to respond to changing circumstances.

The package of proposals in this consultation paper serves three main purposes, to:

- give governors greater scope to choose arrangements that suit their school's particular circumstances;
- free governors from activities that are incidental to their primarily strategic role;
- create a legislative framework for school governance that can be more easily adapted to reflect changing circumstances.

We are seeking views on detailed proposals relating to:

- the constitution of governing bodies (section 2);
- governing bodies' responsibilities (section 3) and
- governing body procedures (section 4).

The proforma at the end of the document sets out the specific issues we are consulting on. Responses will influence the content of the Education Bill due to be introduced in this session of Parliament.

THE CONSTITUTION OF GOVERNING BODIES

The Government is committed to the stakeholder model of school governance, and to providing for parents, the community, school staff and the LEA, and for Voluntary and Foundation schools the foundation body or equivalent, to have a voice on the governing body. But the current models for governing body membership provide little scope for schools to tailor the governance models to reflect their situation. Allowing schools the freedom to determine the detailed membership of their governing body, within a framework of principles, would mean local factors could be taken into account. We are proposing an alternative approach to the constitution and size of governing bodies based on the guiding principles set out at paragraph 4.3.

Under the proposed guiding principles teaching and non-teaching staff would be combined into a single stakeholder group, and minor authority representation accommodated within the LEA or community (formerly

co-opted) governor categories. The Government proposes that nursery schools should be required to have governing bodies, and that the same guiding principles should apply to their constitution.

Where they wish to do so, schools will be able to federate under a single governing body. We also propose to introduce a range of other measures to support collaboration between schools, for example to allow two or more governing bodies to meet jointly and form joint committees.

Tackling school failure remains a Government priority and we will consider any solution necessary to secure the quality of education that every child's right. We will implement our proposal to replace the governing body of a school in special measures, or with serious weaknesses, with an Interim Executive Board (IEB). Primary responsibility for proposing an IEB will rest with LEAs, and all such proposals will require the Secretary of State's approval.

GOVERNING BODIES' RESPONSIBILITIES

A more coherent and consistent approach to governance legislation will help every governing body focus on what matters most to their school: raising pupils' achievements. We propose a fresh approach to governance legislation based on a framework of enabling powers. We intend to repeal many of the current provisions relating to governing bodies' responsibilities set out in primary legislation, and replace them with a framework of regulation-making powers. Greater use of secondary legislation for the detailed provisions, alongside guidance and model policies, would create a more responsive statutory framework and give schools the opportunity to establish arrangements that reflected their particular circumstances. In addition to deregulation the Government intends to provide for the governing body's:

- involvement in staff appointment decisions, in normal circumstances, to be restricted to the leadership group. Guidance, and any associated model policies, will provide the governing body with the discretion, taking account of the advice of the head teacher, to determine the extent of their involvement in staffing appointments outside the leadership group;
- role in dismissal decisions to be restricted to hearing any appeal. In the case of VA schools, dismissal decisions, save in respect of the head, will be taken by the head and a governor;
- powers to provide additional services to their pupils, pupils' families and the wider community to be extended. This will not be a duty: governors will have the choice about whether to begin providing or to extend their family and community facilities and services.

GOVERNING BODY PROCEDURES

The Government is committed to ensuring that governing bodies have the maximum possible amount of freedom and flexibility to determine how to undertake their functions, with appropriate safeguards to secure accountability. We propose that there should be greater freedom and flexibility than the current arrangements allow, so that governors can concentrate on their role, rather than the rulebook. Schools should be allowed to regulate their own procedures within a framework of principles.

In tandem with moves to give schools the maximum possible flexibility to regulate their own procedures, we also intend to look at ways of simplifying arrangements for setting the quorum and to provide for governing bodies that wish to do so, to make greater use of information and communications technology for the conduct of business.

TIMING AND CONCLUSION

We recognise that further changes in governing body constitutional arrangements should not be implemented too soon after the major reconstitution exercise in September 1999. We propose a flexible approach to implementation by providing for governing bodies to change over to the new constitutional arrangements at time that best suit them within 3 years from the date legislation is enacted. So if these proposals come into force from September 2002, governing bodies will have up until September 2005 to effect the change.

We believe we can trust schools to determine suitable arrangements that reflect their particular circumstances. The proposals in this document aim to produce a flexible framework to allow schools, in partnership with LEAs, to tailor broad national strategic intentions to the needs of their locality. Our aim is to free the largest volunteer force in the country to focus on the key task of ensuring the school system serves the talents and aspirations of all students.

Section 1: The Context

1 School governors and effective schools

'Central to achieving higher standards is the confident, well managed school, running its own budget, setting its own targets and accountable for its performance.'

Schools: Achieving Success paragraph 8.1

- 1.1** The White Paper *Schools: Achieving Success* sets out the significant progress made in the reform of the school system over the last four years. Primary school results demonstrate a marked advance in education in the basics. Secondary schools have produced a steady improvement in GCSE results. The higher standards schools now achieve owe much to collaborative working between teachers, governors and LEAs acting together to share and solve leadership challenges. Their commitment to the success of their schools, and to improving the life chances of their pupils is evident and is demonstrably contributing to school improvement.
- 1.2** Successive Ofsted inspection reports and research reports demonstrate that governors make a positive contribution to the leadership and management of schools. Ofsted inspections undertaken under the new framework show that primary school governing bodies are becoming increasingly effective in carrying out their duties, and that secondary school governing bodies provide effective contributions to the management of their schools. Ofsted has also reported an association between good relations between governing bodies and headteachers, and high achievement or improvement.
- 1.3** These successes testify to the commitment and value that governors add to the schools they serve. Governors represent a powerful force in the drive for school improvement and we will continually search for ways to increase the scope for them to have a positive impact on school life. The package of proposals in this consultation paper serves three main purposes, to:
- give governors greater scope to choose arrangements that suit their school's particular circumstances;
 - free governors from activities that are incidental to their primarily strategic role;
 - create a legislative framework for school governance that can be more easily adapted to reflect changing circumstances.

