

2007 No. 1287

EDUCATION, ENGLAND

**The School Organisation (Requirements as to Foundations)
(England) Regulations 2007**

<i>Made</i>	- - - -	<i>25th April 2007</i>
<i>Laid before Parliament</i>		<i>3rd May 2007</i>
<i>Coming into force</i>	- -	<i>25th May 2007</i>

The Secretary of State for Education and Skills makes the following Regulations in exercise of the powers conferred by sections 23A, 23B and 138(7) of the School Standards and Framework Act 1998(a).

Citation, commencement and application

1.—(1) These Regulations may be cited as the School Organisation (Requirements as to Foundations) (England) Regulations 2007 and come into force on 25th May 2007.

(2) These Regulations apply only in relation to England.

Interpretation

2. Any reference in these regulations to a foundation is a reference to the foundation of a school to which section 23A of the School Standards and Framework Act 1998 applies.

Form of body corporate

3. The foundation must be either—

(a) a company registered under the Companies Act 1985(b) as a company limited by shares or by guarantee; or

(b) a body incorporated by Royal Charter.

Persons disqualified from acting as charity trustees

4. Without prejudice to sections 72 and 73 of the Charities Act 1993(c), the persons listed in the Schedule are disqualified from acting or continuing to act as a charity trustee of a foundation.

(a) 1998 c.31; sections 23A and 23B are inserted by section 33 of the Education and Inspections Act 2006 (c. 40). See section 142 for the definition of “prescribed”.

(b) 1985 c. 6.

(c) 1993 c.10; section 72 is amended by the Insolvency Act 2000 (c. 39), s 8, Schedule 4, Pt II, para 18(a), (b), (c)(i), (ii); SI 2004/1941, Article 3, Schedule, para 5(a), (b), (c); SI 2006/242 Article 5, Schedule, Pt 1, para 6(1), (2); and SI 2006/1722, Article (2)(2), Schedule 2, Pt 1, art 1(1) and 4(b)

Power of Secretary of State to remove charity trustees

5.—(1) In the circumstances set out in paragraph (2), the Secretary of State may, by direction, remove any charity trustee of a foundation.

(2) The circumstances mentioned in paragraph (1) are that, having regard to—

- (a) the objects or purposes of the foundation, and
- (b) the functions carried out by the foundation in relation to the school,

the Secretary of State is satisfied that the person has acted in any way which is incompatible with the objects or purposes of the foundation or is likely to bring into disrepute any school for which the foundation acts.

Power of Secretary of State to appoint charity trustees

6.—(1) In the circumstances set out in paragraph (2), the Secretary of State may, by direction, appoint a person to be a charity trustee of a foundation.

(2) The circumstances mentioned in paragraph (1) are that, whether or not the Secretary of State has exercised his power under regulation 5, having regard to—

- (a) the objects or purposes of the foundation, and
- (b) the functions carried out by the foundation in relation to the school,

the Secretary of State is satisfied that such appointment is necessary to improve the administration of the foundation.

Procedure for removal and appointment of charity trustees under regulations 5 and 6

7.—(1) Before exercising his powers under regulation 5, the Secretary of State must—

- (a) notify each of the charity trustees of the foundation that he intends to exercise his power, setting out the reasons for his decision to remove any charity trustee; and
- (b) provide the person whom he proposes to remove with the opportunity to make representations against his removal.

(2) Before exercising his powers under regulation 6, the Secretary of State must—

- (a) notify each of the charity trustees of the foundation that he intends to exercise his power, setting out—
 - (i) the reasons for his decision to appoint a person to be a charity trustee; and
 - (ii) the particulars of the person whom he proposes to appoint; and
- (b) provide the existing charity trustees with the opportunity to make representations in relation to the appointment.

Effect of direction made under regulations 5 and 6

8. A direction made under regulation 5 or 6 is to have the same effect as an order of the Charity Commission for England and Wales under section 18 of the Charities Act 1993 for the removal or appointment of a charity trustee.

25th April 2007

Jim Knight
Minister of State
Department for Education and Skills

Individuals disqualified from acting as charity trustees of a foundation

The following individuals may not act or continue to act as a charity trustee of a foundation—

1. A person who is—
 - (a) included in the list kept under section 1 of the Protection of Children Act 1999^(a) (list of those considered by the Secretary of State as unsuitable to work with children);
 - (b) subject to a direction of the Secretary of State under section 142 of the Education Act 2002 ^(b) (or any other disqualification, prohibition or restriction which takes effect as if contained in such a direction);
 - (c) disqualified from working with children under sections 28, 29 or 29A of the Criminal Justice and Court Services Act 2000^(c);
 - (d) disqualified from registration under Part 10A of the Children Act 1989^(d) for child minding or providing day care; or
 - (e) disqualified from registration under Part 3 of the Childcare Act 2006^(e).
2. A person who either during his trusteeship of the foundation, or in the period of five years ending with the date on which his trusteeship of the foundation would otherwise have taken effect, has been convicted, whether in the United Kingdom or anywhere else, of an offence, the facts of which give rise to a criminal offence under English law, and has had passed on him a sentence of imprisonment (whether suspended or not) for a period of not less than three months without the option of a fine.
3. A person who within the period of 20 years ending with the date on which his trusteeship of the foundation would otherwise have taken effect has been convicted as stated in paragraph 2 of any offence and has had passed on him a sentence of imprisonment for a period of not less than two and a half years.
4. A person who at any time has been convicted as stated in paragraph 2 of any offence and has had passed on him a sentence of imprisonment for a period of not less than five years.
5. A person who has not obtained a criminal records certificate under section 113A of the Police Act 1997^(f).
6. A person who has not attained the age of 18.
7. A person who is detained under the Mental Health Act 1983^(g).
8. A person who is paid to work at a school for which the foundation acts, except for the head teacher.

(a) 1999 c. 14; as amended by the Care Standards Act 2000 (c.14).

(b) 2002 c. 32.

(c) 2000 c. 43; section 29A is inserted by the Criminal Justice Act 2003 (c. 44).

(d) 1989 c. 41; inserted by the Care Standards Act 2000 (c.14).

(e) 2006 c. 21.

(f) 1997 c.50; inserted by section 163(2) of the Serious Organised Crime and Police Act 2005 (c.15).

(g) 1983 c.20.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set out the requirements to be met in relation to the foundations of foundation and foundation special schools to which section 23A of the School Standards and Framework Act 1998 (“SSFA 1998”) applies. For these purposes, a foundation is a foundation established otherwise than under SSFA 1998: it is not a “foundation body” as defined in section 21 of SSFA 1998. They also provide for the Secretary of State to have certain powers in relation to the charity trustees of such foundations.

Regulation 3 provides that the foundation must be either a company limited by guarantee or by shares registered under the Companies Act 1985 or a body incorporated by Royal Charter.

Regulation 4 and the Schedule set out the circumstances in which a person is disqualified from acting or continuing to act as a charity trustee of a foundation.

Regulation 5(1) enables the Secretary of State to remove any charity trustee of a foundation in the circumstances set out in regulation 5(2).

Regulation 6(1) enables the Secretary of State to appoint a person to be a charity trustee of a foundation in the circumstances set out in regulation 6(2).

Regulation 7 sets out the procedure to be followed by the Secretary of State in removing or appointing a charity trustee under regulation 5 or 6.

Regulation 8 provides that a direction made by the Secretary of State under regulation 5 or 6 is to have the same effect as an order of the Charity Commission for England and Wales under section 18 of the Charities Act 1993.

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