

department for
children, schools and families

Trust School Proposals

A Guide for Governing Bodies and Local Authorities

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Trust School Proposals – A Guide for Governing Bodies and Local Authorities

Introduction

1. This is guidance issued by the Secretary of State under Section 21(6) of the Education and Inspections Act 2006. It is aimed at
 - a) Governing bodies of foundation schools that are considering
 - i. the acquisition of a foundation (i.e. becoming a Trust School);
 - ii. the acquisition of an instrument of government providing for a majority of governors to be appointed by the school's foundation;
 - b) Governing bodies of other categories of school that are seeking to make one or both of the changes in (a) together with a change of category to foundation;
 - c) The Schools Adjudicator;
 - d) Local authorities, including where they are seeking to exercise their power under Section 23 of the Education and Inspections Act 2006 to refer proposals to acquire a foundation to the adjudicator;
 - e) Those seeking to work with a school as a Trust partner;
 - f) Parents or stakeholders with an interest in such proposals.

2. The Department for Children, Schools and Families is producing a Trust Schools toolkit to assist governing bodies in particular through this process. A draft of this toolkit is available from <http://www.specialistschools.org.uk/trustschools2/test/trustschoolstoolkit/default.aspx>. In addition, the Trust and Foundation Schools Partnership also offer support and guidance to Trust schools. Further information is available from the Trust schools website at <http://www.ssatrust.org.uk/trustschools2/default.aspx>. To access this support please contact the Trust and Foundation Schools Partnership via the website or by phone at 020 7802 0967 or by e-mail to trustschools@ssatrust.org.uk.

Background and the Government's Policy Intention

3. The Government's aim is to transform our school system so that every child receives an excellent education – whatever their background and wherever they live. A vital part of the Government's vision is to create a

more diverse education sector offering excellence and choice, where each school has a distinctive character and ethos. We know that schools work best when taking responsibility for their own school improvement, working closely with other schools and external partners.

4. The White Paper, *Higher Standards, Better Schools For All*, published in October 2005, sets the framework for the Trust School provisions in the Education and Inspections Act 2006. The policy objective is to strengthen the leadership and ethos of schools by enabling them to form long-term sustainable partnerships with charitable trusts which will be able to appoint a majority of the governors, where the existing governing body wishes. The aim is to bring in experience, energy and expertise from new partners as a lever to raise standards, and to take existing collaboration a step further.

Definition of Terms

"Trust", "Trust School" and "Foundation"

5. Trust Schools are foundation schools with foundations. Trusts are the foundations of such schools.
6. Foundations are defined in section 21 of the School Standards and Framework Act 1998 (SSFA 98). The statutory purpose of a foundation is to hold land on trust for one or more schools; they may also appoint foundation governors to those schools where the school's instrument of government so provides.
7. The Education and Inspections Act 2006 (EIA 2006) puts in place safeguards around the acquisition of a Trust and defines particular characteristics required of Trusts, including the charitable purpose of advancing education and a duty to promote community cohesion in furthering such purpose. (These requirements do not apply universally: broadly, foundations that existed in relation to a school or schools before the commencement of the EIA 2006 will not be subject to these requirements unless certain alterations are made to the school – see Annex A).

"Foundation majority"

8. The governing body of a Trust school may, having completed the statutory process set out in the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 (SI 2007/1289) (as amended by the School Organisation and Governance (Amendment) (England) Regulations 2007) and outlined in this guidance, have an instrument of government that allows for the Trust to appoint a majority of governors to the governing body. Similar arrangements already exist in

voluntary aided schools, and are often a key factor in shaping a strong ethos for the school.

9. It will be for individual governing bodies to decide whether to have this type of instrument of government - there will be no compulsion. However Trust Schools now have the opportunity to adopt governance arrangements previously limited to voluntary aided schools where this is thought by the governing body to be in the best interests of the school. This guidance will use the term "acquiring a foundation majority" to mean acquiring an instrument of government whereby the school's Trust has the power to appoint a majority of governors on the governing body.

"Prescribed Alterations", "Proposals", "Foundation Proposals", "Trust Proposals"

10. Section 19 of the EIA 2006 includes the following alterations to schools within the definition "prescribed alterations";
 - I. A change of category to foundation
 - II. The acquisition of a Trust under the Education and Inspections Act 2006
 - III. The acquisition of a foundation majority under the Education and Inspections Act 2006
11. To make such a prescribed alteration the governing body must publish proposals in accordance with provisions in the EIA 2006, regulations made under that Act and having regard to guidance (such as that contained in this document) issued by the Secretary of State under that Act.
12. Statutory proposals for any or all of the alterations to schools described in paragraph 10 are known as "foundation proposals". This guidance will use the term "Trust proposals" to mean proposals to acquire a Trust and proposals to acquire a foundation majority.

Decision Maker

13. Decisions on proposals to acquire a Trust or a foundation majority are taken by the governing body or by the schools adjudicator. In this guidance both are covered by the term "Decision Maker".

Scope of the Guidance

14. It is possible for the governing body of a school to complete the statutory process to change category to foundation at the same time as the statutory processes to acquire a Trust, and/or to acquire a foundation

majority. This guidance is concerned with the acquisition of a Trust and/or a foundation majority. *Changing School Category to Foundation – A Guide for Governing Bodies* is available from the School Organisation Unit website www.dcsf.gov.uk/schoolorg.

15. This guidance provides statutory guidance for Decision Makers; and provides statutory guidance for Local Authorities on the referral of proposals to acquire a Trust and/or a foundation majority to the Schools Adjudicator.
16. The following sections are statutory guidance issued by the Secretary of State under regulations made under the Education and Inspections Act 2006. The statutory guidance sections are also indicated by shading.
 - a) Guidance on consultation – **Paragraph 42**;
 - b) Guidance to local authorities on the power to refer Trust proposals to the Schools Adjudicator – **Paragraphs 76 – 107**;
 - c) Guidance to Decision Makers in deciding proposals to acquire a Trust and/or acquire a foundation majority – **Paragraphs 113 – 133**;
17. The remainder of this document is intended as a guide to the statutory process for the acquisition of a Trust and/or the acquisition of a foundation majority.

Overview of the statutory process for acquiring a Trust and/or a foundation majority

18. All foundation proposals must follow this standard process:

<u>Stage 1</u>	The governing body considers the acquisition of a Trust, and or the acquisition of a foundation majority; initiation of statutory process
<u>Stage 2</u>	The governing body consults on the plans
<u>Stage 3</u>	The governing body publishes proposals (having obtained consent where appropriate)
<u>Stage 4</u>	Period for representations (including opportunity for the local authority to refer proposals to the Schools Adjudicator)
<u>Stage 5</u>	Proposals are determined by the Decision Maker (usually the governing body; the adjudicator if the LA has referred proposals at stage 4)
<u>Stage 6</u>	Implementation

19. The statutory process of changing category to foundation also requires consultation, the publication of proposals, a period for representation and the determination of proposals. These statutory processes may be run as one. *Changing School Category to Foundation – A Guide for Governing Bodies* is available from the DCSF School Organisation website www.dcsf.gov.uk/schoolorg.
20. The purpose of the statutory process is to ensure that stakeholders are adequately informed, and have the opportunity to make their views known, about proposed changes; and to ensure that the case for change is robust. Important points to note about the process include:
- a) Consultation is intended to be formative – i.e. it should help to shape the proposals that will be published. Consultation should be conducted in this spirit.
 - b) The Decision Maker should base their decision on the proposals alone. It is therefore important that the published proposals make the case for the changes proposed.

The following chapters explain the process in more detail.