2 Recent developments

- 2.1** In November 2000 we launched the Consultation on School Governing Bodies in response to concerns about the burdens on governors and how minor duties get in the way of them focusing on raising standards. The consultation assessed the fit between governing body responsibilities and their largely strategic role, looking in particular at responsibilities for staffing matters. It went on to consider whether the current size and

constitution was appropriate and what extra support and training would contribute most to the effective operation of governing bodies.

- 2.2** We received over 6,500 responses to the consultation, 5,000 from governors and published a headline summary of the results on 30 April. Some of the proposals were endorsed by a substantial majority of respondents. Other proposals attracted some support, but not a clear consensus, notably those on staff appointments and dismissals, and the size and constitution of governing bodies. We invited representatives of governors, head teachers, local education authorities, the churches and others to work with us on these areas and identify the best way forward. The Way Forward Group on School Governance completed its deliberations in July and its report has been published alongside this consultation document. This paper outlines how we will take forward the proposals from both the initial consultation and the Way Forward Group.

3 The case for change

- 3.1** Education law is complex and prescriptive with a great deal of detail set out in primary legislation. This restricts the scope for the system to innovate and respond to changing circumstances. Even when there is wide support for change there can be significant delay before the opportunity to make relatively minor administrative changes arises. The White Paper *Schools: Achieving Success* announced the Government's intention to undertake a wide reform of education law, to deregulate the system and so to increase the ability of schools to innovate.
- 3.2** Deregulation is particularly appropriate to governance where the current legislative framework prescribes a significant level of detail that leave schools little scope to devise arrangements to suit their particular situation. For example, a school's legal category and number of pupils determines the size and constitution of the governing body, and the number of governor places for each school size and type is prescribed in primary legislation.
- 3.3** Allowing schools the freedom to determine the detailed membership of their governing body, within a framework of principles, would mean local circumstances on matters such as the challenges facing the school, the availability of governors and the best way for the governing body to organise its work, could be taken into account. A more coherent and consistent approach to governance legislation will help every governing body focus on what matters most to their school: raising pupils' achievements.
- 3.4** This consultation seeks views on detailed proposals for delivering the freedoms that will refresh governance arrangements while recognising the need to retain safeguards on representation and accountability. The aim is to shift the balance away from primary legislation and prescription over processes, toward a framework of enabling legislation. Minimal primary legislation will sit alongside clear Regulations that concentrate on principles and supporting guidance giving practical advice on fulfilling responsibilities. We will consult on the Regulations and guidance to ensure that we retain all essential features and protections in the new legislative framework.

3.5 This consultation is concerned with broad principles, including proposals on alterations to current responsibilities and seeks views where a change of approach is proposed. Throughout the document the issues we are seeking views on are set out. The proforma at the end of the document should be used to record overall views and any other comments. Responses to this consultation will influence the content of the Education Bill due to be introduced in this session of Parliament.

Section 2: The Constitution of Governing Bodies

4 The stakeholder model for the constitution of governing bodies

- 4.1** The Government is committed to the stakeholder model of school governance. The key stakeholders groups – parents, the community, school staff and the LEA, and for Voluntary and Foundation schools the foundation body or equivalent -must be guaranteed a voice on the governing body. But the current models for governing body membership provide little scope for schools to tailor the governance models to reflect their situation. We accept the Way Forward Group’s advice that there should be greater flexibility than the current models allow, so that schools can adopt a size and constitution that reflects their particular circumstances. This requires an alternative to the current approach of specifying the number of places in each category of governor by type and size of school.
- 4.2** We would welcome views on an approach to the constitution and size of governing bodies that sets a framework based on guiding principles then allows schools the freedom to determine the detailed membership of their governing body within that framework. The guiding principles proposed are as follows.
- 4.3** The following stakeholder groups must be represented on the governing body:
- parents;
 - staff employed to work at the school;
 - LEA appointed governors;
 - members of the community; and
 - in the case of Voluntary and Foundation schools, the founding body or equivalent.
 - at least a third of the places on the governing body should be taken by parents of children at the school;
 - staff employed at the school should take no more than a third of the available places. This figure would be assumed to include the head teacher, whether or not he/she chose to be a governor. At least one of the remaining places should be taken by a teacher;
 - one fifth of the places on the governing body to be filled by LEA appointed governors at Community Schools, up to and including one fifth at Voluntary Controlled and Foundation schools, and up to and including one tenth in the case of Voluntary Aided schools. The LEA may determine to reserve places from within its allocation of places for minor authority representatives;

- at least one fifth of the places to be filled by members of the local community, including the business community, co-opted by the governing body (not applicable to VA schools). The governing body may decide to invite any minor authority to nominate a person for co-option;
- at voluntary controlled schools and foundation schools, up to and including one quarter of the places reserved for appointment by the foundation or by the governing body as partnership governors in schools without a foundation;
- at voluntary aided schools, the foundation governors, of which at least one fifth must be parents, outnumber the other governors by two;
- no governing body should be smaller than 9 or larger than 20.

4.4 The Way Forward Group devised these principles in the light of the current composition of governing bodies and to achieve an appropriate balance between producer and consumer interests. For example under the current models the governing body of a community secondary school with over 600 pupils has 30% places filled by parents, 25% by the LEA, 25% co-opted, and 20% staff. While it had not proved possible to achieve such a close match for all types of school, the Group felt the advantage lay in having the simplest possible list of principles that applied across all types of schools, for example the proposition that all schools should have a third of available places taken by parents. Appendix 1 provides some illustrations of the membership models that would be available to schools under the proposed approach.

1 We would welcome your views on the proposal that the size and constitution of a school's governing body should be based on the guiding principles set out in paragraphs 4.3 above.

