

EXPLANATORY MEMORANDUM TO
THE SCHOOL ORGANISATION (REQUIREMENTS AS TO FOUNDATIONS)
(ENGLAND) REGULATIONS 2007

2007 No. 1287

1. This explanatory memorandum has been prepared by The Department for Education and Skills and is laid before Parliament by Command of Her Majesty.
- 1.1 This memorandum contains information for the Joint Committee on Statutory Instruments.
2. **Description**
- 2.1 The term 'foundation', in relation to a foundation or voluntary school, is defined in section 21 of the School Standards and Framework Act 1998. The statutory purpose of a foundation is to hold land on trust for one or more schools; a foundation may also appoint foundation governors to those schools. These regulations set out the requirements, in terms of structure and governance, on those foundations to which section 33 of the Education and Inspections Act applies; and the circumstances in which the Secretary of State's powers apply in relation to the trustees of such foundations.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
- 3.1 None.
4. **Legislative Background**
- 4.1 The regulations are made under sections 23A, 23B and 138(7) of the School Standards and Framework Act 1998. Sections 23A and 23B are inserted by section 33 of the Education and Inspections Act 2006. Sections 23A and 23B impose requirements on those foundations to which section 23A applies and provide for regulations to specify the detail of those requirements and to make provision enabling the Secretary of State to remove or appoint a charity trustee of a foundation.
- 4.2 The requirements apply to
 - i. the foundations of foundation schools established under the Education and Inspections Act 2006;
 - ii. foundations acquired by foundation schools under section 19 of that Act;
 - iii. the foundations of foundation schools which make an alteration under section 19 of that Act which allows the school's foundation to appoint a majority of the governing body of the school;

- iv. foundations where a voluntary aided school has changed category to foundation and where a majority of governors are to be appointed by the foundation.

5. **Extent**

- 5.1 These Regulations apply to England only.

6. **European Convention on Human Rights**

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. **Policy background**

- 7.1 The policy background is set out in the Department for Education and Skills White Paper *Higher Standards, Better Schools for All*, published in October 2005. The objective of the policy is to spread innovation and diversity across the whole school system by encouraging schools to acquire foundations (also to be known as Trusts). The membership of these foundations might consist of a wide range of partner organisations. The White Paper also set out the Government's intention to consider safeguards to prevent the creation of inappropriate foundations/Trusts.

- 7.2 Consultation on the draft Regulations took place between 13 November 2006 and 4 February 2007. Details of the consultation exercise, and a summary of responses, are available on the DfES website at <http://www.dfes.gov.uk/consultations/>

- 7.3 The Department consulted generally on the suite of School Organisation regulations, and specifically on two aspects of these regulations. The consultation version of these regulations disqualified (a) members and officers of local authorities and (b) staff employed at the school in question from trusteeship of a foundation/Trust. In light of responses to the consultation, we have removed the disqualification of LA members and officers and the head teacher working at a school for which the foundation acts.

- 7.4 Officials wrote to local authorities and others on 1 March 2007 to advise them that the Regulations were likely to come into force on 25 May.

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 There are at present relatively few foundation schools with foundations (around 100), and these requirements will not apply to those foundations unless the school becomes a school where the foundation appoints a majority of the governors.

8.3 The instrument will result in greater regulation of the characteristics of certain foundations than was previously the case, which is commensurate with the increased involvement of external organisations in long term partnerships with schools, and the new provision in the Education and Inspections Act 2006 allowing school governing bodies to give these foundations the power to appoint a majority of the governors.

9. **Contact**

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