<u>Stage 1</u>	The governing body considers the acquisition of a Trust, and/or the acquisition of a foundation majority; initiation of statutory process
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Factors to consider before embarking on the process of acquiring a Trust or a foundation majority

21. It will be for individual school governing bodies to decide whether to acquire a Trust and to decide the kind of Trust that is most appropriate for them. The governing body will need to consider carefully its aims in acquiring a Trust and the expected long-term outcomes.
22. Trusts can be formed by a single partner, or by a number of partners working together. Different partners will bring different perspectives, experience and skills to support certain aspects of the school's mission. Governors are expected to give due consideration to these factors before deciding to begin the statutory process. The Trust Schools Toolkit contains practical guidance for governing bodies and their partners.
23. The governing body of a voluntary school, or of a foundation school with a foundation which, in either case, existed before the commencement of the Education and Inspections Act 2006, may only publish Trust proposals with the consent of the school's existing trustees, and of anyone other than the trustees entitled to appoint foundation governors. Furthermore, a school may only have one foundation.
24. In general, it is considered good practice, where a school has an existing foundation (whether or not this existed before the commencement of the Education and Inspections Act 2006) to ensure that the foundation is formally consulted at an early stage on any plans the governing body has to publish proposals.
25. While a voluntary or foundation school may be initially established with a religious character, it is not possible for any school to gain, lose or change religious character through the acquisition of a Trust or through a change of category.

The role of the Schools Commissioner

26. Schools that wish to acquire a Trust may approach the Schools Commissioner for advice and support on identifying a suitable Trust partner. The Schools Commissioner holds details of organisations willing and able to establish Trusts for schools and, where possible, helps to facilitate the matching up of schools with potential Trusts. The Schools Commissioner also encourages existing and potential Trusts to focus their

interest on schools in disadvantaged areas and weaker schools which are in greatest need of support.

27. However, the Schools Commissioner does not hold a complete list of potential Trusts. In considering whether a potential Trust partner is suitable, a governing body should in the first instance take into account whether the proposed Trust partner is one which the Schools Commissioner is actively promoting. But the fact that the Schools Commissioner is not promoting a particular Trust does not serve as evidence that it is unsuitable.
28. The Schools Commissioner also holds a record of and will make available (via the Department for Children, Schools and Families School Organisation website www.dcsf.gov.uk/schoolorg) details of all proposals, once decided, to acquire a Trust or to remove a Trust. The information provided will be that which must be contained in all published proposals (see Stage 2). This allows a school interested in acquiring a Trust to access information about a particular Trust and to follow up any questions with the school or Trust in question.
29. Many schools will already have relationships with partners who could form a Trust. The Schools Commissioner will also be able to help match and broker arrangements if a school so wishes, but there is no obligation on the school to consult the Schools Commissioner or to have regard to his advice.

Factors to consider in drawing up the consultation

30. The governing body is required to undertake a period of statutory consultation.
31. Governing bodies should bear in mind the recent High Court judgement (*R v Northumberland County Council, Ex Parte Parents for Legal Action Ltd*, 18 May 2006). The Judge commented that:

“The whole purpose of consultation is to inform the process *before* the public body formulates and publishes its final processes. That, after all, is why consultation must be undertaken when proposals are still at a formative stage and why, as the authorities which I have referred to make clear, the results of the consultation must be conscientiously taken into account in finalising any statutory proposals.”
32. The proposals published after the consultation should not be substantially different from what the governing body has already consulted on. Therefore, should the outcomes of the consultation require significant changes to the governing body’s proposals then the governing body

- should re-consult on new proposals. For these reasons, the governing body should rigorously consider the suitability of the Trust in question and the case for change; and the statutory consultation should be on proposals of sufficient detail. Governing bodies may wish to consult informally before embarking upon the statutory process.
33. The governing body should satisfy itself that the proposed Trust will meet all legal requirements before consulting (see paragraph 116).
 34. Any decision to embark on a statutory process to acquire a Trust should be based on an assessment that it will contribute to raising standards.
 35. The governing body should also satisfy itself, before consultation, that the potential Trust partner(s) will enhance the reputation of the school, operate according to principles that are consistent with a charitable trust that will advance the education of the pupils at any school and, in so doing, will promote community cohesion. Section 36 of the EIA 2006 places an explicit duty on governing bodies to promote community cohesion in discharging their functions, and governing bodies will wish to consider how the acquisition of a Trust will help them to fulfil this duty.
 36. In determining the suitability and appropriateness of a particular Trust, a governing body should therefore:
 - a) consider whether and how the acquisition of the particular Trust will support the school in raising standards, improving the quality of teaching and learning and improving delivery of the five 'Every Child Matters' outcomes for all children;
 - b) consider how the Trust fits with the school's character and ethos and how it will develop the culture of the school further;
 - c) consider what perspectives, experience and skills the Trust will bring to support the school's mission;
 - d) consider the potential impact of the partnership on other schools in the locality and on any other organisations or bodies likely to be affected;
 - e) take account of any views expressed in respect of a potential Trust and the nature of the partnership with the school;
 - f) take into account the Trust's previous track record of involvement in schools and education more generally, as well as the experience and expertise of the proposed trustees;
 - g) consider whether particular Trusts should be considered unsuitable on the grounds of inappropriateness – for example, ensure that Trust partners are not involved in activities that may be considered inappropriate for children and young people (for example, tobacco,

gambling, adult entertainment, alcohol etc).

37. The governing body should look ahead to the statutory guidance for Decision Makers (paragraphs 113 – 133) in order to determine whether the Trust is suitable.

<u>Stage 2</u>	The governing body consults on the plans
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Consultation

38. The governing body **must** comply with the requirements of the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 (SI 2007/1289) (as amended). **Paragraphs 39 and 40** reproduce certain parts of these regulations. **Paragraph 42** is statutory guidance to which governing bodies must have regard when consulting on proposals. **Paragraphs 47 and 48** set out good practice which governing bodies may wish to consider.
39. Before publishing its proposals, the governing body must consult a range of local stakeholders, including, but not necessarily limited to, those specified in the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 (SI 2007/1289) (as amended):
- a) any local authority likely to be affected by the proposals, in particular neighbouring local education authorities where there may be significant cross-border movement of pupils;
 - b) families of pupils at the school;
 - bb) teachers, and other staff at the school;
 - c) the governing body, teachers and other staff of any other school that may be affected by the proposals;
 - d) families of pupils at any other school that may be affected by the proposals including where appropriate families of pupils at feeder primary schools;
 - e) any trade unions who represent staff at the school and representatives of any trade union of any other staff at schools that may be affected by the proposals;
 - f) if proposals involve, or are likely to affect a school which has a religious character—
 - i. the Diocesan Board of Education for any diocese of the Church of England any part of which is comprised in the area of the local authority;

- ii. the bishop of a diocese of the Roman Catholic Church any part of which is comprised in the area of the local authority;
or
- iii. the relevant faith group in relation to the school

as appropriate;

- g) if the proposals affect the provision of full-time 14-19 education, the Learning and Skills Council for England;
- h) Members of Parliament whose constituencies include the school that is the subject of the proposals, or whose constituents are likely to be affected by the proposals;
- i) the local district or parish council where the school is situated;
- j) where proposals affect early years provision, the Early Years Development and Child Care Partnership, or those who benefit from a contractual arrangement giving them the use of the premises;
- k) any other interested party; and
- l) any other persons whom the governing body thinks appropriate.

40. Where proposals are made in respect of a special school, the governing body must also consult

- a) the relevant Primary Care Trust for the area in which the school is situated; and
- b) any NHS trust or NHS foundation trust responsible for a hospital or other provision in the area in which the school is situated.

