



Department  
for Education

# **Section 554 of the Education Act 1996: applications for orders**

**Advice for trustees and religious bodies**

**February 2020**

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# Summary

## About this departmental advice

This advice is from the Department for Education, and sets out the circumstances in which an education endowment order can be made under section 554 of the Education Act 1996 ('the 1996 Act'), including the process for applying for an order. This advice has been produced to help applicants understand their obligations and duties in relation to the 1996 Act, in particular:

- when a school might be eligible for inclusion in an education endowment order;
- when a trust for sale might arise under section 1 of the Reverter of Sites Act 1987 and how to safeguard against unknown beneficiaries;
- what information the department needs in order to be able to process an application for an education endowment order;
- the process for making education endowment orders; and
- that certain endowments can be held on uniform statutory trusts pursuant to section 557 of, and Schedule 36 to, the 1996 Act.

## Who is this advice for?

This advice is for:

- diocesan and other religious authorities and
- trustees

## Overview

In certain circumstances, section 554 of the 1996 Act enables the Secretary of State to make fresh provision for the endowments of trusts held or used for the provision of religious education, where those trusts have subsequently failed, by allowing the endowment to be used for appropriate educational purposes<sup>1</sup>. So far as educational charitable trusts associated with voluntary, foundation or former grant-maintained schools are concerned, a failure of a trust is usually brought about by the closure of the school to which it relates. Failure would also occur if a school did not close but moved to a new site and the former site was no longer used for the purposes of the school, or where part of the site is no longer used for the purposes of the school, for example where a teacher's house is no longer used as such. Because the land held on the trusts is no longer being used for the purposes of education, the trust fails. Normally, when a charitable trust would otherwise fail the Charity Commission make a cy-pres scheme to re-apply the endowments for purposes as near as possible to those originally intended. However,

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<sup>1</sup> As defined in s.556 of the Education Act 1996.

both the department and the Charity Commission have agreed that education endowment orders under section 554 take priority unless the section 554 eligibility criteria are not met.

# Applying for an Order

## Background

1. An application for an order under section 554 of the Education Act 1996 (a 'section 554 order') may be made by the appropriate authority of any religious denomination or religion. For convenience this advice assumes that the application is made by the relevant authority of the Church of England diocese<sup>2</sup>, since the vast majority of applications relate to Church of England schools, but the advice applies equally to an application from the appropriate authority of another denomination or religion. The purpose of this advice is to offer some initial advice to dioceses and their advisers about the circumstances in which a section 554 order can be made. The advice also gives some indication of the information which is always needed in the preparation of an order and invites dioceses' assistance in its collection. The advice given does not constitute an authoritative legal interpretation of the statutory provisions referred to; that is exclusively a matter for the courts. Applicants should consider the law carefully and ensure that the eligibility criteria are met and that the application form, associated evidence and draft of the s.554 order completed, compiled and drafted by applicants support this. If the application received is incomplete, it will be returned to the applicant with a request to resubmit a corrected application. Failure to complete the application form properly or to provide a correctly drafted s.554 order will delay the process of obtaining the final order as the application will not proceed until any defects are remedied.
2. Normally, when a charitable trust would otherwise fail the Charity Commission make a cy-pres scheme to re-apply the endowments for purposes as near as possible to those originally intended. So far as educational charitable trusts associated with voluntary, foundation, former grant-maintained or non-provided public elementary schools are concerned, a failure occurs when the school closes, moves to a new site or part of the site is no longer used as mentioned above. If the criteria set out in section 554 of the 1996 Act are met, together with associated criteria in sections 555, 556 and 557, the Secretary of State may make a statutory instrument which makes fresh provision for the endowments of the failed trusts held or used for the provision of religious education at the closed school, by allowing the endowment to be used for appropriate educational purposes. This statutory instrument is the section 554 order referred to in this advice. The Secretary of State has the same power in a case where part or all of the land is no longer used for the purposes of the

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<sup>2</sup> Usually the Diocesan Board of Education or the Diocesan Board of Finance.

school or as otherwise permitted under the trusts, for example where the school moves or a teacher's house is no longer used as such.