4.5 The composition of a school's governing body is set out in its Instrument of Government. When a school wishes to change its Instrument it notifies the LEA and, if the LEA is content, it makes a revised Instrument. Voluntary and Foundation schools must get the approval of the foundation governors, any trustees and, if appropriate, the Diocesan authority, before approaching the LEA. Where there is a disagreement between a school and its LEA, either party can refer the matter to the Secretary of State for determination. The Government does not propose to change these arrangements. They place the initiative with schools, whilst allowing the LEA and other interested parties sufficient scope to influence the outcome. The process for changing a school's instrument operates satisfactorily at present, and we believe it should work equally well for determining governing body membership under the proposed new arrangements. In addition the arrangements under which schools with a religious character have an ethos statement in their Instrument of Government will continue unchanged.

5 Additional members of governing bodies

5.1 Under the proposed guiding principles there would be no separate provision for additional co-opted governors representing minor authorities such as parish, town or some district councils. The Government accepts the Way Forward Group's advice that minor authorities are not a separate stakeholder group but that governors representing such interests should form part of the LEA group and/or the community group. We believe that

decisions on whether a minor authority should nominate to a particular governing body are best determined locally in the light of individual school circumstances.

- 5.2** Provision could be made for the Instrument of Government for a school to recognise that an LEA governor place had been reserved for a minor authority, or that a minor authority had been accorded the right to nominate a representative for co-option. This approach would allow more than one minor authority nominee to be included, or for minor authority representatives to be appointed to secondary schools, rather than be restricted to community and voluntary primary schools as at present, if that is what the appointing bodies concluded best served the school.

2 We would welcome your views on the proposal to include minor authority representation on governing bodies as part of other stakeholder groups (namely LEA and/or community), rather than separately.

- 5.3** The present arrangements whereby Instruments of Government can provide for up to two sponsor governors and one governor representing an Education Action Forum in EAZ areas will remain. These governors are appointed as additional co-opted governors by the governing body and will be in addition to the stakeholder groups outlined in paragraph 4.3 and outside the limit on governing body size. At present the Regulations define a 'sponsor' as 'person who gives, or has given, substantial financial assistance' to the school. The Government intends to amend and extend the definition of 'sponsor' to cover not only financial partners but also other external partners providing support to the school. So, for example, where a successful school or other body is supporting or 'partnering' a school there would be the scope for the school to decide that that body should be entitled to nominate up to two governors for co-option on to the governing body. The inclusion of these additional governors will continue, as now, to be specifically provided for in the school's Instrument of Government. The Government does not intend to make any other changes to the arrangements for the constitution of governing bodies to accommodate the involvement of external partners as outlined in the White Paper.
- 5.4** Governing bodies benefit from being able to draw on additional expertise from outside their formal membership from time to time. We also recognise that many individuals would like to contribute to the work of governing bodies but are reluctant to put themselves forward for full membership because they have only limited time available or only wish to contribute on an issue related to their particular area of expertise. Present arrangements do allow governing bodies to appoint non-governors to committees but this provision is not extensively used. The Way Forward Group proposed that occasional members of governing body committees should be called 'associate governors.' Associate governors would be allowed to attend full governing body meetings, but they would not be afforded voting rights. The balanced representation of the stakeholder model and the associated lines of accountability would be disturbed if these additional members could vote on the range of issues restricted for decision by the full governing body. The current arrangements that give the governing body the discretion over whether to create associate governor places, and to determine whether associate governors should have voting rights on committees, will be retained.

3 We would welcome your views on the proposal that associate governors should be able to attend full governing body meetings, but that they should not have voting rights at those meetings.

6 The stakeholder groups

6.1 The stakeholder groups on governing bodies reflect the main groups with a direct interest in the running of the school. Naming the groups by reference to the stakeholders they signify, rather than the method by which they are selected, will clarify their position. Therefore we intend to rename “co-opted” governors as “community” governors, to emphasise that they reflect the interests of the wider community and business interests from outside the school. At present this group of governors are voted onto the governing body by governors who have not themselves been co-opted. We propose that all governors should be able to vote on the co-option of community governors. Removing the distinction in voting rights for this category of governor would simplify the current complex voting and quorum arrangements. It would also recognise community governors as an equal stakeholder group alongside the other stakeholder categories.

4 We would welcome your views on the proposal that all members of the governing body should be able to vote to co-opt community governors on to the governing body

6.2 Under the new arrangements we propose that there should be a single stakeholder group referred to as staff governors. This will include the head teacher (who will still have the right to decide whether or not to become a governor) and teaching and non-teaching staff. The head teacher will continue to be a governor ex-officio, the remaining staff governors places will be filled by school employees elected by their peers.

6.3 Providing for a single stakeholder group to represent all staff employed to work at the school will allow schools to determine arrangements that suit their particular circumstances. As the structure of school staffing evolves, with greater numbers of para-professionals, the scope for schools to adopt arrangements for the election of staff representatives that reflect their particular circumstances takes on more importance. If a school wishes to ensure that the governing body contains a balanced representation of staff groups it could establish an electoral college system. The Way Forward Group proposed that at least one member of the staff group should be a teacher representative. While this would reduce the scope for schools to determine arrangements that reflected their particular staffing structure, the Group felt that the status of teachers required guaranteed representation.

5 We would welcome your views on the proposal that a single governor stakeholder group should be formed to represent staff employed at the school

6 We would welcome your views on the proposal that one governor place from within the staff stakeholder group should be reserved for a teachers' representative.

6.4 Inspection evidence and casework arising from complaints against governing bodies suggests that a preponderance of school employees on governing bodies inhibits objectivity and can result in a failure to tackle weaknesses. At present school staff can serve as parent governors, as well as teacher/staff governors. Where school staff take the majority of the places on the governing body this also restricts decisions and the conduct of business, for example the pool of governors who can appraise the head's performance or act as chair is reduced. Therefore the Government proposes to accept the Way Forward Group's recommendation that no-one employed to work at the school should serve on the governing body, other than as an elected representative of the staff, save as ex-officio in the case of the head teacher.