41. Under Section 176 of the Education Act 2002 LAs and governing bodies are also under a duty to consult pupils on any proposed changes to local school organisation that may affect them. Guidance on this duty is available on the Teachernet website: www.publications.teachernet.gov.uk and is entitled 'Pupil Participation Guidance: Working Together – Giving Children and Young People a Say'.

42. How consultation is carried out is not prescribed in regulations and it is for the governing body to determine the nature of the consultation including, for example, whether to hold public meetings. Proposers should avoid consulting on proposals during school holidays. However, the governing body should consult all interested parties, allow adequate time, and provide sufficient information for those being consulted to form a

considered view on the matters on which they are being consulted, and should make clear how their views can be made known. Those bringing forward proposals should be able to demonstrate how they have taken into account the views expressed during consultation in reaching any subsequent decision as to the publication of proposals. Where, in the course of consultation, a new option emerges which the proposers wish to consider, it will probably be appropriate to consult afresh on this option before proceeding to publish proposals.

- 43. Governing bodies should bear in mind that failure to follow the requirements of the statutory process could lead to a complaint to the Secretary of State under Section 496/497 of the Education Act 1996, and/or ultimately challenged through judicial review.
- 44. Furthermore, where a governing body has failed to consult adequately, or has failed to have regard to consultation responses, the local authority has the power to refer proposals to acquire a Trust or to acquire a foundation majority to the Schools Adjudicator.
- 45. It is strongly recommended that governing bodies make public formal feedback regarding the responses received and how the consultation process influenced the outcome. (Governing bodies are also required to publish information on the consultation as part of the statutory proposals.)
- 46. **Governing bodies should refer to the statutory guidance to Local Authorities on their power to refer proposals, contained in paragraphs 76 - 107, for information on the factors the local authority will consider in deciding whether to refer proposals to the Schools Adjudicator. The local authority will assess the consultation against the following criteria:**
 - I. Process
 - a) Is the process for consultees to make their views known sufficiently clear and straightforward?
 - b) Has the governing body allowed sufficient time and provided sufficient information to enable consultees to reach an informed view of the proposals?
 - II. Openness
 - a) Has the governing body proactively sought to identify relevant interested parties and those who are likely to be affected by the proposals?

III. Clarity and accessibility

- a) Are the consultation documents of reasonable and sufficient clarity?
- b) Has the governing body made reasonable adjustments to facilitate contributions from all relevant parties, including groups who could be overlooked (e.g. black and minority ethnic communities, disadvantaged or disabled people)?

47. Governing bodies may also find it helpful to refer to and, where relevant, abide by the principles set out in the *Cabinet Office Code of Practice on Consultation*. <http://www.bis.gov.uk/category/consultations?status=open> This document sets out the principles by which government departments are generally expected to abide, but the guidance can be applied to assist governing bodies in identifying good practice to follow.

48. Some important elements of the guidance have been adapted or reproduced here. However, this is not an exhaustive list of considerations.

a) Consult widely throughout the process

- i. It is important to identify proactively relevant interested parties and those whom the proposals will be likely to affect. These groups should be contacted and engaged in discussion as early as possible.
- ii. Some stakeholders, for example those from disadvantaged or minority communities, may be particularly difficult to reach. It is important to engage proactively with individuals, organisations and trade associations. Written consultation is not the only or even always the most effective means of consultation. Other forms of consultation may help in this process. These might include public meetings, surveys, targeted leaflet campaigns and so on.

b) Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses

- i. As far as possible, consultation should be completely open, with no options ruled out. However, if there are things that cannot be changed then make this clear.
- ii. Representative groups should be asked when responding to give a summary of the people and organisations they represent.

- iii. Provide a list of consultees as an annex to your consultation document and ask for suggestions of other interested parties who should be consulted. It may also be helpful to refer to any earlier or informal consultation.
 - iv. Clearly state any alternative ways of contributing to the process in the consultation document.
- c) Ensure that your consultation is clear, concise and widely accessible
- i. **Clear** - Use plain language: avoid jargon and only use technical terms where absolutely necessary. A consultation should be as accessible as possible. Explain complicated concepts as clearly as possible and use a glossary for any technical terms.
 - ii. **Concise** - Provide an executive summary to the written consultation document that covers the main points of the document, preferably no longer than two pages. Ensure that the executive summary is accessible to all.
 - iii. **Accessible** - Ensure that the consultation documents are available in paper format. Where it is possible to also use electronic means, this would be good practice. Costs to users should never be such that they are an obstacle to effective consultation.
 - iv. Consider groups who cannot access traditional written consultations or the online versions of these. It may be necessary to produce the document in different languages. There may be some circumstances in which written consultation is not the best way to reach your target audience.
 - v. With regard to equality issues, ensure that your consultation engages with the whole community. You may need to consider the format of the consultation to achieve this and to consider how to reach groups which could be overlooked. These groups could include black and minority ethnic communities or disabled people.
 - vi. The consultation criteria (for example, a – d here) should be reproduced in all consultation documents. Explicitly state that the consultation should abide by these criteria. Invite respondents to comment on the extent to which the criteria have been adhered to and to suggest ways of further improving the consultation process. Explicitly state whom to contact if respondents have comments or complaints about the

consultation process.

- d) Give feedback regarding the responses received and how the consultation process influenced the outcome
- i. Responses should be carefully and open-mindedly analysed. Do not simply take account of the numbers of people expressing a particular view when analysing responses. In constructing a qualitative analysis of consultation responses in respect of school organisation proposals, the use of weighting may be helpful in ensuring sufficient regard is had to those stakeholders most directly affected, for example, the views of parents.
 - ii. Particular attention should be paid to:
 - a. possible new approaches to the proposals;
 - b. further evidence of the impact of the proposals; and
 - c. strength of feeling among particular groups.
 - iii. The consultation document should state the date when, and the web address where, the summary of responses will be published. Those without web access should be able to request a paper copy of this summary.
 - iv. Wherever possible the summary of responses should also include a summary of the next steps for the policy, including reasons for decisions taken.

Stage 3	The governing body publishes proposals
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Consideration of consultation responses

49. Following the consultation, the governing body then decides whether to go ahead and publish proposals. The governing body should be able to demonstrate how it has taken into account the views expressed during consultation in reaching any subsequent decision as to the publication of proposals. It is strongly recommended that governing bodies make public formal feedback regarding the responses received and how the consultation process influenced the outcome.
50. The proposals should not be substantially different from what the governing body has already consulted on and should be published within a reasonable timeframe following consultation so that the proposals are informed by up-to-date feedback.

Publication of proposals

51. Before publishing proposals, the governing body should ensure that it has the consent of relevant parties as follows;
 - a) The governing body of a school of a voluntary school, or of a foundation school with a foundation which, in either case, existed before the commencement of the Act, must obtain the consent of the school's existing trustees, and of anyone other than the trustees entitled to appoint foundation governors before publishing proposals to obtain a foundation majority.
 - b) The governing body should establish beyond any reasonable doubt that all parties that will be named in the proposals continue to be content with the proposals to be published. This includes proposed members of the Trust and any other schools that may have undertaken separate consultation processes with a view to acquiring a shared Trust.
52. The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 (SI 2007/1289) (as amended) specify both the information to be contained in proposals and the procedures for publishing proposals.
53. All Foundation Proposals must include:
 - a) The name, school category and address of the school for which the governing body is publishing the proposals;

- b) The proposed date of implementation;
- c) A statement explaining the procedure for making representations, including the date by which representations should be submitted - i.e. within 4 weeks of the publication of the proposals - and to whom they should be sent – this will be the governing body itself;
- d) Evidence of the consultation before the proposals were published including—
 - i. a list of persons and/or parties who were consulted;
 - ii. minutes of all public consultation meetings;
 - iii. the views of the persons consulted; and
 - iv. a statement to the effect that all applicable statutory requirements in relation to the proposals to consult at all stages were complied with; and
 - v. copies of all consultation documents and a statement on how these documents were made available.
- e) A statement of whether the proposed alteration comprises one or more of the following—
 - i. the acquisition of a Trust; or
 - ii. any proposed change in the instrument of government which results in the majority of governors being foundation governors.