## Eligibility for inclusion in a section 554 Order

3. Although the department will fully investigate the eligibility of a school for inclusion in a section 554 order, the diocese, or diocesan solicitors, should not submit an application for an order unless they are satisfied that the endowment concerned is eligible. If an application is submitted that is incomplete, unclear or incorrectly drafted then the application will be returned to the applicant. The application will not proceed until the deficiencies and errors have been remedied or corrected by the applicant.
4. A section 554 order can be made only in respect of premises of a school (including teacher's houses) which are no longer used for the purposes of the school, or where in the opinion of the Secretary of State the premises will cease to be used for such purposes. This means that section 554 orders are made in respect of schools which have closed, or are about to close, or where part or all of the land is no longer used for the purposes of the school. Applications for section 554 orders will not be accepted if there is merely an intention to close the school in question or cease to use the premises for the purposes of the school. In practical terms, a school/school site which is to close in the near future is one where proposals to discontinue the school have been published under the Education and Inspections Act 2006. In a case where a voluntary or foundation school has not closed but has transferred to a new site provided by a local authority, the old site is usually sold and the proceeds of sale held until consideration is given as to whether the local authority should be paid part or all of the proceeds of sale of the old site to compensate it for providing the new site for the school. An application for a section 554 order must not be submitted until that matter is addressed. There is legislation - in particular relevant paragraphs of Schedule 3 to the School Standards and Framework Act 1998 (the 1998 Act) - that deals with the issue of the compensation that should be given to the local authority. For instance a determination may be made in favour of the local authority under Schedule 3 to the 1998 Act. After the decision is made regarding compensation and the local authority has been paid, if there are surplus proceeds of sale these can be made the subject of a section 554 order. In the case of the proceeds of sale of a teacher's house, determination provisions do not apply and the proceeds of sale can be made the subject of a section 554 order in the usual way.
5. Section 554 requires that the endowment(s) to be included in an order have been 'held' or 'used' wholly or partly, for or in connection with the provision at the school of religious education in accordance with the tenets of a particular religion or religious denomination.

6. Where it cannot be shown by supporting documents, such as title deeds or schemes, that an endowment has been 'held' wholly or partly for or in connection with the provision at the school of religious education in accordance with the tenets of a particular religion or denomination, applicants may be able to show that an endowment has been so 'used' and that the requirements of section 554 have been fulfilled. As evidence of use, the department will require applicants to supply either a statement from the diocese that the school had been a voluntary, foundation or grant-maintained one and that religious education had been given there continuously since 1 April 1945 (see model 'use' statement at Annex A to this advice), or, alternatively, in certain circumstances a letter from a person with local knowledge may be acceptable. Where there is some doubt as to usage, more evidence than a single statement from the diocese will be required.
7. Any statement to the effect that religious education had been provided since 1945 must be on the basis that such education was given in accordance with the relevant legal requirements, which means in accordance with section 69 of, and Schedule 19 to, the 1998 Act. Three further points should be noted; the first is that section 554(4) allows the Secretary of State to assume that religious education has been provided at parental request unless satisfied that the contrary is shown. Second, where religious education is being provided at the school at the time of closure (or in the case of a school that has not yet closed, at the time of the section 554 order), the presumption is that such education has been provided since 1 April 1945 unless the contrary is shown to the satisfaction of the Secretary of State. Finally, the provisions of section 554(4) apply where the premises of a non-provided public elementary school ceased to be used for such a school before 1 April 1945 as they apply where the premises of a voluntary school have ceased to be used for such a school since that date.
8. Where an applicant has information which shows that any of the above assumptions would be incorrect, such information must be made available to the department.

## Timing

9. It is premature to make an initial application for a section 554 order unless the conditions outlined above can be satisfied. On the other hand, the previous practice of accumulating individual applications until an order can cover a sizeable number of foundations is best avoided. Such large orders are unwieldy and time consuming to handle and problems with just one foundation inevitably cause unnecessary delays for the others in the draft order. For this reason it is best to submit singular 554 applications.