7 We would welcome your views on the proposal that staff employed by the school may only serve as staff governors.

6.5 Since 1999 all governors have been appointed or elected for a fixed term of four years. In some circumstances, schools may want to make a governor appointment for a shorter period. A parent may be reluctant to take on a commitment that extends beyond the period for which his or her child is due to attend the school. Business representatives might also find it easier to commit themselves for a shorter period than the full 4 year term. Newly formed governing bodies may want shorter terms for initial appointments so that reappointments occur over a number of years, rather than all at once. Therefore the Government intends to revise the current provisions on terms of office to allow schools to set governor appointment terms of 'up to four years'.

7 Governing bodies for maintained nursery schools

7.1 Current legislation requires all maintained schools to have governing bodies. At present this does not apply to nursery schools. The separate consultation exercise underway on Early Years and Childcare proposes that nursery schools are required to have legally constituted governing bodies. The more flexible constitutional arrangements we are proposing in this document will make it easier to extend governance arrangement to nursery schools. The new approach can accommodate the different balance of teacher and non-teaching staff in these schools, as well as provide within the community category for other partners, who may be involved in assisting the school to deliver early years provision. In addition, the proposal that a governor's term of office may be 'up to four years', as proposed in paragraph 6.5, will assist nursery schools to set terms for parent governors that reflect the relatively short period that children spend at such schools.

8 We would welcome your views on the proposal that the guiding principles on the size and constitution of governing bodies set out in paragraph 4.3 of the consultation document should be extended to maintained nursery schools.

8 Collaboration between schools

8.1 The White Paper says that we will make it easier for schools to work together where they wish to.

The Consultation on School Governing Bodies suggested that there might be a case for reintroducing grouping of schools under a single governing body as a means of facilitating closer working, citing a range of circumstances which might apply:

- bringing a weaker school or schools into a cluster with better schools under a single management structure, perhaps (but not necessarily) involving a single very good head;
- grouping small primary schools to exploit economies of scale in management (including governor support), staffing and curriculum provision;
- pairing grammar with non-selective schools;
- pyramid arrangements, involving secondary schools and their feeder primaries, to improve the transition from key stage 2 to key stage 3.

8.2 In addition the White Paper mentions bringing small schools together or enabling a successful school to ally with a weaker one. We are also aware that a number of LEAs have been promoting federated schools with a single head teacher in charge of several schools. At present these heads have to report to separate governing bodies, which can be a burden.

8.3 The Way Forward Group agreed that a permissive power for governing bodies to group together should be introduced to deal with the limited range of circumstances where the degree of collaboration that the schools desired made this necessary. Therefore the Government proposes to introduce a provision to enable schools to federate under a single governing body. The minimum number of schools that could federate is naturally two, and we would welcome views on whether we should set a maximum for the number of schools that could federate under a single governing body. Respondents who think a maximum should be set are invited to offer a view on whether the maximum should be set within the range: up to five; or between five and seven; or between eight and 10; or in excess of 10.

8.4 In addition to federation under a single governing body, the Government proposes to introduce a range of other measures to support collaboration between schools, short of full federation. These would include providing for two or more governing bodies to meet jointly and to form joint committees, for example where schools share the same site.

9 We would welcome your views on whether we should set a maximum for the number of schools that should be allowed to federate under a single governing body.

10 If you think a maximum should be set, we would welcome your views on a range of options for the maximum number of schools that should be allowed to federate under a single governing body.

9 Tackling school failure

- 9.1** The Government is committed to taking whatever steps are necessary to turn around schools that are failing their pupils and to prevent schools slipping into failure. Our overarching principle is that we should consider any solution that offers the prospect of turning round a failing school, or preventing a school that is in imminent danger of failing from doing so, where this is necessary to enable us to offer children the quality of education that is their right.
- 9.2** Last November's Consultation on Governing Bodies proposed that, in certain circumstances, the governing body of a school in special measures should be replaced with a smaller interim body. That proposal attracted support from 65% of respondents, with 77% agreeing that the proposed triggers for action were appropriate. The Way Forward Group agreed that, in the circumstances set out in the consultation document, the Secretary of State, or the local education authority with the Secretary of State's agreement, should have the power to replace the existing governing body with a smaller Interim Executive Board (IEB). The Group also agreed that the challenge these schools present justified paying IEB members.
- 9.3** In the White Paper *Schools: Achieving Success* we reaffirm our commitment to take decisive action in cases of school failure. The smaller number of schools going into special measures recently demonstrates that the system is becoming better at tackling failure. Nevertheless, where existing measures are not working quickly, or are not sufficient to prevent failure, we believe that we should extend further the armoury of measures available to take necessary action.
- 9.4** The capacity of the governing body to act at the first sign that standards at the school are unacceptably low is of pivotal importance. Otherwise, opportunities are missed and the task of remedying failure becomes much more difficult. As a result, a greater number of children do not receive the education they deserve. We set out in the White Paper the support mechanisms available to schools. In most cases, these support mechanisms should prove to be successful in preventing failure. But where a governing body, with support and advice, is unable to tackle the school's problems, we need a range of strategies to provide the necessary impetus for improvement.
- 9.5** LEAs are best placed to take the lead on deciding the most appropriate solution to the problems a school faces. They understand the local circumstances and are in a position to assess where targeted intervention is necessary to secure school improvement. LEAs already have powers to appoint additional governors and/or withdraw delegation where a school is in special measures or has serious weaknesses or where the LEA has issued a formal warning notice. In most cases these powers of intervention should be sufficient. But in the small number of cases where there is evidence that the school's governing body will not be able to come to terms with the challenges it faces, or existing intervention measures have not proved sufficient, further action must be taken.

9.6 To deal effectively with schools in these circumstances the Government proposes to legislate to allow a governing body to be replaced with an IEB where:

- a school requires special measures and is unable to turn itself around; or
- a school has serious weaknesses that means it is at risk of requiring special measures; or
- an LEA has exhausted its existing powers of intervention (appointment of additional governor and withdrawal of delegation).

The detailed arrangements and circumstances in which this power can be used will be set out in Regulations and guidance from the Secretary of State.

