

EDUCATION AND INSPECTIONS ACT 2006

EXPLANATORY NOTES

COMMENTARY

Part 3: Further Provisions about Maintained Schools

Section 33: Requirements as to foundations

147. *Subsection (1)* of this section inserts new sections 23A and 23B into the 1998 Act. These new sections provide for the foundations of certain foundation and foundation special schools, and the charity trustees of those foundations, to have specified characteristics and gives the Secretary of State power in certain circumstances (to be specified in regulations) to remove and appoint charity trustees.
148. New section 23A(1) provides for section 23A to apply to foundation and foundation special schools where one or more of three conditions is met.
149. The first condition, set out in *subsection (2)* of the new section 23A, is that the school was established as a foundation or foundation special school pursuant to proposals implemented under the Act.
150. The second condition, set out in *subsection (3)* of the new section 23A, is that the school acquired its foundation, or became a school whose instrument of government provides for the majority of governors to be foundation governors pursuant to proposals implemented under the Act.
151. The third condition, set out in *subsection (4)*, is that the school has changed category from voluntary aided to foundation school pursuant to proposals implemented under the Act. References in this explanatory note to “foundations” and “charity trustees” are to the foundations and charity trustees of the schools to which the new section 23A applies only.
152. Section 23A(5) provides that a foundation must be incorporated and must also be a charity (as defined in the Charities Act 1993). It also provides that a foundation must have as its purposes, or as one of its purposes, the charitable purpose of the advancement of education. Section 23A(6) requires the foundation to promote community cohesion in carrying out its functions in relation to the school.
153. Section 23A(7) provides that where local authorities are members of, or are to appoint persons to be members of, foundations, the voting rights exercisable by those members must not exceed 20% of the total voting rights. Section 23A(8) similarly provides that where local authorities are to appoint charity trustees, the number of trustees appointed by them, and the voting rights exercisable by such trustees, must not exceed 20% (of the total number of trustees or the voting rights respectively).
154. Section 23A(9) enables regulations to prescribe people who are to be disqualified from acting as trustees. Section 23A(10) defines the terms used in sections 23A and 23B.
155. New section 23B(1) provides for regulations enabling the Secretary of State to make directions, in prescribed cases, to remove any charity trustee of a foundation or

*These notes refer to the Education and Inspections Act 2006
(c.40) which received Royal Assent on 8 November 2006*

foundation special school to which section 23A applies, even if the person is not otherwise disqualified; and to appoint a charity trustee to such a school.

156. Section 23B(2) enables regulations to make provision about the effect of a direction under *subsection (1)*, and, in particular, enables the regulations to provide for such a direction to have the same effect as an order of the Charity Commission for the removal or appointment of a trustee made under section 18 of the Charities Act 1993. Section 23B(3) goes on to provide that nothing in this section affects any powers of the Charity Commission.
157. *Subsection (2)* of the section is a transitional provision which provides that any reference in section 23B to the Charity Commission for England and Wales should be read as a reference to the Charity Commissioners for England and Wales until section 1A(1) of the Charities Act 1993 comes into force. The Charities Act 2006 provides for the establishment of the Charity Commission as a body corporate, and inserts into the 1993 Act the new section 1A that is referred to.