## Trusts for sale arising under the Reverter of Sites Act 1987

10. A summary of the law and practice as it affects section 554 orders is given below. However, it is beyond the scope of this advice to discuss fully the circumstances that cause a trust for sale to arise. Applicants should seek advice from their legal advisers where this question occurs before an application is sent to the department.
11. A trust for sale under section 1 of the Reverter of Sites Act 1987 (the 1987 Act) may arise when a school closes if the school site was granted under section 2 of the School Sites Act 1841 (the 1841 Act). Where the grant was made under section 6 of the 1841 Act no such trust for sale arises. Section 2 of the 1841 Act contains a proviso that land granted under that section reverts to the estate of the grantor if it ceases to be used for the purposes of that Act. Many schools have sites that were granted under section 2 of the 1841 Act and when such schools close, the 'reverter proviso' frequently takes effect and a trust for sale arises under section 1 of the 1987 Act. The same may be true if a school moves site from the original site and the original site is not first disposed of in accordance with section 14 of the School Sites Act 1841.
12. Section 1 operates retrospectively so that a trust for sale is deemed to have arisen at any time that reverter occurred in the past. However, if the trustees have already acquired a good title by adverse possession before 17 August 1987, the beneficiary obtains no rights under the 1987 Act and the property can be dealt with in a section 554 order in the same way as any other endowment. In practice, the Secretary of State will usually accept that the trustees have by that date acquired title by adverse possession if 12 years have elapsed between the date the premises ceased to be used for the purposes of the 1841 Act and the coming into force of the 1987 Act i.e. 17 August 1987, provided the Secretary of State is satisfied they are not aware of any outstanding adverse claim. Trustees may be advised to take out indemnity insurance against the appearance of 'reversioners'.
13. Where a trust for sale has arisen under section 1 of the 1987 Act, the Secretary of State is enabled by section 5 of the 1987 Act to include in a section 554 order a provision extinguishing the rights of any beneficiary under such trust. The Secretary of State may do this provided the Secretary of State is satisfied that all reasonably practicable steps have been taken to trace any such beneficiary and that there is no outstanding claim.
14. To safeguard unknown beneficiaries the Secretary of State will normally require:
  - a) suitable notices to be published in two national newspapers with a substantial circulation one of which should be The Times, the other being



- left to the discretion of the trustees, and at least one local newspaper circulating widely in the locality where the relevant land is situated (a model notice is at Annex B to this advice); and
- b) the simultaneous display of the advertisement fixed on some object on the site and buildings in such a way that, so far as possible, members of the public can easily see and read it without going on to the land; and
  - c) the trustees to take all reasonably practicable steps to trace possible beneficiaries and to tell them about their rights. This should include thorough local enquiries and, in the case of titled grantors, recourse to any of the several reference works which list all the relatives of such people.
15. Normally, 'reverter' notices will specify a period of three months during which any person may make a claim, although claims may be made at any time before an order is made which extinguishes beneficiaries' rights. It is for the applicant concerned to establish the validity of such claims, with reference to the courts if necessary. An outline of all the steps already taken to trace possible beneficiaries will be required by the department.
16. Normally, notices are published after application for an order has been made to the department and initial checks for eligibility have been completed. However, applicants may prefer to publish such notices before applying for an order if they wish to discover whether there are any claimants before proceeding with an application. It is for applicants to choose which action is the best method of proceeding, taking into account legal costs and the cost of placing advertisements.
17. The 1987 Act enables the Charity Commission, also on the application of trustees, to extinguish beneficiaries' rights under the new statutory trusts for sale, again subject to appropriate safeguards. When both the Secretary of State and the Charity Commission are asked to extinguish the rights of any beneficiary, the Act precludes the Charity Commission from taking action unless the Secretary of State agrees that the application made to the Charity Commission should be considered first or the Secretary of State makes a section 554 order without extinguishing the rights of the beneficiary.

## **Religious Education Funds**

18. Section 556(2)(b) of the 1996 Act allows endowments to be used for a Religious Education Fund (formerly called Sunday School Funds), a smaller trust in addition to the main trust (i.e. the primary trust the subject of the section 554 order establishing the basis on which the majority of the assets are to be held and how they can be used) the purpose of which is to provide Sunday School provision or similar religious education in the parish where the land is situated. The locality to be covered by such a fund is restricted to that served

by the school. Normally, the amount allocated to a fund is 3/14ths of the trust assets. Where a diocese wants the proportion allocated to the Religious Education Fund to exceed 3/14ths the request should be supported by a letter from the National Society. It greatly assists the making of an order if the need for any such fund is clearly identified from the outset. The department needs to be told the correct name(s) of the parish(es) and the correct title of the incumbent, together with full details of the trustees. The diocese should warn the department if there is an unusual arrangement in the parish which could affect the appointment of trustees, e.g. a change in the name of the parish or the creation of a team ministry. The department takes the view that dioceses should inform the trustees of the original trust of the availability of Religious Education Funds in all cases.