9.7 Primary responsibility for proposing an IEB will rest with LEAs, and all such proposals will require the Secretary of State's approval. Before agreeing to an LEA's proposal, the Secretary of State will consider any representations from the school concerned and, where appropriate, the foundation or Diocesan body. There will be a reserve power for the Secretary of State to act on her own initiative to establish an IEB, but we see this power being used rarely and following consultation with the relevant LEA, school concerned and, where appropriate, the foundation or Diocesan body.

9.8 When proposing an IEB, we would expect an LEA to show evidence from an Ofsted inspection report that the school's management and leadership had been judged to be weak, and to be able to demonstrate that replacing the governing body is necessary to initiate school improvement. Similarly, an LEA will be able to propose an IEB where monitoring by Ofsted or a subsequent inspection provides evidence that necessary improvements are not being made, and the LEA can show replacing the governing body with an IEB to be an appropriate response to the problems the school faces.

9.9 Even where these circumstances apply, we would expect an LEA to consider whether additional support, or the use of existing powers of intervention, would be a more appropriate response to the challenges the school faces. While it will be possible for an LEA to propose an IEB in cases where existing intervention powers have not been used, there would need to be a compelling case that appointing additional governors and/or withdrawing delegation, would not be sufficient to create the necessary impetus for improvement.

9.10 The IEB's task would be to secure, in partnership with the senior management of the school and with the local authority, rapid sustainable change to the school's performance. It will inherit all the powers, duties and liabilities of the governing body. In addition, it will be responsible for overseeing the return of the school to normal governance arrangements as soon as practicable. The IEB, the LEA and Diocesan Board where appropriate, will work together to establish a temporary governing body, which may include members of the original governing body or the IEB. When formed, the temporary governing body will work alongside the IEB and when a good basis for continued improvement has been established, the IEB will be disbanded and the temporary governing body will become the school's governing body.

9.11 Our purpose in taking these powers is to make sure LEAs can take whatever steps are necessary to prevent further detrimental effect on children's education. We envisage them being used exceptionally and as a last resort when other measures would not deliver improvement quickly.

11 We would welcome your views on the proposal that the circumstances outlined in paragraphs 9.8 should prompt consideration of replacing the school governing body with an Interim Executive Board.

Section 3: Governing Bodies' Responsibilities

10 Governing bodies' responsibilities

10.1 School governing bodies' duties stem from their overarching responsibility to conduct their schools with a view to promoting high standards of educational achievement (School Standards and Framework Act 1998 Section 38(2)). Regulations and associated guidance define the three key roles of governing bodies as: setting the school's strategic direction; securing accountability; and monitoring and evaluating, and supporting and challenging (the 'critical friend').

10.2 The Way Forward Group extended this overarching description of roles by identifying some of the activities that governing body's perform under each heading.

10.3 *Setting the school's strategic direction* includes:

- setting the school's mission and ethos. This is associated with the development and pursuit of a medium to long-term strategy for school development;
- approving the school's development plan, targets and the allied budget plan, annually, and making links between them. This should reflect the overall strategy set;
- setting policies, for example on performance management, recruitment and development of staff, pay, curriculum, organisation of the school, and (where appropriate) admissions. These should be aligned with one another, and with the overall strategy;
- appointment of the head teacher.

10.4 *Monitoring and evaluation* includes:

- evaluating the school's performance: against past performance, against other 'like' schools, and in the context of its operating environment;
- monitoring progress against the approved budget, plans and targets; and
- reviewing and revising policies.

10.5 *Securing accountability* includes:

- reporting to parents, the community and the LEA on performance against targets and plans, and on key developments;
- providing information to parents, the LEA, DfES and other Government agencies;

- hearing appeals, for example on pupil exclusions, staff dismissal, under grievance procedures, and those arising from general complaints;
- for schools with trustees, ensuring compliance with the provisions of the trust deeds;
- decisions on the pay range, appraisal, suspension and dismissal of the head teacher; and
- taking decisions outside established policies.

10.6 The progressive delegation of funding and responsibilities from local education authorities to individual schools over the last 20 years has inevitably brought about a dramatic increase in the weight and range of governing bodies' responsibilities. As a result current governance legislation is extensive, fragmented and can appear piecemeal. While the framework outlined above appears clear, when applied to particular responsibilities there is often a blurring of the line between the 'strategic' and 'operational' roles. The Government accepts the Way Forward Group's advice that we should strive for a sharper focus in the definition of governing body responsibilities, concentrating on their strategic role, and providing for the headteacher to act in a leadership role, operating within the framework established by the governing body.

10.7 The Way Forward Group proposed a fresh approach to governance legislation based on a framework of enabling powers. This would involve repealing many of the current provisions relating to governing bodies' responsibilities currently set out in primary legislation, and replacing them with a framework of regulation-making powers. Greater use of secondary legislation for the detailed provisions, alongside guidance and model policies, would create a more responsive statutory framework and give schools the opportunity to establish arrangements that reflected their particular circumstances. The Government accepts the Group's advice and announced in the White Paper its plans for a wide-ranging reform of the law on school governance.

11 Governing bodies' staffing responsibilities

11.1 At present the governing body's staffing responsibilities fall into six overlapping areas.

- *Appointments* The whole governing body decides on the appointment of the head and deputies (advised by a selection panel – save in the case of VA schools where the governing body has decided that the whole governing body should select). Decisions on the appointment of other staff (teaching and non-teaching) may be delegated to the head, a governor, or a committee/panel comprising governors.
- *Appraisal* Governors review the performance of the head, set a performance management policy, and monitor the performance management process. The head is responsible for implementing the agreed policy and ensuring that performance management arrangements are carried out.
- *Grievance, conduct and discipline* The governing body establishes procedures, which will usually assign management responsibility for operational aspects to the head and provide for an appeal to the governing body.

- *Dismissal* The decision to dismiss anyone at the school is taken by the governors' staff dismissal committee, with a second committee hearing any appeal.
- *Suspension* The governing body or the head can suspend any member of staff, but only the governing body can reinstate.
- *Capability* The governors must adopt a procedure and operate it in respect of the head teacher. The application of capability procedures in respect of other staff is the responsibility of the head teacher or other senior member of staff.

