

Changing School Category to Foundation

A Guide for Governing Bodies

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Changing School Category to Foundation – A Guide for Governing Bodies

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 community, voluntary aided or voluntary controlled schools who wish to change category to foundation;
 - b) The Schools Adjudicator;
 - c) Parents or stakeholders with an interest in such proposals.
2. The Foundation and Aided Schools National Association (FASNA - www.fasna.org.uk) offer support and guidance to schools wishing to change category to foundation. In addition to the DfES guidance below, a comprehensive information pack is available from FASNA.

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. The White Paper, *Higher Standards, Better Schools For All*, published in October 2005, set out the Government's belief that all schools should have the opportunity to become self-governing. Foundation schools own their own assets, employ their own staff and are their own admission authorities.
4. Furthermore, the White Paper set out the framework for the Trust school provisions in the Education and Inspections Act 2006. Trust Schools are foundation schools supported by a charitable foundation. Guidance on the process for becoming a Trust School, and on giving the Trust the power to appoint a majority of the governing body, is available in the document *Trust School Proposals – Guidance for Local Authorities and Governing Bodies*.

Definition of Terms

"Trust", "Trust School", "Foundation", "Foundation Majority"

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 a majority or a minority of foundation governors to those schools where the school's instrument of government so provides. This guidance will use the term "acquiring a foundation majority" to mean acquiring an instrument of government whereby the school's Trust (foundation) has the power to appoint a majority of governors on the governing body.

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

7. Section 19 of the 2006 Act 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
8. To make such a prescribed alteration the governing body must publish proposals in accordance with provisions in the 2006 Act, regulations made under that Act and having regard to guidance (such as that contained within this document) issued by the Secretary of State under that Act.
9. Statutory proposals for any or all of the alterations to schools described in paragraph 7 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.

Scope of the Guidance

10. This guidance is concerned with the process of changing category to foundation. 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 give the Trust the power to appoint a majority of the governors. Governing bodies seeking to change category and make one or both of these changes should also

consider *Trust School Proposals – A Guide for Governing Bodies and Local Authorities* which is available from the School Organisation Unit website www.dfes.gov.uk/schoolorg.

11. This guidance provides statutory guidance for Decision Makers regarding proposals to change category to foundation. Decision Makers considering related proposals for a school to change category and acquire a Trust and/or acquire a foundation majority must have regard to both sets of Decision Maker's guidance.
12. 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 25**;
 - b) Guidance to Decision Makers in deciding proposals to change category to foundation – **Paragraphs 50 – 57**;
13. The remainder of this document is intended as a guide to the statutory process for changing category to foundation.

Overview of the statutory process for changing category to foundation

14. Proposals to change category to foundation must follow this standard process:

<u>Stage 1</u>	The governing body considers a change of category to foundation; initiation of statutory process
<u>Stage 2</u>	The governing body consults on the plans
<u>Stage 3</u>	The governing body publishes proposals
<u>Stage 4</u>	Period for representations
<u>Stage 5</u>	Proposals are determined by the governing body
<u>Stage 6</u>	For VA schools only – possible referral to the Schools Adjudicator
<u>Stage 7</u>	Implementation

15. Where

- a) a community school wishes to change category to foundation and acquire a Trust; or
- b) where a community school wishes to make the changes in (i) and to give the Trust the power to appoint a majority of the governors; or
- c) where a voluntary controlled school wishes to change category to foundation and give the Trust the power to appoint a majority of the governors;

the statutory processes may be administered concurrently.

16. The local authority has the power to refer Trust proposals to the Schools Adjudicator on certain grounds. In any of the above cases, were the Trust proposals to be referred to the School Adjudicator, the proposals to change category to foundation will also be determined by the Schools Adjudicator. In this event, process would be as follows;

<u>Stage 1</u>	The governing body considers the change of category, acquisition of a Trust, and 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
<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

<u>Stage 1</u>	The governing body considers a change of category to foundation; initiation of statutory process
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Factors to consider before embarking on the process of changing category to foundation

17. It will be for individual school governing bodies to decide whether to change category to foundation. The governing body will need to consider carefully its aims and the expected long-term outcomes.
18. 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 a change of category.
19. For proposals involving voluntary aided schools with a religious character, the governing body should consider the implications of the school changing category in respect of Religious Education and staffing appointments.