## Information Requirements

19. A considerable amount of information is needed in the process of making orders. For example, whether the former premises have been sold and, if so, where the proceeds are invested, and the names and addresses of local bodies such as parish councils must be available. Other matters such as Religious Education Funds and reverter will have to be considered and these have their own information requirements.
20. Once a diocese has satisfied itself on the questions of eligibility and timing as outlined above it should apply to the department using the 'SAT554' form available to download from the Gov.UK website. The diocese is responsible for drafting the initial section 554 order for submission with the application and enclosing any evidence or other applicable documents (i.e. the trust deed(s) and any regulating schemes). The draft section 554 order will be checked by the department and if necessary amended in line with the department's requirements. A template draft section 554 order with associated drafting notes, together with example orders, is available on request via the email address given in paragraph 22 below. When the section 554 order is ready to be made after the publication process has completed, the department will take the necessary steps to have the order made on behalf of the Secretary of State.
21. Where an application is made for the inclusion of part of the land comprised in a deed in a section 554 order, a full description of the land should be provided, together with a plan, if possible. In addition, the department should be informed whether or not the land is registered. If registered land is to be included in an order, office copy entries and title plans (coloured) will be required. On receipt of the application, checks will be made for eligibility.
22. All enquiries and SAT554 forms should be addressed to:

Real Estate Team  
Department for Education  
Bishopsgate House  
Darlington  
DL1 5QE

Email: [SchoolsAssets.CAPITAL@education.gsi.gov.uk](mailto:SchoolsAssets.CAPITAL@education.gsi.gov.uk)

## Consideration of Orders

23. Below is a brief outline of the steps involved in considering an application for a section 554 order:
- a) a draft order must initially be prepared by the applicant and sent, along with the SAT554 form and any related evidence, to the department for review;
  - b) the application form and draft order will be reviewed by the department to consider if the endowment is deemed to be eligible. The department will check its own records as part of the eligibility process in addition to checking that the application has been properly completed, the draft order is correctly drafted etc. As you will appreciate, this can become quite involved and additional information may be requested;
  - c) the draft order submitted will be checked and any necessary changes made and then sent to the diocese for comment;
  - d) once comments have been received and the draft order is agreed between the department and the diocese, it is ready for publication (model notice available at Annex C). One month is allowed for representations/objections to be made;
  - e) if representations/objections have been made then, once the period for representations has expired, any representations received will automatically be copied to the diocese for comment. The person(s) making the representations will then receive a copy of the reply from the diocese and they will be allowed a further period of one month in which to comment. The Secretary of State takes into account any representations made by any person interested before any order is made;
  - f) if the order is to be made, the final draft order is agreed by the department and the diocese and checked for accuracy. When this step is completed the department will arrange for the order to be signed (made) and registered by the SI Registrar at Her Majesty's Stationery Office. The order is then obtained and distributed electronically (unless instructed otherwise) to all interested parties. The signed order has two dates, the date it is made and the date it will come into force, which is the day after the day it is made.

24. As you will appreciate, this is a very brief explanation of our procedures. In particular, orders that extinguish beneficial rights can take longer to process as the Secretary of State must be satisfied that all reasonably practicable steps have been taken to trace beneficiaries (as detailed in paragraph 14).