54. In cases where the proposal is for the acquisition of a Trust, the following information must also be provided:

- a) the name or proposed name of the Trust;
- b) the rationale for the Trust and the ethos it will bring to the school;
- c) the details of membership of the proposed Trust, including the names of the members;
- d) the entitlements to appoint trustees and the number of trustees to be appointed by each;
- e) the proposed constitution of the governing body;
- f) details of the Trust's charitable objects;
- g) whether the foundation already acts as a foundation for any foundation or voluntary schools;
- h) where applicable, a statement that the requirements set out in the School Organisation (Requirements as to Foundations) (England) Regulations (2007/1287) will be met;

- i) where the majority of governors are to be foundation governors, a statement that a Parent Council will be established and details of the proposed arrangements for the Parent Council;
- j) a statement and supporting evidence as to how the foundation will contribute to the advancement of education at the school and in particular how it will help to raise standards;
- k) A statement of how the Trust will contribute to the promotion of community cohesion;
- l) A statement of the impact of the Trust on the diversity of school provision in the area.

55. In cases where the proposal is for the appointment of a majority of foundation governors at a school which has already has a Trust, the following information must also be provided:

- a) the name or proposed name of the Trust;
- b) the rationale for the change and how it will contribute to the advancement of education at the school and in particular how it will help to raise standards;
- c) the details of membership of the proposed Trust, including the names of the members;
- d) details of the Trust's charitable objects;
- e) a statement that the requirements set out in the School Organisation (Requirements as to Foundations) (England) Regulations (2007/1287) will be met;
- f) a statement that a Parent Council will be established and details of the proposed arrangements for the Parent Council;
- g) the proposed constitution of the governing body; and
- h) the entitlement to appoint trustees and the number of trustees to be appointed by each.
- i) Where appropriate (see paragraph 51), a statement that the consent of the school's existing trustees, and of anyone other than the trustees entitled to appoint foundation governors, has been obtained.

56. Where more than one alteration is being proposed (including for a change of category to foundation), the rationale for each change may be presented as one overarching rationale for change.

57. It is not necessary to include the names of individuals who will be trustees, however these may be included where known. Proposers should ensure that this information is structured clearly in order that readers can easily

identify the members of the proposed Trust.

58. The objects of the proposed Trust must be exclusively charitable, and must include the advancement of the education of pupils at the school or schools in respect of which it acts as the foundation.
59. The governing body must also publish a statutory notice of the proposals in accordance with the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 (SI 2007/1289) (as amended).
 - a) The statutory notice must contain as a minimum the following information
 - i. The information in paragraph 53, other than (d)
 - ii. the name or proposed name of the foundation;
 - iii. whether the foundation already acts as a foundation for any foundation or voluntary school;
 - iv. details of the membership of the foundation, including the names of the members;
 - v. a summary of the rationale for the acquisition of the foundation and/or the change in governance, the particular contribution it will make, and the direction it will provide to the school;
 - vi. details of how complete copies of the proposals can be obtained.
 - b) The governing body must publish the notice
 - i. by posting it in a conspicuous place in the area served by the school;
 - ii. by publishing it in at least one local newspaper circulating in the area served by the school;
 - iii. by posting it at or near the main entrance to the school or, if there is more than one main entrance, all of them.
 - c) The governing body must also send the full proposal, within one week of the date of publication, to:
 - i. the relevant local authority; and
 - ii. the Secretary of State (DCSF, School Organisation Unit, Mowden Hall, Staindrop Road, Darlington, DL3 9BG. school.organisation@education.gsi.gov.uk)

(excluding the information relating to consultation as set out in paragraph 52(d) above), **together** with a copy of the published statutory notice.

60. A conspicuous place in the area served by the school might be the local library, community centre or post office. Proposers may circulate a notice more widely in order to ensure that all those substantially affected have the opportunity to comment.
61. Where the foundation proposals are being proposed by the governing body of a special school, a complete copy of the proposals must be sent to
 - a) the relevant primary care trust for the area in which the school is situated;
 - b) any NHS trust responsible for a hospital or other provision in the area in which the school is situated;
 - c) any local authority who maintain a statement of special needs in respect of a registered pupil at the school;
 - d) any local authority which might be affected by the proposals; and
 - e) parents of children who attend the special school.
62. Governing bodies must make it clear from where complete copies of the full proposals can be obtained, and send copies to anyone who requests them within one week of the request being made.
63. The DCSF School Organisation Website Forum www.dcsf.gov.uk/schoolorg contains online tools and templates to help proposers to draft a statutory notice that complies with regulations, and offers an opportunity for the notice to be checked by the School Organisation Unit of the DCSF. To gain access to the forum you must register for the "Members' Area" on the website but this is free of charge.

Implementation Date

64. There is no maximum limit on the time between the publication of a proposal and its date of implementation but circumstances may change significantly if too long a period elapses. The implementation date may fall during school holidays.

Explanatory Note

65. If the full effect of the proposals is not apparent to the general public from the published notice, it may be supplemented by an explanatory note or

background statement, but this should be clearly distinguishable from the formal proposals.

Invalid Notice

66. Where a published notice has not been properly formulated in accordance with the regulations, the notice may be judged invalid and therefore ineligible to be determined by the governing body or schools adjudicator. In these circumstances proposers should publish a revised notice making it clear that this replaces the first notice and that the statutory period for representations will run from the publication date of the revised notice.

Standards

67. Those bringing forward proposals to acquire a Trust or a foundation majority are required to justify them in terms of standards, and proposals should offer the strongest rationale possible for the alterations in this respect. This will be particularly important should proposals be referred to the Schools Adjudicator to be determined.
68. It is therefore recommended that proposals should include
- a) a table setting out the test results of the school that is making the alteration;
 - b) a summary of recent OFSTED reports or other reports on quality;
 - c) a brief discussion of what would happen to standards if no action is taken;
 - d) a brief discussion of the impact on standards if the proposal is implemented.
69. Depending on the nature of Trust, governing bodies may also wish to include information on:
- a) the impact of the proposals on the quality, range and/or diversity of educational provision in the school;
 - b) the impact of the proposals on the curriculum offered by the school, including, if appropriate the development of the school's specialism;
 - c) the experience and track record of the Trust members, including any educational experience and expertise of any proposed trustees;
 - d) how the Trust might raise pupils' aspirations and contribute to the ethos and culture of the school;
 - e) whether and how the proposals advance national and local transformation strategies;

- f) The particular expertise and background of Trust members as against the needs of the school. For example, a school seeking to prepare its pupils better for higher education might have a Higher Education Institution as a partner.
70. The local authority will consider the case put forward when deciding whether to refer proposals to the Schools Adjudicator on the grounds that implementation of the proposals would have a negative impact on standards at the school. **Governing bodies are advised to consider the guidance to local authorities on the exercise of their power to refer proposals, and the Decision Maker’s guidance, when drawing up proposals.**

<u>Stage 4</u>	Period for representations (including opportunity for the local authority to refer proposals to the Schools Adjudicator)
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Period for representations

71. From the date of publication of the proposals (i.e. the date on which the requirements of paragraph 59(b)(i, ii and iii) have been met and a copy of the full proposals is completed and available to be viewed on request) there will be a period of four weeks for representations. During this period any person may make objections to or comments on the proposals. The representation period is the final opportunity for people and organisations to express their views about the proposals and ensure that they will be taken into account by the Decision Maker.
72. Any such objections must be sent to the governing body at the given address within the four week period. It is the responsibility of the person making the objection to ensure that the representations reach the governing body.
73. In cases where a local authority requires a governing body to refer foundation proposals to the Schools Adjudicator, the governing body must send a copy of the proposals, and any objections or comments received, to the adjudicator within one week of the end of the period for representations.