Initiation of statutory process

20. The governing body should inform the local authority in writing if a motion to consult on change of category proposals is to be discussed at a meeting of the governing body. Once the local authority has been informed of the governing body's intention it may not dispose of any property which is used for the purposes of the school, or cease to hold it or use it for the school, until the proposals are decided or withdrawn.

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

21. The governing body **must** comply with the requirements of the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 (SI 2007/1289). **Paragraphs 22 and 23** reproduce some of these Regulations. **Paragraph 25** is statutory guidance to which governing bodies must have regard when consulting on proposals.

22. 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);
 - 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, 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 at any other school that may be affected by the proposals including where appropriate parents 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.
23. 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.
24. 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".
25. 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.
26. 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.

27. Where the governing body is also publishing proposals to acquire a Trust or a foundation majority together with a change of category, the governing body is strongly advised to consider the relevant sections of *Trust School Proposals – A Guide for Governing Bodies and Local Authorities*.

<u>Stage 3</u>	The governing body publishes proposals
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Publication of proposals

28. Following the consultation, the governing body then decides whether to go ahead and publish proposals.
29. The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 (SI 2007/1289) specify both the information to be contained in proposals and the procedures for publishing proposals.
30. All proposals to change category to foundation 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 (this must not be less than 4 weeks after 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 which of the following alterations are proposed
 - i. a change of category (a "change of category to foundation")
 - I. from a community school to a foundation school;
 - II. from a voluntary aided school to a foundation school;
 - III. from a voluntary controlled school to a foundation school;

IV. from a community special school to a foundation special school;

31. The governing body must also publish a statutory notice of the proposals in accordance with in the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 (SI 2007/1289).
- a) The statutory notice must contain as a minimum the following information
 - i. the information in paragraph 30, other than (d)
 - ii. a summary of the change proposed, the particular contribution it will make, and the direction it will provide to the school;
 - iii. 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 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 notice to
 - i. the relevant local authority within one week of the date of publication; and
 - ii. the Secretary of State within one week of the date of publication (DfES, School Organisation Unit, Mowden Hall, Staindrop Road, Darlington, DL3 9BG. It may be sent by e-mail to schools.organisation-unit@dfes.gsi.gov.uk).
32. 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.
33. 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.
34. 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.
35. The DfES School Organisation Website Forum www.dfes.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 DfES. To gain access to the forum you must register for the "Members' Area" on the website but this is free of charge.

Implementation Date

36. 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

37. 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

38. 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

39. Those bringing forward proposals are required to justify them in terms of standards.
40. It is recommended that proposals should also include
- a) a table setting out the test results of the school at the centre of the proposal;
 - 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.

<u>Stage 4</u>	Period for representations
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Period for representations

41. From the date of publication of the proposals (i.e. the date on which the requirements of paragraph 31(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.
42. Any such objections must be sent to the name and address of the governing body given in the within the four week period. It is the responsibility of the person making the objection to ensure that the representations reach the governing body.
43. In cases where the proposals are related to proposals to acquire a Trust and/or to acquire a foundation majority a local authority may, on certain grounds, refer the Trust proposals to refer the proposals to the Schools Adjudicator to be determined. In this event the proposal to change category to foundation would also be considered by the Schools Adjudicator. The governing body must then send a copy of the proposals, and any objections or comments received, to the adjudicator immediately after the expiry of the representation period in which the request has been made. More information on the power of a local authority to refer Trust proposals can be found in *Trust School Proposals – A Guide for Governing Bodies and Local Authorities*.

Withdrawal of Proposals

44. The governing body may withdraw published proposals at any point before they are determined.
45. 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
 - c) give notice in writing to the Secretary of State at the address given in paragraph 31 (c)(ii)
 - d) place written notice at the entrance (or where there is more than one, all entrances) to the school.