11.2 Legislation on appointments and dismissal prescribe in some detail the process for filling vacancies, making dismissals and the associated decision-making arrangements. The Government proposes to replace these prescriptive provisions with a model along the following lines:

- primary legislation should provide for regulations to define the respective roles and responsibilities of the LEA, Diocesan authority in the case of church schools, governing body and head teacher, in respect of staff appointments and dismissals;
- legislation should provide for the Secretary of State, after consultation, to issue statutory guidance, or a code of practice, containing such practical guidance and/or model policies as are appropriate concerning the staffing of schools

12 We would welcome your views on the proposal that we should deregulate provisions relating to governing body responsibilities for staff appointments and dismissals.

11.3 In addition to deregulating staffing provisions, the Government has decided to accept the Way Forward Group's advice that the governing body's involvement in appointments should normally be restricted to the leadership group. The leadership group is key to the strategic development of the school and governors have a proper concern for ensuring that such senior appointments reflect the ethos and long-term aims for the school. Current legislation allows the governing body to delegate to the head decisions on the appointment of teaching and other staff, except the head and deputy heads. However, the way the legislation is framed could lead a governing body to conclude that they are expected to be involved in such appointments. In tandem with deregulation, we will make revisions to legislation, and associated guidance, to promote delegation of the responsibility for appointments outside the leadership group to the head. Guidance, and any associated model policies, will provide the governing body with the discretion, taking account of the advice of the head teacher, to determine the extent of their involvement in staffing appointments outside the leadership group.

11.4 The governing body's current role on discipline, grievance and capability is restricted usually to hearing any appeal. However, on dismissal the governing body has decision-making responsibilities. The current arrangements, whereby the head determines that a dismissal is required, then the governing body's staff dismissal committee make a formal decision, with any appeal against that decision heard by a second committee of governors, introduce delay and costs into the system. The Way Forward Group proposed that

dismissal decision-making should be aligned with that for discipline, grievance and capability and transferred to the head teacher, with the governing body hearing any appeal. Teachers proposed for dismissal (except those dismissed for gross misconduct) would have been through capability procedures and could still appeal. The Government accepts the Way Forward Group's advice that dismissal decisions, save in respect of the head, should be the sole responsibility of the head with any appeal being heard by the governing body. In the case of VA schools, dismissal decisions, save in respect of the head, will be taken by the head and a governor.

12 Governing bodies' other statutory responsibilities

- 12.1** The School Government Terms of Reference Regulations 2000 and the associated guidance have been widely welcomed as straightforward, useful and practical. The Government proposes to adopt an approach to defining governing body responsibilities that builds on these arrangements and follows the approach to deregulation advocated at paragraph 11.2.
- 12.2** For each governing body responsibility, the legislation will be reviewed to determine whether the approach fits with the framework outlined by the Way Forward Group (reproduced at 10.2) and the emphasis on strategy, rather than operational activities. Where appropriate, prescriptive primary legislation will be replaced with a framework of enabling powers. The Government intends to seek broad powers to make Regulations that set the framework for the exercise of governing body functions.
- 12.3** For example the Government proposes to replace the current prescriptive legislative provisions governing pupil exclusions with an enabling legislative framework of limited primary legislation, with key provisions in Regulations, accompanied by guidance. The same approach will be applied to governors' other responsibilities where the current provisions in primary legislation are prescriptive. Essential protections will be retained in Regulations or statutory guidance, which will be the subject of consultation.
- 12.4** Deregulation of the legislation on governors responsibilities will allow agreed changes to be implemented more quickly. With less detail needed on the operation of provisions, guidance will focus on the dissemination of good practice and advice on areas of discretion. This will create a more responsive system, capable of adapting more readily to change with room for innovation.

13 We would welcome your views on the proposal that we should deregulate provisions relating to governing bodies other responsibilities where they are prescriptive and cannot be easily adapted to cater for changing circumstances.

- 12.5** A key part of a governing body's accountability function is to provide information and report on activities. The governors' annual report, and the associated annual meeting with parents, is an essential part of the accountability framework. We consulted earlier this year on the proposal that schools should no longer have to produce both school prospectuses and governors' annual reports to parents. Instead, we proposed that

schools should be required to produce a single document, known as the *Governors' Report & School Prospectus*, and that the amount of information which had to be included in it would be reduced.

- 12.6** The majority of the responses to the consultation were opposed to the idea of combining the two documents, arguing that they had different purposes, were intended for different audiences, and that a 'hybrid' would serve neither purpose effectively. Respondents were, however, generally in favour of streamlining the information required for the two documents and making it easier for those schools that chose to do so to amalgamate them.
- 12.7** In the light of the consultation, the Government will not be changing the law so as to combine the two documents. We shall, however, amend the relevant regulations so as to effect a further reduction in the statutory contents of governors' annual reports and school prospectuses and make it easier for schools that wish to do so to issue a combined document. We have also considered requests that the requirement for an annual meeting with parents should be removed or relaxed. The Government believes that the annual meeting with parents is an important element in the accountability framework and has decided to retain current arrangements. We will however be working with Ofsted to exploit the scope for greater coherence between the requirements on schools to report on activities and the school improvement planning cycle.

13 New discretionary powers for governing bodies

- 13.1** The White Paper announced the Government's intention to promote 'extended schools'. Many schools already recognise the benefits for them and their communities of providing additional services to their pupils, pupils' families and the wider community. Most schools already provide some before or after school study support; some provide space for sports or arts activities, community groups or Internet access; others work closely with other public bodies to provide integrated services such as health services, childcare or adult education.
- 13.2** At present the scope for governing bodies directly to provide services benefiting the wider community is constrained by the term 'conduct of the school', which precludes activities such as childcare. The Government plans to legislate to enable governing bodies to provide for a range of activities for the benefit of their staff, for children and parents, and for the members of the wider community. The governing body could provide these activities directly, in partnership with others, or through another provider on the premises. The power to run these activities will be separate to the governing body's prime responsibility for the conduct of the school and therefore costs will fall to be met from outside the delegated budget.
- 13.3** We know that many governing bodies want these wider powers. This will not be a duty: governors will have the choice about whether to begin providing or to extend their family and community facilities and services.