## **Adoption of Uniform Statutory Trusts and Amalgamation of Funds**

25. The Secretary of State has the power to make section 554 orders which provide that the endowments (other than the Religious Education Fund, which is established and held on a separate trust) are held on the “uniform statutory trusts”. The relevant procedures are set out in section 557 of the 1996 Act and the trusts themselves are set out in Schedule 36 to that Act.
26. Section 557 applies to endowments which are:
- a) regulated by a section 554 order, an order under section 2 of the Education Act 1973, or a qualifying scheme under earlier legislation; and
  - b) held under that scheme or those orders on trusts providing for capital, income or both to be applied for the provision of religious education at, or premises for, relevant schools, or relevant schools of any description in a diocese or other geographical area.
27. The trustees may adopt the uniform statutory trusts as the trusts on which those endowments are to be held. On adoption of the uniform statutory trusts, the scheme or order regulating the endowments has effect as if the uniform statutory trusts are incorporated in the scheme or order, instead of the corresponding provisions in the scheme or order.
28. Section 557 also allows the trustees of two or more endowments held on the uniform statutory trusts to consolidate all or any of those endowments and, where they do so, the endowments are treated as held for the purposes of a single charity.
29. Section 557 enables trustees to pass a resolution adopting the uniform statutory trusts in place of the corresponding provisions contained in existing orders or schemes. It will be for the trustees to decide whether to adopt the statutory trusts for some or all of their orders and schemes. Where the trustees pass such a resolution, they are required by the legislation to forward a copy to the department and this should be sent to the address given in paragraph 22.
30. Where the trustees make a resolution to adopt the uniform statutory trusts, they may pass a further resolution to amalgamate the relevant funds so as to constitute a single charity. The purpose of this power is to simplify administration for diocesan boards arising from the accounting requirements of

the Charities Acts<sup>3</sup>. It is not necessary to provide the department with a copy of this type of resolution.

31. For current orders, it is open to dioceses to specify in their application whether or not they wish the uniform statutory trusts to be incorporated into the order, and if so, whether they wish the funds to be consolidated. In these circumstances there is no need for the trustees to pass a resolution in order to amalgamate the funds dealt with by the order.

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<sup>3</sup> Primarily the Charities Act 2011 and the Charities (Protection and Social Investment) Act 2016

## **Annex A: Certificate confirming asset “used” for the purposes of Religious Education**

XX School was a [insert type of school e.g. “voluntary school”] and religious education, in accordance with the tenets of [the Church of England][*other relevant body*], has been given there continuously since 1st April 1945 in compliance with the relevant legal requirements that is in accordance with the provisions of Section 69 of and Schedule 19 to the School Standards and Framework Act 1998.

Signed by XX

On behalf of XX

Dated XX

DfE Ref XXXX

# Annex B: Reverter of Sites Act – Extinguishment of Rights Draft Notice

## REVERTER OF SITES ACT - EXTINGUISHMENT OF RIGHTS.

### XX School

#### Whereas:-

1. By a Conveyance/ Deed dated XX between XX the site (and buildings) of what became known as the XX School was granted to XX as trustee pursuant to section 2 of the Schools Sites Act 1841.
2. The said school premises ceased to be used for the purposes of a voluntary school in XX and pursuant to section 1 of the Reverter of Sites Act 1987 a trust for sale has arisen in respect of the said premises.

#### Now take notice:-

1. The [Diocese of XX] has made an application to the Secretary of State for Education for the inclusion of the above named school in an Order under section 554 of the Education Act 1996; the purpose of the Order is to allow the assets of the foundation to be used for the benefit of new and continuing schools of the same denomination within the diocese. The same Order will extinguish the rights of any beneficiary under the trust for sale.
2. Any beneficiary who wishes to oppose the extinguishment of his rights should notify his claim in writing to XX (***insert the name and address of the diocesan/applicant's solicitors***) no later than XX (***this date must be at least three months following the publication of the notice***).

# Annex C: Notice of publication of s554 order

## Department for Education Notice

[Diocese of XX]

XX School

Proposed order under sections 554 and 556 of the Education Act 1996

Notice is hereby given:-

1. That the Secretary of State for Education proposes to make an order under sections 554 and 556 of the Education Act 1996 in respect of the above mentioned [Church of England] educational foundation. The purpose of sections 554 and 556 is to make new provision as to the use of the assets of endowments of foundation, voluntary, grant-maintained or non-provided public elementary schools in certain circumstances to enable the assets to be applied for the benefit of new and continuing schools of the same denomination within the state system of education. The order will, where appropriate, authorise the sale of the premises described.
2. That under sections 554 and 556 of the Education Act 1996 any person interested may within one month after the date of this Notice make representations on the proposed order in writing to the Secretary of State at the department's address given below.

A copy of the draft order may be inspected from Monday to Friday between XX and XX at XX.

Additional copies can be obtained from the Department for Education, Real Estate Team, Bishopsgate House, Darlington, DL1 5QE.

Dated XX





Department  
for Education

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