



# The Extended Schools Initiative and the provision of pre-school childcare

(Version February 2006)

## What is the Extended Schools Initiative?

The Extended Schools Initiative is a Government initiative<sup>1</sup> to assist schools that are looking to extend the use of school facilities in order to benefit their local community more widely, for example by providing support for after-school provision, pre-school childcare, adult learning and other community needs.

An 'extended' school is therefore one that provides a range of activities and services, often beyond the school day, to help meet the needs of its pupils, their families and the wider community.

## What is the purpose of this guidance?

As a result of a number of recent enquiries from schools and local pre-school associations, this guidance has been produced in order to clarify the circumstances in which those responsible for a school can provide pre-school facilities and what happens when an existing charitable pre-school association already operates at the school.

## To which schools does the Extended Schools Initiative apply?

The Extended Schools Initiative relates to the governing bodies of maintained schools. Maintained schools<sup>2</sup> are -

- (a) voluntary schools, comprising-
  - (i) voluntary aided schools, and
  - (ii) voluntary controlled schools;
- (b) foundation schools;
- (c) foundation special schools
- (d) community schools;
- (e) community special schools.

The governing bodies of voluntary schools, foundation schools and foundation special schools (and any institution administered by them and established for the general or special purposes of that body or category of school) are exempt charities<sup>3</sup>.

The governing bodies of community schools and community special schools are not charities.

## What activities and services can be provided under the extended schools initiative?

The governing body of a maintained school can provide any facilities or services whose provision furthers any charitable purpose for the benefit of pupils or their families or people who live or work in the area.

Working with local partners, governing bodies can develop as little or as much provision as they think suitable for their own community. Schools and their partners can build on existing provision and consider what additional service or activities they might offer. There is no blueprint for the types of activities that schools might provide, or how they could be organised. However a governing body cannot undertake activity that they are unable to do by virtue of any prohibition, restriction or limitation on the powers of the governing body which is contained in the school's instrument of government<sup>4</sup> or which, to a significant extent, might interfere with the duty to conduct the school with a view to promoting high standards of educational achievement at the school<sup>5</sup>.

## Can (a) the governing body of a maintained school or (b) the charity trustees of the land used or occupied by the school or the charity trustees of another charity set up and run a new charitable pre-school?

This depends.

The governing body of a maintained school has clear power to do this, unless specifically prohibited, restricted or limited by the school's instrument of government.

If the charity trustees of the land used or occupied by the school wish to set up and run a new charitable pre-school, they will have to look at the terms of the trusts under which the school site is held. The trusts will usually provide for the premises to be used as a school for the education of children of a stated parish. Unless such trusts are further limited for children over 5 years of age, the charity trustees could set up and run a pre-school. But they (and others) must do so by agreement with the governing body of the school (which has the control of the occupation and use of the school premises). It is not typical for the trusts to specifically refer to the provision of pre-school education or childcare, although they are generally quite widely drawn. If the running of a pre-school is not within the existing trusts, application can be made (if the school is a foundation, voluntary or foundation special school) to the Secretary of State for Education for a modification of the trust deed in relation to the property held on trust for the purposes of such a school, under the powers given in section 82 of the School Standards and Framework Act 1998 to enable it to then operate a pre-school facility.

In the above circumstances it is not necessary for the governing body of the school or the charity trustees of the school site trust to establish a separate charity to run a pre-school since the running of a pre-school would fall within the governing body's or the school site charity's own trusts either in their original form or as amended.

Alternatively an entirely separate charity could be established to run the pre-school. In particular this may be used where the governing body is not itself a charity.

## Can the governing body of a maintained school take over the running of an existing charitable pre-school?

The Extended Schools Initiative envisages that schools will work in partnership with other organisations such as pre-schools to create a broader range of provision, and will not just look to take over other organizations operating on the school site. There may, however, be certain circumstances where closer integration would be beneficial.

The control of the use and occupation of the school premises of a maintained school is entirely a matter for the governing body of the school. But (though it could determine the occupation of school premises) the governing body of a maintained school cannot simply take over the running of an existing charitable pre-school, even where the pre-school operates from within the school's premises. The existing pre-school has to be administered and controlled in accordance with its own governing document.

A significant proportion of charitable pre-schools operate under a version of the Pre-school Learning Alliance's model constitution (or that of its predecessor organization, the Pre-school Playgroups Association). This usually contains a provision which prohibits any change to the pre-school's constitution without the prior approval of the Pre-school Learning Alliance and the Charity Commission, who would need to be convinced that the proposed change is consistent with the original aims of the charity before agreeing to the change.

Similarly, dissolution of the existing charitable pre-school may not result in the assets of the dissolved charity being available to establish a similar facility at the school which is run by the school. This is because the dissolution clause of the existing pre-school may place restrictions on the application of any remaining assets after the group's debts have been settled.

So for example, in the case of a charitable pre-school operating under the model constitution of the Pre-school Learning Alliance, the dissolution clause states:

"If at a general meeting of the pre-school the members decide to terminate the existence of the pre-school any funds or equipment remaining after all debts have been paid shall be handed to the Pre-school Learning Alliance or any similar charity concerned with the education of pre-school children in the area of the pre-school."

The clause as drafted means that upon dissolution the assets remaining after payment of all debts etc shall either pass to the Pre-school Learning Alliance or to a similar charitable group in the area. This means that the remaining assets could only be transferred to a body which is charitable and which has purposes that permit the provision of pre-school education. This may be another charitable pre-school. It may also be possible for the trusts of the governing body of a maintained school to satisfy such a requirement and for the transferred assets to be transferred to the governing body to be held as a special trust specifically for pre-school education.

If the assets pass to the Pre-school Learning Alliance then it will be for that body to decide how the assets should best be applied.

## Can the Head and/or governing body of a maintained school decide whether an existing charitable pre-school should be dissolved?

No. The decision to dissolve the existing pre-school charity rests entirely with the charity trustees of that charity acting in accordance with its governing document, and it is for the charity, not the governing body of the school, to decide whether the charity should be dissolved. It is also for the charity's governing document to determine how any remaining assets should be applied, subject to the provisions set out in the charity's dissolution clause.

## Can the governing body of a maintained school work in partnership with an existing pre-school charity?

Yes. Although the governing body of a maintained school can set up pre-school childcare provision from scratch, government guidance on the Extended Schools initiative states that:

“The provision of childcare by schools should link into existing provision in the local community. Schools should represent a new source of childcare, rather than undermining or replacing existing community or voluntary groups<sup>6</sup>.”

The Education Act 2002 allows schools to go into partnership with existing pre-schools whereby the governing body of the school becomes the “registered person” with Ofsted.

### Endnotes

1. which has its origins in the Education Act 2002
2. as described in section 20 of Part II of Chapter I of the School Standards and Framework Act 1998
3. Exempt charities are generally charities subject to statutory provisions other than the Charities Act 1993 (now the Charities Act 2011). They are not required to be registered as charities and are also exempt from many of the requirements of the Charities Acts.
4. S28 Education Act 2002. The instrument of government is the governing document of a maintained school's governing body. It is not the same as the governing document of a charity providing the site and premises of a maintained school.
5. S.21(2) Education Act 2002
6. Childcare in Extended Schools: providing opportunities and services for all, DFES, 2002