14 We would welcome your views on the proposal that we should legislate to give governing bodies the choice to provide a wide range of family and community facilities or services.

13.4 In addition to providing for greater scope for governing bodies to provide a wider range of school-based services, the Government will continue to explore with LEAs, through the New Models pilots, new and innovative approaches to partnership working and service delivery. Where current powers prevent governing bodies from engaging in new ways of working with their LEAs we intend to run pilots to establish new forms of partnership working that schools and LEA could adopt if they consider appropriate. Increasing the scope for governing bodies to engage in broader activities, where they wish to do so, is a key part of the Government's commitment to provide schools with greater freedom to innovate.

Section 4: Governing Body Procedures

14 Deregulating governing body procedures

- 14.1** The Government is committed to ensuring that governing bodies have the maximum possible amount of freedom and flexibility to determine how to undertake their functions, with appropriate safeguards to secure accountability. Governing body procedures must enable key stakeholder groups to voice their opinions and enable the governing body as a whole to conduct its business in the most efficient, effective and fair-minded manner possible.
- 14.2** While current provisions do not prescribe every detail of the procedural process, they are extensive and give little real scope for schools to tailor their procedures to reflect their situation. We propose that there should be greater freedom and flexibility than the current arrangements allow, so that governors can concentrate on their role rather than the rulebook and adapt their procedures to their particular circumstances. This requires a change to the current approach of specifying a high level of detail on how governing bodies should operate.
- 14.3** We would welcome views on a fresh approach to regulating governing body procedures, as described in paragraph 11.2. Governing body procedures are already laid down in secondary, as opposed to primary, legislation. The change of approach would entail placing more emphasis on practical guidance, within a framework of guiding principles. The regulations would establish minimum requirements and restrictions to provide necessary safeguards. Schools would then be allowed to regulate their own procedures within that framework of principles.
- 14.4** Guiding principles would be designed to support governing bodies to:
- focus on ensuring the school is conducted with a view to promoting high standards of educational achievement and in particular support governing bodies to act strategically in the running of the school, act as a 'critical friend' to the headteacher, and secure accountability for all with a legitimate interest in the school;
 - act corporately in the best interests of the school. Every governor to get a fair hearing and the opportunity to influence decision-making. Where the behaviour of individual governors is inappropriate, there should be scope for the other governors to call them to account. Associated guidance would incorporate a code of principles governing behaviour;
 - account to all those with a legitimate interest in the school. Stakeholders to gain fair and sensible access to records of meetings of the governing body. Complaints to be dealt with fairly, in accordance with procedures based on recommended principles.

14.5 The governing body should have the freedom to determine how best to conduct its business, with minimum regulation governing how to:

- determine who should act as Chair, Vice-Chair and the Chairs of Committees. The process of nomination and election should be simple and open;
- determine when and how often meetings need to take place; where and at what time they are held; and how to ensure that all governors have the necessary notice and information to enable them to make a full contribution;
- secure the services of a suitable clerk to help them in their organisation and ensure that meetings are recorded in sufficient detail to provide an audit trail for decision making, balanced against minimising bureaucracy and protecting confidentiality;
- delegate their work and/or decision-making to committees or individual governors, and involve individuals from outside the governing body. Public accountability guidelines require that the work of committees and individuals is regulated in the same way as the rest of the governing body's work.

15 We would welcome your views on the proposal that governing bodies should be given greater scope to regulate their own procedures within a framework of principles.

14.6 Providing governing bodies with greater discretion to frame arrangements to suit their circumstances places greater emphasis on the process through which those arrangements are agreed. At present governing body decisions are made by simple majority when the meeting is quorate. For most items of business, the required quorum is one-third of the seats on the governing body rounded up to the nearest whole number (but not less than three). A quorum of two thirds is needed when the governing body are taking decisions about their own membership, the membership of committees and selection panels and on appointing or removing the chair.

14.7 It would be more straightforward if there were a single arrangement for determining whether a meeting of the governing body was quorate. While it can be argued that decisions on governing body membership are important enough to warrant involving a greater number of governors, if meetings are well publicised far enough in advance, all governors who wish to should have the opportunity to influence outcomes. There may be a case for extending the notice required for meetings and requiring any issue needing a decision by the governing body to be clearly signalled on the agenda, or in a supporting paper. This is a finely balanced issue, and we would therefore welcome views on whether the value of greater simplicity, from a single quorum for all governing body meetings set at one-third of the seats on the governing body, outweighs any loss of accountability for decisions.

16 We would welcome views on the proposal that there should be a single quorum for all governing body meetings and decisions of one third.

14.8 In tandem with moves to give schools the maximum possible flexibility to regulate their own procedures, we also intend to look at ways of allowing governing bodies that wish to, to make greater use of information and communications technology for the conduct of business. At present the rules governing meetings and procedures take a traditional view of how business is conducted and decisions taken. For example the regulations state that the notice of meetings 'may be given to a person by leaving it at, or sending it by post to, his usual place of residence' and that the minutes must record those 'present at the meeting'. These concepts need to be updated to allow governing bodies the freedom to communicate by email and to hold e-meetings where their circumstances, and that of their members, make this the best way for them to conduct business.

Section 5: Timing and Conclusion

15 Transitional Arrangements for Implementation

- 15.1** The Government appreciates the concerns registered, in responses to the Consultation on School Governing Bodies, about further changes in governing body constitutional arrangements too soon after the major reconstitution exercise in September 1999. The changes now proposed give governing bodies greater scope to adopt arrangements that reflect their local circumstances and we propose to provide for transitional arrangements that give schools some freedom over when they move to the new approach. We appreciate the workload involved in drawing up and agreeing new Instruments of Government, and intend to work with LEAs to ensure that central guidance minimises the difficulties of the changeover. Key to smoothing the process will be the timeframe for implementation.
- 15.2** We propose that there should be no 'big bang' introduction with all changes required to take place on the same date. Instead we suggest that changes could be introduced by governing bodies at a time that best suits them within 3 years from the date legislation is enacted. So if these proposals come into force from September 2002, governing bodies will have up until September 2005 to effect the changes. All maintained school governing bodies will need to conform to the new constitutional arrangements, but the burden should be minimised by allowing governing bodies to decide on the timing that suits them best for bringing in a new Instrument of Government.
- 15.3** We intend to incorporate a transitional provision to enable governing bodies that wish to, to run with surplus governors in any category until their individual terms of office have expired. This will eliminate the need to go through the process of removing surplus governors. Taken together with the proposed flexibility over governor terms of appointment, this will allow schools the scope to manage the transition to the new framework over a period and to move formally to a new constitution at the point that best suits them.

