

EXPLANATORY MEMORANDUM TO
THE SPECIFIED SIXTH FORM COLLEGE CORPORATION ORDER 2010
2010 No. 625

1. This explanatory memorandum has been prepared by the Department for Children, Schools and Families and is laid before Parliament by Command of Her Majesty.

2. **Purpose of the instrument**

The instrument lists sixth form college corporations for the purpose of section 33J of the Further and Higher Education Act 1992 which provides that the instrument of government of certain sixth form college corporations shall contain provisions to ensure that the existing character of the sixth form college is maintained and, in particular, that the sixth form college is conducted in accordance with any trust deed relating to it.

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

None

4. **Legislative Context**

4.1 Section 125 of and Schedule 8 to the Apprenticeships, Skills, Children and Learning Act 2009 (“ASCL Act”) inserted new provisions for sixth form college corporations in England into the Further and Higher Education Act 1992 (“FHEA 1992”) including section 33J FHEA 1992.

4.2 Section 33J applies to a sixth form college corporation (“SFCC”) in respect of which the relevant sixth form college is specified, or falls within a class specified, by the Secretary of State by order.

4.3 The instrument of government of all such specified SFCCs must provide for a majority of members of the governing body of the relevant sixth form college to be persons appointed for the purpose of securing, so far as practicable, that the established character of the sixth form college is preserved and developed and, in particular, that the sixth form college is conducted in accordance with any trust deed relating to it.

4.4 This Order is made under section 33J FHEA 1992.

5. **Territorial Extent and Application**

This instrument applies to England.

6. European Convention on Human Rights

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 ASCL Act transfers the duties and powers of the Learning and Skills Council in relation to sixth form colleges to Local Authorities (LAs) and provides for the creation of sixth form college corporations with a distinct legal status. This will enable sixth form colleges to be performance managed by their home LAs. As sixth form colleges are high performing institutions it is intended that this will have the effect of raising standards across all 16-18 provision in areas where sixth form colleges exist. Separate legal status will also facilitate the development of the sector by providing the basis for any further legislative changes that may be necessary to meet changing circumstances.

7.2 28 of the 94 sixth form colleges are Trust based including 15 voluntary aided Catholic colleges, representing a significant proportion of the sector. Trusts bring to each of their colleges a tradition of commitment to 16-19 education and a particular ethos and character which is greatly valued by students and parents, adding to the quality and diversity of provision in their localities.

8. Consultation outcome

The provisions in ASCL Act for the designation of sixth form colleges relate to reforms proposed in the White Paper 'Raising Expectations: Enabling the System to Deliver'. We did not consult specifically on governance arrangements for Trust based colleges but made it clear that designation would not change the independence and incorporated status of sixth form colleges. This is consistent with expressed wishes of LAs and the college sector.

9. Guidance

The Department will not be issuing separate guidance in relation to this instrument, however the Secretary of State intends to issue a direction to the Young People's Learning Agency for England ("YPLA") which defines YPLA powers in a way which prevents YPLA changing provisions within the Instruments of Governance relating to Trustees.

10. Impact

The benefits of a separate sixth form college sector will be in raising standards and improving student outcomes in local areas. There will be few associated costs to the public sector. There will be minimal costs for LAs in performance managing sixth form colleges; as the sixth form colleges will remain independent corporations, the LA role will be comparatively light touch except in the rare instances where intervention is required. The YPLA will have a strategic role in developing an intervention strategy for sixth form colleges, the cost of which will be part of the

initial establishment cost. There are currently 28 Trust based colleges out of 94 in the sector as a whole.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

This is an administrative measure to effect the protection of the established character and trust status of the colleges specified so is not subject to monitoring and review.

13. Contact

Brian Teahan at the Department for Children, Schools and Families Tel: 0114 2594112 or email: brian.teahan@dcf.gov.uk can answer any queries regarding the instrument.

EXTRACT FROM THE IMPACT ASSESSMENT PREPARED FOR THE APPRENTICESHIPS, SKILLS, CHILDREN AND LEARNING BILL

1.4 SIXTH FORM COLLEGES

RATIONALE

Sixth form colleges (SFCs) mainly provide for students aged 16-19 although many have diversified since they were first incorporated in the FE sector in 1993. The 94 SFCs have maintained a distinct identity within the FE sector, although there are few objective criteria that differentiate precisely between SFCs and FE colleges. SFCs have a reputation for high standards. They tend to offer Level 3 provision, are often seen as a bridging phase into higher education and negotiate pay and conditions that take account of school teachers' pay and conditions. They are represented by the Sixth Form Colleges Forum, of which all existing SFCs are members. Ministers want to recognise the strength of SFCs and their contribution to the education of young people by identifying the SFC sector as a distinct legal category.

AIMS AND OBJECTIVES

The main objective of the proposals is to create a separate legal identity for sixth form colleges, which will be based on a single commissioning and performance management relationship between the SFC and its home local authority.

BENEFITS

The benefits of a separate SFC sector will be in student outcomes: SFCs are among the highest performing post-16 settings (as shown by attainment data and in Ofsted reports) and the strengths of a developing SFC sector will help raise standards. The presence of high performing institutions within 14-19 partnerships will help to secure better 14-19 outcomes in local areas. SFCs are generally popular with parents and students and a strong and separate SFC sector will add to quality, choice, diversity and learner satisfaction – all indicators of a successful post-16 system.

COSTS

This is largely an administrative change with few associated costs to the public sector. There will be minimal costs for LAs in performance managing SFCs; as the SFCs will remain independent corporations, the LA role will be comparatively light touch except in the rare instances where intervention is required. The YPLA will have a strategic role in developing an intervention strategy for SFCs, the costs of which will be part of the initial establishment cost.