Withdrawal of Proposals

74. The governing body may withdraw published proposals at any point before they are determined.
75. If the governing body wishes to withdraw proposals it has published, it must
 - a) give notice in writing to the relevant local authority
 - b) Where proposals have been referred to the adjudicator, give written notice to the adjudicator and to the Secretary of State at the address given in paragraph 59 (c)(ii)
 - c) place written notice at the entrance (or where there is more than one, all entrances) to the school.

Local Authority considers whether to refer proposals to the Schools Adjudicator to determine

Statutory guidance

76. The Schools White Paper sets out a strong, clear role for local authorities in relation to education in their area. Local authorities will act as commissioners of school provision and as the champions of parents and pupils in their area, responding appropriately to their needs. They will have new powers to ensure high standards in all schools.
77. In keeping with their new role as champions of parents and pupils, local authorities have the power to refer certain proposals to the Schools Adjudicator in certain circumstances and according to procedures set out in this guidance.
78. The Schools Adjudicators are appointed by the Secretary of State under section 25 of the School Standards and Framework Act 1998. They take decisions on individual proposals for change to school organisation, or issues relating to schools admission arrangements - where it has not been possible to resolve the matter at a local level. Adjudicators are independent of the Department for Children, Schools and Families. They look afresh at all cases referred to them, considering each case on its merits and taking account of the reasons for disagreement at local level in the light of the legislation and guidance.
79. As a safeguard to ensure the processes of acquiring a Trust or a foundation majority are robust, the local authority has the power to refer these proposals to the Schools Adjudicator. The local authority does not have this power in respect of any other types of proposal, and local authorities may not refer proposals with reference to the implications of a proposed change of category. However, where proposals are related to proposals to acquire a Trust, such as a change of category to foundation, the whole set of proposals will be referred to the adjudicator for decision.
80. The local authority has from the date of the publication of the proposals until the closing date for representations to decide whether to exercise its power to refer the proposals to the Schools Adjudicator to determine rather than the governing body.
81. The grounds for referral are set out in the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 (SI 2007/1289) (as amended).

- a) Inadequate consultation – i.e. the governing body has failed to fulfil the requirements set out in the Education and Inspections Act 2006

and regulations, or has failed to have regard to statutory guidance given by the Secretary of State (contained at paragraph 42 of this document);

- b) The governing body has failed to have regard to the responses to the consultation;
- c) The local authority consider that the Trust will have a negative impact on standards at the school.

82. On the grounds set out in paragraph 81 (a) – (c), the local authority may act in response to representations from parents or other stakeholders.

Referral on the grounds of 'Inadequate Consultation'

83. Before publishing its proposals, the governing body must consult a range of local stakeholders, including, but not necessarily limited to, those specified in the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 (SI 2007/1289) (as amended), and reproduced at paragraph 39 and 40 of this guidance. Failure to comply with this requirement would render the proposals invalid and they should not be determined. In the event that such proposals were pursued, this should be considered grounds for referral of the proposals to the Schools Adjudicator for decision.

84. How consultation is carried out is not prescribed in regulations and it is for the governing body to determine the nature of the consultation, having regard to the statutory guidance at paragraph 42.

85. Good practice guidance on consultation is provided to governing bodies at paragraphs 47 and 48 of this guidance. However, deviation from any part of the guidance set out at paragraph 48 should not necessarily be taken as an automatic trigger for referral.

86. In considering whether to refer proposals to the adjudicator on the grounds of inadequate consultation, the local authority should, taking into account objections or representations it has received from local stakeholders, consider the consultation against the following key criteria.

I. Process

- a) Is the process for consultees to make their views known sufficiently clear and straightforward?
- b) Has the governing body allowed sufficient time and provided sufficient information to enable consultees to reach an informed view of the proposals?

II. Openness

- a) Has the governing body proactively sought to identify relevant interested parties and those who are likely to be affected by the proposals?

III. Clarity and accessibility

- a) Are the consultation documents of reasonable and sufficient clarity?
- b) Has the governing body made reasonable adjustments to facilitate contributions from all relevant parties, including groups who could be overlooked (e.g. black and minority ethnic communities, disadvantaged or disabled people)?

87. Local authority referrals on the grounds of inadequate consultation should include the local authority's assessment against these criteria and provide evidence to support that assessment.

Referral on the grounds of 'a failure to have regard to consultation responses'

88. The proposals published by the governing body following consultation should not be substantially different from what the governing body has already consulted on. The governing body should not substitute new proposals following consultation. Should the outcomes of the consultation require substantial changes to the governing body's proposals then the governing body should re-consult on new proposals.
89. It is impossible to pre-emptively define what is a 'substantial' change in any given proposals, or what would constitute a 'substitution' of proposals. In considering whether to refer proposals to the adjudicator on the grounds of a failure to have regard to consultation responses, the local authority should consider each case on its merits.
90. The local authority should also consider the following:
- a) Has the governing body made public formal feedback regarding the responses received and how the consultation process influenced the outcome?
 - b) Is there any serious disjuncture between the weight of opinion as evidenced by the responses and the course of action proposed by the governing body? Has this disjuncture arisen legitimately? (For example, where the weight of opinion as evidenced by the respondents was based on an inaccurate or incomplete

understanding of the effect of the proposals.)

91. Local authority referrals on the grounds of a failure to have regard to consultation responses should include the local authority's assessment against these criteria and provide evidence to support that assessment.

Referral on the grounds of 'a negative impact on standards' – proposals to acquire a Trust

92. The Government's aim is to transform our school system so that every child — no matter who they are or where they come from — receives an excellent education and has the opportunity to fulfil their potential.
93. Proposals for the acquisition of a Trust must include a statement of how the foundation will contribute to the advancement of education at the school and in particular how it will help to raise standards.
94. The absence of any such statement would render the proposals invalid and they should not be decided. In the event that such proposals were pursued, this should be considered grounds for referral of the proposals to the Schools Adjudicator for decision.
95. This guidance recommends that proposals should also include
- a) a table setting out the test results of the school that is making the alteration;
 - b) a summary of recent OFSTED reports or other reports on quality;
 - c) a brief discussion of what would happen to standards if no action is taken;
 - d) a brief discussion of the impact on standards if the proposal is implemented.
96. Depending on the nature of the Trust, and the case put forward by the governing body in the proposals, factors to consider could include:
- a) the impact of the proposals on the quality, range and/or diversity of educational provision in the school;
 - b) the impact of the proposals on the curriculum offered by the school, including, if appropriate the development of the school's specialism;
 - c) the experience and track record of the Trust members, including any educational experience and expertise of any proposed trustees;
 - d) how the Trust might raise pupils' aspirations and contribute to the ethos and culture of the school;

- e) whether and how the proposals advance national and local transformation strategies;
 - f) the particular expertise and background of Trust members as against the needs of the school. For example, a school seeking to prepare its pupils better for higher education might have a Higher Education Institution as a partner.
97. The factors set out in paragraphs 95 and 96 are not statutory requirements. However, the absence of a rationale on the basis of standards in the full proposals or serious flaws in the rationale may be considered as grounds for referral.
98. Proposals for a change are, by their very nature, speculative. However, just as the governing body is expected to produce a rationale for the positive contribution the proposal would make to standards, so the local authority, if it wished to refer the proposals, would be expected to produce a rationale for the negative impact of the proposals on the standards of education of children at the school, taking into account the factors outlined in paragraph 95, irrespective of whether or not this information is provided in the proposals.
99. It will be much more difficult for the local authority to justify the referral of a proposal affecting a school or schools that are not producing good results than one affecting high performing schools. However, the fact that a school is performing well at present should not be considered a determinative argument for retaining the status quo and this fact alone should not be considered sufficient grounds for referral on the basis of a negative impact on standards.
100. Similarly, referrals should not be made on the basis of a negative impact on standards at a high performing school where it is proposed that the high performing school will share a Trust with a poorly performing school.