<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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46. Once the period for representations has passed, the proposals must be determined. For proposals solely for a change of category to foundation, the governing body will always be the Decision Maker. The proposals must be determined within six months of the date of publication of the proposals.
47. The governing body must notify
- a) the relevant local authority; and
 - b) the Secretary of State (at the address given in paragraph 31 (c)(ii));
- of the outcome of the determination and the reasons for their decision.
48. Where
- a) the proposals are related to proposals to acquire a Trust and/or to acquire a foundation majority and the Trust proposals have been referred by the local authority at stage 4; or
 - b) the governing body fails to determine the proposals within 6 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).

49. 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 50 - 57.

Decision Makers Guidance

Statutory Guidance

The Decision

50. The governing body may decide to:
- a) reject the proposals;
 - b) approve the proposals without modification;

c) approve the proposals with modifications

51. Whoever is the Decision Maker, the proposal must be determined on its merits.

Standards

52. The Government wishes to encourage changes to local school provision where it will boost standards and opportunities for young people, whilst matching school place supply as closely as possible to pupils' and parents' needs and wishes. The Government wishes to see more schools become self governing and benefit from the freedom this offers e.g. to control their own assets, employ their own staff and set their own admission criteria.
53. Decision Makers should be satisfied that proposals for changes to a school's provision will contribute to raising local standards of provision, and will lead to improved attainment for children and young people. They should pay particular attention to the effects on groups that tend to under-perform including children from certain ethnic groups, children from deprived backgrounds and children in care, with the aim of narrowing attainment gaps.

Diversity

54. 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 school system offering excellence and choice, where each school has a strong ethos and sense of mission and acts as a centre of excellence or specialist provision.
55. Decision Makers should consider how proposals will contribute to local diversity and national transformation strategies.

Consultation

56. 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.

Representations received on the proposals

57. 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 not simply take account of the numbers of people expressing a particular view when considering representations made on proposals. The Decision Maker should give the greatest weight to representations from those stakeholders likely to be most directly affected by the proposals, for example the parents of children at the school.

Conditional Approval

58. Proposals to change category to foundation may be approved subject to the making of any scheme relating to any charity connected with the school.
59. Should a condition not be met, the proposals will be referred back to the Decision Maker for a fresh determination.

Decision Letters

60. 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.
61. A copy of all decision letters must be forwarded to the local authority and the Secretary of State at the address given in paragraph 31(c)(ii).
62. Where the Schools Adjudicator is the Decision Maker, the Schools Adjudicator must notify the governing body, local authority and the Secretary of State of his decision together with his reasons.
63. 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

64. The decision of the governing body or Schools Adjudicator is expected to be final.

65. 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, however, not substitute his decision for that of the governing body.
66. 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>	For VA schools only – possible referral to the Schools Adjudicator
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67. Where the governing body of a voluntary aided school approves proposals to change category to foundation, certain persons may request that these proposals are referred to the adjudicator. These persons are
- a) the local authority;
 - b) 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;
 - c) the bishop of a diocese of the Roman Catholic Church any part of which is comprised in the area of the authority; and
 - d) 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.
68. The request must be made in writing to the governing body within four weeks of the proposals being approved by the governing body.

<u>Stage 7</u>	Implementation
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Requirement to implement

69. 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

70. 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.
71. 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 73 - 77.
72. Before modifying proposals, the Decision Maker must consult the local authority. Where the Schools Adjudicator rather than the governing body is the Decision Maker the Schools Adjudicator must also consult the governing body which published the proposals.

Revocation Proposals

73. 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;
 - c) a statement as to why it is proposed that the proposals should be revoked and the duty to implement should not apply; and
 - d) details of how copies of the original proposals can be obtained.

74. 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 newspaper circulating in the area to be served by the school.
75. 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.
76. The proposals must then be determined by the governing body. Before this determination the governing body must consult the local authority.
77. 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.

Responsibility for implementation of other unimplemented proposals

78. Where, as a result of VA school changing category, the LA becomes responsible for the implementation of any other previously approved proposals, the Department would continue its support of any agreed capital costs for those proposals, and would be prepared to consider applications from an LA to meet its share of any capital costs which previously fell to the governing body. LAs would also be able to publish statutory proposals to be relieved of the duty to implement approved proposals in respect of the school in its previous category.