16 Conclusion: modernising school governance

- 16.1** This package of proposals aims to fulfil our commitment to increase the scope for school governors to have a greater impact on school life by freeing them from activities that distract them from their primary role. The transformation of education requires innovation and we believe that providing much greater scope for local discretion than is currently allowed for in the arrangements for the governance of schools is essential to this process. Innovation requires a flexible and more responsive framework, and prescription is a burden that acts as a block on innovation in the longer-term. The de-regulation of governors' responsibilities and governing body constitutions has the potential to unleash energies and unlock the potential for new and better governance arrangements.

16.2 We believe we can trust schools to determine suitable arrangements that reflect their particular circumstances. The proposals in this document aim to produce a flexible framework to allow schools, in partnership with LEAs, to tailor broad national strategic intentions to the needs of their locality. We have the opportunity to refresh governance arrangements, keeping the best of the current arrangements while modernising the approach to provide for a forward-looking framework. Our aim is to free the largest volunteer force in the country to focus on the key task of ensuring the school system serves the talents and aspirations of all students in our diverse society.

Appendix

Illustrations of the principles outlined in Section 4.3

Current constitution				
Community	Primary normal	Primary under 100	Secondary normal	Secondary under 600
Parent	5	3	6	5
LEA	4	2	5	4
Teacher	2	1	2	2
Staff	1	0 or 1	1	1
Head	1	1	1	1
Co-opted	4	2	5	4
Total	17	9 or 10	20	17

Alternatives that would comply with the principles in Section 4.3					
Community	Option 1	Option 2	Option 3	Option 4	Option 5
Parents	3	4	5	5	6
Community	2	3	3	3	4
LEA	2	3	3	3	4
Staff	2	2	3	4	3
Total	9	12	14	15	17

Community	Option 6	Option 7	Option 8	Option 9	Option 10
Parents	7	7	7	7	7
Community	4	4	4	5	4
LEA	4	4	5	4	4
Staff	3	4	4	4	5
Total	18	19	20	20	20

Current constitution				
Voluntary Controlled	Primary normal	Primary under 100	Secondary normal	Secondary under 600
Parent	4 or 5	3	6	5
LEA	3	2	4	3
Teacher	1	1	2	2
Staff	1	0 or 1	1	1
Head	1	1	1	1
Foundation	3 or 4	2	5	4
Co-opted	1	1	2	2
Total	14 or 16	10 or 11	21	18

Alternatives that would comply with the principles in Section 4.3					
Voluntary Controlled	Option 1	Option 2	Option 3	Option 4	Option 5
Parents	4	4	4	5	5
Community	1	2	2	2	2
Staff	2	2	3	2	2
LEA	1	1	1	2	3
Foundation	2	2	2	2	3
Total	10	11	12	13	15

Voluntary Controlled	Option 6	Option 7	Option 8	Option 9	Option 10
Parents	6	7	7	7	7
Community	2	2	2	2	2
Staff	3	3	3	3	4
LEA	2	2	3	4	3
Foundation	3	4	3	4	4
Total	16	18	18	20	20

Current constitution				
Voluntary Aided	Primary normal	Primary under 100	Secondary normal	Secondary under 600
Parent	1 or 2	1	3	2
LEA	1 or 2	1	2	1
Teacher	1	1	2	2
Staff	1	0 or 1	1	1
Head	1	1	1	1
Foundation	7 or 9 (inc 2 parents)	6 or 7 (inc 2 parents)	12 (inc 3 parents)	9 (inc 2 parents)
Total	12 or 16	10 or 12	21	16

Alternatives that would comply with the principles in Section 4.3					
Voluntary Aided	Option 1	Option 2	Option 3	Option 4	Option 5
Parents	1	2	2	3	3
LEA	2	2	2	2	2
Staff	3	3	4	3	4
Foundation	4	5	5	7	7
Foundation parents	4	4	4	3	4
Total	14	16	17	18	20

Current constitution				
Foundation	Primary normal	Primary under 100	Secondary normal	Secondary under 600
Parent	5 or 6	4	7	6
LEA	2	2	2	2
Teacher	1	1	2	2
Staff	1	0 or 1	1	1
Head	1	1	1	1
Foundation	3 or 4	2	5	4
Co-opted	1	1	3	2
Total	14 or 16	11 or 12	21	18

Alternatives that would comply with the principles in 4.3					
Foundation	Option 1	Option 2	Option 3	Option 4	Option 5
Parents	4	4	4	5	5
Community	1	2	2	2	2
Staff	2	2	3	2	2
LEA	1	1	1	2	3
Foundation	2	2	2	2	3
Total	10	11	12	13	15

Foundation	Option 6	Option 7	Option 8	Option 9	Option 10
Parents	6	7	7	7	7
Community	2	2	2	2	2
Staff	3	3	3	3	4
LEA	2	2	3	4	3
Foundation	3	4	3	4	4
Total	16	18	18	20	20

CONSTITUTION OF COMMUNITY SPECIAL SCHOOL

As for community schools but a representative governor appointed by the relevant voluntary organisation(s) designated by the LEA replacing a community governor. In hospital schools the representative governor will be appointed by either the Health Authority or the NHS Trust.

CONSTITUTION OF FOUNDATION SPECIAL SCHOOL

As for foundation schools, with partnership governors replacing foundation governors where there is no foundation.