Referral on the grounds of 'a negative impact on standards' – proposals to allow an existing Trust to appoint a majority of the governors

101. In considering proposals solely to allow an existing Trust to appoint a majority of the governors, the guidance in paragraphs 83 to 100 will apply. However, local authorities should in particular bear in mind the requirement for a rationale evidencing why such a proposal might have a negative impact on standards in opposition to the governing body's view of the contribution such a change might make.

Process

102. The referral must be made during the period for representations.

103. Referrals must be made in writing, to

The Secretary
Office of the Schools Adjudicator
Mowden Hall
Staindrop Road
Darlington
DL3 9BG

104. The referral letter or e-mail should be copied to the Chair of Governors at the school for which proposals have been published, and should include:

- a) Referral to the Office of the Schools Adjudicator signed by a LA representative with the required authority.
- b) A letter explaining grounds for referral as set out in this guidance.

105. The governing body must send to the adjudicator a copy of the proposals and any objections or comments received immediately after the end of the period for representations.

106. The adjudicator's office will pass the papers to an adjudicator. He or she will look at the issues raised. The adjudicator is required to have regard to the Decision Makers guidance issued by the Secretary of State in the same way as the governing body would if it were deciding the proposals. Information on the adjudication process can be found on the Office of the Schools Adjudicator website at www.schoolsadjudicator.gov.uk.

107. The adjudicator's decision is final and must be implemented immediately. It can only be challenged by application to the high court for judicial review. An application must be made within 3 months of the decision date. If there is concern about the procedures used, a complaint may be made through the local MP to the Parliamentary Commissioner (Ombudsman).

<u>Stage 5</u>	Proposals are determined by the Decision Maker (usually the governing body; the adjudicator if the LA has referred proposals at stage 4)
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108. Once the period for representations has passed, the proposals must be determined. If the proposals have not been referred to the adjudicator during the period for representations, the governing body will be the Decision Maker. The proposals must be determined within twelve months of the date of publication of the proposals.
109. The governing body must notify
- a) the relevant local authority; and
 - b) the Secretary of State (at the address given in paragraph 59 (c)(ii));
- of the outcome of the determination and the reasons for their decision.
110. Where the proposals have been referred by the local authority at stage 4; or if the governing body fails to determine the proposals within 12 months of the date of publication; the Schools Adjudicator will be the Decision Maker. In this instance, the Schools Adjudicator will aim to make a decision within six weeks of receiving the core information. The relevant parties will receive a copy of the decision at the same time. All decisions may be accessed via the adjudicators' web-site (www.schoolsadjudicator.gov.uk).
111. Whether the proposals are determined by the governing body or the Schools Adjudicator, the Decision Maker must have regard to the statutory guidance issued by the Secretary of State in paragraphs 113 – 133.
112. Proposals to acquire a Trust or a foundation majority may be linked to proposals to change category to foundation, in which case the proposals would fall to be decided together. In this case, the Decision Maker must also have regard to the Decision Maker's guidance contained within *Changing School Category to Foundation – A Guide for Governing Bodies*, available from the DCSF School Organisation website www.dcsf.gov.uk/schoolorg.

Decision Makers Guidance

Statutory Guidance

The Decision

113. The governing body or Schools Adjudicator may decide to:

- a) reject the proposals;
- b) approve the proposals without modification;
- c) approve the proposals with modifications (following consultation with the proposers where the Decision Maker and proposer are separate – i.e. where the Schools Adjudicator and not the governing body is the Decision Maker);
- d) give a conditional approval (see paragraphs 131 - 133).

114. Whoever is the Decision Maker, the proposal must be determined on its merits. Criteria for approval will be:

- a) That the Trust meets legal requirements;
- b) That consultation was adequate – the governing body met the requirements set out in regulations and had regard to consultation responses. If the governing body has failed to meet the statutory requirements for consultation, the proposals may be deemed invalid and therefore should not be decided;
- c) Evidence that the Trust:
 - i. Is likely to contribute to raising standards at the school;
 - ii. Is likely to promote community cohesion.
- d) Trust members and proposed trustees (where the trustees are specified in the proposals) are not involved in activities that may be considered inappropriate for children and young people – e.g. tobacco, gambling, adult entertainment, alcohol;
- e) The reputation of Trust members and proposed trustees (where the trustees are specified in the proposals) is in keeping with the charitable objects of a Trust.
- f) Trust members and proposed trustees (where the trustees are specified in the proposals) are not involved activities which could bring the school into disrepute, but would not otherwise be disqualified under regulations.

115. Where the LA has referred the proposals to acquire a Trust/foundation majority to the Schools Adjudicator for decision, any related proposals for a change of category to foundation will also fall to be decided by the Schools Adjudicator. In this case, the Schools Adjudicator must have regard to the Decision Maker's guidance contained in *Changing Category to Foundation – A Guide for Governing Bodies*. The Schools Adjudicator should bear in mind that the basis of the LA referral will be with reference to those elements of the proposals concerned with the acquisition of a Trust/foundation majority and it is to those elements that the Schools

Adjudicator should have most regard when determining the proposals.

Criteria for Approval

(A) - Legal requirements as to the characteristics of the proposed Trust

116. The Decision Maker, whether the governing body or the Schools Adjudicator, should satisfy themselves that the following criteria are met for the proposal to be approved:

- a) That the proposal meets the criteria set out in section 18(4) of the Education and Inspections Act 2006: for example that it is not seeking to alter the religious character of a school or for a school to acquire or lose a religious character, as these alterations cannot be made simply by acquiring a Trust under this procedure;
- b) That the necessary work is underway to establish the Trust as a charity and as a body corporate – either as a company limited by guarantee (or, once the relevant provisions of the Charities Act 2006 are in place, as a Charitable Incorporated Organisation);
- c) That the proposed objects of the Trust are exclusively charitable, and that they include the advancement of education of the pupils of the school;
- d) That those sections of the proposals setting out the contribution of the proposed Trust to community cohesion give confidence that the legal requirement to promote community cohesion in furthering the advancement of such education will be met;
- e) Where local authorities are proposed as members of a Trust, that they are to exercise no more than 20% of the total voting rights in accordance with Section 23A of the School Standards and Framework Act 1998 as inserted by the Education and Inspections Act 2006;
- f) Where local authorities are entitled to appoint charity trustees, the number of such trustees and the voting rights exercisable by them do not exceed 20% of the total voting rights;
- g) That the proposals confirm that none of the proposed trustees are disqualified from exercising this function, either by virtue of:
 - i. Disqualifications under company or charity law;
 - ii. Disqualifications from working with children or young people;
 - iii. Not having obtained a criminal records certificate under section 113A of the Police Act 1997;
 - iv. The School Organisation (Requirements as to Foundations) (England) Regulations (2007/1287) (as amended) which

disqualify certain persons from acting as charity trustees.