Admissions - transitional measures

79. When a school changes category, and the admission authority changes too, anything done by the former authority under chapter 1 of part III of the School Standards and Framework Act 1998 ("the Act") in its role as admission authority will, from the implementation date, have effect as if done by the new admission authority. The effect of this is that if, for instance, a community school became a foundation school the governing body would be required to honour any decisions taken by the LA in respect of admissions to the school (both in respect of policy and offers of places) for the existing admissions round.

Reconstitution of the governing body

80. In changing category the governing body must be reconstituted in a form appropriate to the school's new category and also in accordance with the appropriate instrument of government taking into account 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.
81. 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.
82. 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.

Staffing

83. A change of school category from community or voluntary controlled to foundation will result in a change of employer for the school's staff. Paragraphs 49 to 55 of Schedule 3 to The School Organisation (Prescribed Alterations to Maintained Schools)(England) Regulations 2007 provide for all rights, powers, duties and liabilities to transfer from the LA to the governing body. Another consequence of changing category is that anything done by the LA in respect of the employee is considered, from the implementation date, to have been done by the governing body.
84. The effect of these provisions is to protect an individual's employment rights on transfer. Any agreements entered into by the LA or governing body before this date, in respect of an individual's terms and contract of employment must therefore be honoured by the new employer. Equally, if any action is being taken by an employee against the former employer in respect of a liability, duty etc of that employer before a school changes category, the liability transfers to the new employer.

85. The governing body should also take account of the 'Staff Transfers in the Public Sector' statement of practise which can be accessed at http://www.civilservice.gov.uk/publications/staff_transfer.asp.

Variation of foundation and voluntary school trusts

86. The trust of a voluntary or foundation school often makes very specific provisions regarding the conduct of the school and the use of any fund held by the trust for the use of the school and premises. In bringing forward proposals to change category, proposers will need to consider whether the school's current trust allows for the change in category proposed. If in doubt, or if a variation in the trust is clearly necessary, promoters are advised to make early contact with the Charity Commission to apply for the trust to be varied under the relevant trust law.

Land Transfer

87. Schedule 3 to The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 (SI: 2007 No 1289) have effect in relation to the transfer of land. Any land transfers will follow the existing patterns of ownership for maintained schools so far as possible and will take place on the implementation date.
88. Where a community or a voluntary school becomes a foundation school any land held by a LA for the school transfers automatically to the school's trustees or, if it has no trustees, to the governing body.

Rights to use land

89. Where land held by another body was used by a school prior to its change of category (for instance a private playing field, church hall or swimming pool) the rights and liabilities connected with the use of that facility enjoyed by the school prior to the change of category will continue to apply. Therefore, where a community school has, by agreement, been allowed to use a playing field owned by a sports club prior to changing category, the school cannot be disqualified from using the facility merely because of the change in category.

Land excluded from transfer

90. Land may be excluded from transfer with the prior written approval of the Schools Adjudicator. Applications to the adjudicator to exclude land from transfer can be made jointly (where there is agreement) or individually from either party. Applications to exclude land from transfer can only be made during the period between the change of category proposals being approved and the implementation date.

Issues relating to transfer of land

91. 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 A

Consultation draft letter – to be sent to the main office of each union represented at the school. We suggest you do this when the statutory notice is published.

Date.....

(Union Main Office Address)

Dear Colleague

Re: XXXXXXXX school change of status to a foundation school

I am writing to inform you that the governing body ofschool is proposing to become a foundation school with as the implementation date.

I am confirming that, if the proposals come into effect, the employer of your members would cease to be local authority and would become the governing body of.....school from that date.

The governing body would ensure that the terms and conditions of employment would be no less favourable than those currently enjoyed. The governing body has no further proposals at present with regards to this transfer.

If you have any comments you wish to make please contact me within two weeks of receipt of this letter.

Yours sincerely

Chair of Governors