

**EXPLANATORY MEMORANDUM TO THE**  
**EDUCATION (CHANGE OF CATEGORY OF MAINTAINED SCHOOLS)**  
**(AMENDMENT) (ENGLAND) REGULATIONS 2005**

**2005 No. 1731**

1. This explanatory memorandum has been prepared by the Department for Education and Skills and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the House of Lords Merits Committee.

2. **Description**

2.1 These regulations amend the Education (Change of Category of Maintained Schools) (England) Regulations 2000 (SI 2000/2195)(as amended) (“the principal regulations”) in relation to the process for community and voluntary controlled secondary schools to change category to foundation. They provide for the governing bodies of such schools to publish and determine whether to implement proposals to change category according to a streamlined procedure.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

4. **Legislative Background**

4.1 These regulations are intended to give effect to a commitment in the Department for Education and Skills five-year strategy to enable community and voluntary controlled secondary schools to change category to foundation more easily. They amend the existing principal regulations- - made under the School Standards and Framework Act 1998 which make provision for the publication and consideration of change of category proposals.

5. **Extent**

5.1 This instrument applies to England.

6. **European Convention on Human Rights**

Not applicable.

## **7. Policy background**

7.1 The policy background is set out in the Department for Education and Skills Five Year Strategy for Children and Learners, published in July 2004. Chapter 4 states that: “every school that is not a foundation school will have the right, by a simple vote of its governing body, following a brief period of consultation, to become one.”

7.2 At present, a school wishing to change category must publish proposals which are then decided by the School Organisation Committee for the area or the Schools Adjudicator. The Department consulted local authorities and other stakeholders on proposals to enable the governing bodies of community and voluntary controlled secondary schools to determine to implement their own proposals to change category. A summary of responses has been sent to consultees and is available on the DfES website.

7.3 The effect of these Regulations is to enable the governing body of a community or voluntary controlled secondary school to publish and determine to implement their own proposals to change category to foundation. They must consult before publishing proposals. Objections to, and comments on, the proposals must be sent to the governing body within four weeks of the publication of the proposals. Following the four week period for representations the governing body must meet formally to decide whether to implement the proposals, taking into account any objections and comments. The decision must be made by a majority vote of the governing body within 6 months from the date of publication of the proposals

7.4 The governing body must inform the local authority and the Secretary of State that the school is changing category to foundation.

7.5. The Department consulted local authorities and other stakeholders on these arrangements in autumn 2004 as part of a wider consultation on proposals in the five-year strategy. Around a third of authorities responded. Most local authorities were opposed to the proposals, on the grounds that allowing school governing bodies, rather than School Organisation Committees, to decide their own proposals reduced democratic accountability; and that an increase in the number of foundation schools would undermine local authorities’ strategic planning role, including their ability to manage the education estate. In the Department’s view a change in the category of a school is not always so significant a change that it requires a local decision maker. In the light of the consultation responses, however, we have decided to introduce a requirement on governing bodies to consult before publishing proposals, which was not included in the draft regulations on which we consulted. With regard to the role of local authorities, the experience of local authorities which already have large proportions of autonomous (foundation or voluntary aided) schools suggests that there is no reason why an increase in the number of foundation schools should prevent them from carrying out their strategic functions.

7.6 Details of the consultation exercise, and a summary of responses, are available on the DfES website at <http://www.dfes.gov.uk/consultations/conResults.cfm?consultationId=1282>.

## **8. Impact**

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact of the instrument on the public sector falls on schools and local authorities. The effect of the instrument is to enable the governing bodies of community and voluntary controlled schools to publish and determine to implement their proposals to change category to foundation. Such proposals are currently decided by School Organisation Committees (SOCs), which are statutory bodies comprising representatives of local stakeholders. The number of proposals published by schools under the current arrangements is low – an average of around six annually – but we expect this to increase significantly.

8.3 Where a community or voluntary controlled school changes category to foundation, contracts of employment must be transferred from the local authority to the governing body. Land held by the local authority for the purposes of the school must be vested in the school's trustees (where they exist) or in the school's governing body. Provision for the transfer of contracts of employment and land is made in schedules to the principal regulations.

## **9. Contact**

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