- h) If the proposal is for the Trust to appoint a majority of the governing body of the school, that the proposals confirm that the governing body will set up a Parent Council and the proposed constitution of the Parent Council.

(B) - Adequate consultation

- 117. The Decision Maker should consider the information provided in respect of consultation, and satisfy themselves that the necessary consultation has been carried out and that the governing body has had regard to the responses to the consultation. If the governing body has failed to meet the statutory requirements for consultation, the proposals may be deemed invalid and therefore should not be decided.
- 118. The Decision Maker should have regard to the guidance to governing bodies set out in paragraph 42 and the guidance to local authorities on the referral of foundation proposals set out in paragraphs 76 – 107.

(C) - Representations received on the proposals

- 119. The Decision Maker should consider the views of all those affected by the proposals or who have an interest in them. This includes all objections to and comments on the proposals submitted during the representation period. The Decision Maker should have particular regard to any representations from parents of pupils at the school concerned.

(D (i)) - Evidence that the Trust is likely to raising standards at the school

- 120. The Government's aim is to transform our school system so that every child — no matter who they are or where they come from — receives an excellent education and has the opportunity to fulfil their potential. Decision Makers should consider the impact of acquiring a Trust on educational standards in the school.

Factors to consider could include:

- a) the impact of the proposals on the quality, range and/or diversity of educational provision in the school;
- b) the impact of the proposals on the curriculum offered by the school, including, if appropriate, the development of the school's specialism;
- c) the experience and track record of the Trust members, including any educational experience and expertise of the proposed any trustees;

- d) how the Trust might raise pupils' aspirations and contribute to the ethos and culture of the school;
- e) whether and how the proposals advance national and local transformation strategies;
- f) the particular expertise and background of Trust members as against the needs of the school. For example, a school seeking to prepare its pupils better for higher education might have a Higher Education Institution as a partner.

121. Where delivery of proposals is dependent on a specific arrangement, such as the new school entering into a contract with a particular body, the decision maker will need to take a view on the ability of the governing body to enter into a contract of the kind envisaged, and the steps that would need to be taken to do so. For instance, but not exclusively, the decision maker would need to be confident that the school was complying with relevant procurement regulations and that the school had considered how they would manage any implications that might arise from the possibility that, as a result of staff not being employed by the governing body or local authority, the majority of the workforce might not be "teachers" as defined by Section 122 of the Education Act 2002.

(D (ii)) - Evidence that the Trust is likely to promote community cohesion

122. The Government is committed to improving community cohesion and promoting ethnic, religious and cultural tolerance and respect between different groups of people living together. Schools have a key part to play in this by providing opportunities for young people from different backgrounds to learn with, from and about each other; by encouraging, through their teaching, an understanding of, and respect for, other cultures and faiths; by ensuring equal opportunities for all pupils to succeed at the highest level possible and removing barriers to access and participation in learning; and by engaging with parents, other schools and local and wider communities.

123. The Decision Maker will need to consider the impact of the Trust on community cohesion on a case-by-case basis, taking account of the community that the school serves and the views of different sections within the community. Examples of matters which the Decision Maker might consider are:

- a) How the proposal demonstrates that the Trust would promote and contribute to community cohesion;
- b) Plans for partnership working with other schools, agencies or voluntary bodies.

124. This list is not exhaustive. Decision Makers will wish to have particular regard to the strength of parental and other local opinion about the appropriateness of Trust partners' activities.

(E) - The reputation of Trust partners is in keeping with the charitable objects of a Trust

AND

(F) - Trust members and proposed trustees (where the trustees are specified in the proposals) are not involved in illegal activities and/or activities which could bring the school into disrepute

125. Decision Makers should use their own discretion and judgement in determining on a case-by-case basis what circumstances might prevent the reputation of a Trust partner being in keeping with the charitable objects of a Trust, or could bring the school into disrepute. However, the Decision Maker should seek to come to a balanced judgement, considering the suitability and reputation of the potential Trust partner in the round.

126. Trust partners are not involved in activities that may be considered inappropriate for children and young people – e.g. tobacco, gambling, adult entertainment, alcohol.

127. The following sources may provide information on the history of potential Trust partners:

- I. The Health and Safety Executive Public Register of Convictions
<http://www.hse.gov.uk/prosecutions/>

To account for the appeals process and quality assurance, the HSE allows 9 weeks to elapse following conviction before a case is added. Where HSE is notified of an appeal outside this time period, the case will be removed from the site. Appearance on this database should not automatically disqualify a Trust member; Decision Makers will wish to consider each case on its merits.

- II. The Charity Commission's Register of Charities:
<http://www.charity-commission.gov.uk/registeredcharities/first.asp>

- III. The Companies House web check service:
<http://wck2.companieshouse.gov.uk>

Other issues for consideration

128. In addition to the criteria set out above, there are a number of other factors which might help a Decision Maker in deciding whether a Trust proposal is a good one.

- a) Does the Trust act as the Trust for any other schools? Are any of the members already part of an existing Trust?
- b) Do the proposed Trust partners already have a relationship with the school or other schools?
- c) Do the proposed Trust partners have knowledge of the local community and the specific needs of the school? To what extent does the Trust proposal address these?
- d) Do the proposals set out the support the Trust plans to give to governors?
- e) Does the Trust propose to utilise relevant leadership and/or experience in order to contribute to raising standards?

129. There is no single model for a Trust or for the number of partners to be involved, as these will depend on the specific needs of each school. However, positive examples of model Trust scenarios could include:

- a) a Trust allowing a partnership between a successful school and a weaker school which could offer opportunities to both partners to enhance leadership skills or to provide mentoring;
- b) a Trust involving a network of schools working collaboratively to help raise standards, to work on curriculum development, to allow teacher exchanges or to share best practice in a specialist area;
- c) a Trust involving local colleges and/or employers to help improve the vocational element of the curriculum and improve links between the school and the world of work;
- d) a Trust involving a group of schools which have decided that they want to introduce the 14 new specialised diplomas, mixing vocational and academic studies. The Trust could allow them to establish a permanent relationship, set up new facilities and bring in outside experts to help;
- e) a Trust involving a university or universities and colleges to improve progression routes into higher education and/or further education for pupils.

130. The factors and questions in paragraphs 128 and 129 would not, in themselves, be grounds for approving or rejecting proposals. They are intended to help inform the Decision Maker's consideration of the extent to

which the acquisition of a Trust would benefit the school.

Conditional Approval

131. Foundation proposals may be approved subject to the following conditions;
 - a) the making of any scheme relating to any charity connected with the school; and
 - b) the establishment of a foundation meeting the requirements of section 23A of the SSFA 1998 (inserted by section 33 of the Education and Inspections Act)
132. Should a condition not be met, the proposals will be referred back to the Decision Maker for a fresh determination.
133. The Decision Maker may not place other conditions on the approval.

Decision Letters

134. All decision letters must give reasons for the decision, irrespective of whether the proposals were rejected or approved, indicating the main factors/criteria for the decision.
135. A copy of all decision letters must be forwarded to the local authority and the Secretary of State at the address given in paragraph 59 (c)(ii).
136. Where the Schools Adjudicator Is the Decision Maker, the Schools Adjudicator must notify the governing body, authority and the Secretary of State of his decision together with his reasons.
137. Where the proposals include a change of category from VA to foundation, the Schools Adjudicator must also notify
 - a) the Diocesan Board of Education for any diocese of the Church of England any part of which is comprised in the area of the authority;
 - b) the bishop of a diocese of the Roman Catholic Church any part of which is comprised in the area of the authority; and
 - c) where proposals relate to a school providing, or proposing to provide education for pupils aged 14 or over, the Learning and Skills Council for England.

Complaints after the decision is taken

138. The decision of the governing body or Schools Adjudicator is expected to be final.
139. However, where the governing body is the Decision Maker, any person who believes that the governing body has failed in a statutory duty or acted unreasonably may complain to the Secretary of State under section 496 or 497 of the Education Act 1996. Where there is evidence that the governing body has failed to perform a statutory responsibility or has acted unreasonably when exercising any of its powers or performing any of its duties, the Secretary of State may investigate a complaint and if appropriate, direct the governing body to consider the proposals afresh. The Secretary of State could not, however, substitute his decision for that of the governing body.
140. A decision of the Schools Adjudicator could only be challenged by Judicial Review in the courts. Again, the Court cannot generally substitute its own decision, rather it may direct the Adjudicator to consider the proposals afresh.

<u>Stage 6</u>	Implementation
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Requirement to implement

141. Governing bodies are under a duty to implement proposals in the form in which they were approved by that governing body or the Schools Adjudicator.

Modifications to proposals

142. There is scope for certain modifications to be made to a proposal, for example to the implementation date. There are, however, limitations on the scope of modifications. Modifications should not be significant. Whether a modification to proposals that have been consulted upon and published is significant will require a judgment on the facts of a particular case, but modifications that are significant would be unreasonable in public law terms and could be subject to legal challenge.
143. If the Decision Maker or the proposer (if the governing body is not the Decision Maker) wishes to modify proposals to a significant extent after they have been determined new proposals must be published. In this case the governing body will be required to publish revocation proposals, to be relieved of the duty to implement, as set out in paragraph 146.
144. It is not possible to modify the constitution of the governing body to the extent that the proportion of governors appointed by a Trust was increased from a minority to a majority, as this is a change that would require the publication of separate proposals.
145. Before modifying proposals, the Decision Maker must consult the local authority that is to maintain the school and where the Schools Adjudicator rather than the governing body is the Decision Maker it must also consult the governing body which published the proposals.
146. The governing body must also send the Secretary of State details of any modifications made to the proposals within 1 week of the modification being made.

Revocation Proposals

147. If to implement the proposals would be unreasonably difficult or circumstances change significantly to the extent that it would be inappropriate to implement them, the governing body may publish revocation proposals to be relieved of the requirement to implement the

original proposals. Revocation proposals must be contain

- a) a description of the original proposals;
- b) the date of the publication of the original proposals; and
- c) a statement as to why it is proposed that the proposals should be revoked and the duty to implement should not apply.

148. Revocation proposals must be

- a) posted at or near the main entrance to the school or, if there is more than one entrance, all of them; and
- b) published in at least one local newspaper circulating in the area to be served by the school.

149. As with the original proposals, any person may object to or comment on revocation proposals, and such objections and comments must be sent to the governing body within 4 weeks of the date of publication of the proposals.

150. The proposals must then be determined by the governing body. There is no power to refer revocation proposals to the Schools Adjudicator for decision. However, if the governing body fails to determine the revocation proposals within a period ending 2 months after the end of the representation period, they must be referred to the Schools Adjudicator within one week of the end of that period.

151. Where the original proposals involve a change of category to a foundation school, before determining revocation proposals the governing body must consult the local authority. *Changing School Category to Foundation – A Guide for Governing Bodies* is available from the DCSF School Organisation website www.dcsf.gov.uk/schoolorg.

Reconstituting the governing body

152. The governing body must be reconstituted in an appropriate form following the approval of foundation proposals in accordance with the School Governance (Constitution) (England) Regulations 2007. A period called the “implementation period” begins when the proposals are decided and ends on the date the proposals are implemented. During this period the LA and governing body are required to make a new instrument of government for the school.

153. As soon as reasonably practicable after the beginning of the implementation period, and in any case within a period of 3 months after the implementation date, the governing body and LA are required to reconstitute the governing body. Until the governing body is reconstituted

the current governing body continues to exercise its functions in respect of the school.

154. In reconstituting the governing body, if a school has surplus governors in one or more of the categories appropriate to the school's new category, unless those surplus governors voluntarily agree to cease to hold office, they shall be removed as follows:
- a) seniority - the governor with the shortest period of service being the first to cease to hold office, the governor with the next shortest period of service being the next to cease to hold office, and so on;
 - b) drawing of lots - where governors are of equal seniority, determination of who shall cease to hold office shall be done by drawing lots.
- 154b. Where a foundation school without a foundation, and hence has partnership governors, changes category to become a foundation school with a foundation, the partnership governor category ceases to exist on the implementation date and the partnership governors cease to hold office. The school's foundation may choose to appoint some or all of the partnership governors as foundation governors, if it so wished, to retain expertise on the governing body.

Parent Council

155. Where the school has acquired a foundation majority, the governing body must set up a Parent Council as outlined in their proposals, according to the requirements of the School Governance (Parent Council)(England) Regulations 2007. Guidance on Parent Councils is also available from the School Organisation Unit website www.dcsf.gov.uk/schoolorg.

Issues Relating to Transfer of Land

156. Where the school has acquired a Trust, there may be additional issues relating to the transfer of the school's land and assets to the Trust. Further information regarding the transfer of land can be found in *The Transfer and Disposal of school Land in England: A General Guide for Schools, Local Authorities and The Adjudicator*, which can be obtained from <http://www.teachernet.gov.uk/management/resourcesfinanceandbuilding/schoolslandandproperty>.

ANNEX 1

Table 1 Application of section 25 of the E&I Act, section 23A of the SSFA 1998 (inserted by section 33 of the E&I Act) and paragraph 8A of Schedule 22 to the SSFA 1998 (as inserted by paragraph 13 of Schedule 4 to the E&I Act)

	Type of school	GB must seek Trustees consent to publish proposals re foundations	s25 (Trust removal provisions)	s33/ para 8A (Requirements as to Foundations)
	Community school that converts to foundation school with minority foundation governors post commencement	n/a	Yes	Yes
	Community school that converts to foundation school with majority foundation governors post commencement	n/a	Yes	Yes
	Existing foundation school without a foundation that acquires a foundation and minority foundation governors post Commencement	n/a	Yes	Yes
	Existing foundation school without a foundation that acquires a foundation and majority foundation governors post Commencement	n/a	Yes	Yes
	Existing foundation school with foundation that acquires majority foundation governors post Commencement	Yes	No ¹	Yes
	Existing foundation school with foundation that makes no changes post Commencement	n/a	No	No
	VC (already has a foundation) that converts to foundation school with minority foundation governors post Commencement	Yes	No	No

¹ In such cases, the majority will not be able to be reduced either, even though majority acquired post-Commencement.

	Type of school	GB must seek Trustees consent to publish proposals re foundations	s25 (Trust removal provisions)	s33/ para 8A (Requirements as to Foundations)
	VC (already has a foundation) that converts to foundation school with majority foundation governors post Commencement	Yes	No ²	Yes
	New foundation school established post Commencement with a foundation and a minority of foundation governors	Yes	Yes	Yes
	New foundation school established post Commencement with a foundation and a majority of foundation governors	Yes	Yes	Yes
	VA (already has a foundation) that converts to foundation with majority foundation post Commencement	Yes	No	Yes
	VA (already has a foundation) that converts to foundation with minority foundation post Commencement	Yes	No	No

VC = voluntary controlled school; VA = voluntary aided school NB “community” and “foundation” school includes community special and foundation special schools

² In such cases, the majority will not be able to be reduced either, even though majority acquired post-Commencement.