

# Public Consultation

## Booklet Two

### Changing to Foundation School Category and Acquiring a Charitable Trust Questions & Answers applicable to all Co-operative School Trusts

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NB. These Questions & Answers have been compiled from official Department for Education (DfE) publications and apply to all trusts. Regulations are changing on a regular basis and the latest information can be obtained from the Department for Education website [www.education.gov.uk](http://www.education.gov.uk).



## **1. The Basics**

### **1.1 What is a Trust School?**

A Trust School is a local authority maintained school which is supported by a charitable Trust. To become a Trust school, schools must adopt their own foundation eg community schools need to change their category to become a foundation school. This Trust then appoints some of the governors to serve on the school governing body.

All Trust schools operate within the same frameworks as other maintained schools: they teach the National Curriculum, follow the School Admissions Code and are inspected by Ofsted. Teaching staff will still be employed under the terms of the School Teachers' Pay and Conditions Document. The local authority will fund the school on the same basis as all other local authority schools and will retain its intervention powers if there are problems at the school.

### **1.2 What would change if the school became a Trust school?**

Trust schools differ because their charitable Trust establishes a long-term relationship with external partners and involves them in the school's governance and leadership. The proposal is to form a Co-operative Trust with the partners and develop a shared sense of direction. There are other external partners invited to serve as Trustees on the Trust.

The governing body of a Trust school (which retains parents, staff, community and local authority governors) remains responsible for all major decisions about the school and its future.

The governing body of a Trust school also remains responsible for all aspects of the conduct of the school (including the school's budget and staff) and so responsibilities and accountabilities remain clear. The Trust holds the land and capital assets on trust for the Governing Body of the school.

A community school would change category (a Trust school is defined for the purpose of this document as a foundation school with a foundation acquired under the provisions of the Education and Inspections Act 2006). This means community schools will take on two new areas of responsibility:

- The governing body will be the employer of staff rather than the local authority; and
- The governing body will be responsible for setting admissions arrangements (in accordance with the law and the Admissions Code).

Existing Foundation schools already have these responsibilities. In addition, the governing body would continue to have day to day control of the school's land and assets (which the Trust would hold on trust for the school).

Having a Trust which appoints governors means that the school can strengthen its relationship with partners and their energy and expertise can support the school's leadership and direction.

### **1.3 How does a school acquire foundation category?**

Regulations published in 2005 provide a 'streamline' route for schools to acquire foundation category. This involves a decision by the governing body following a period of consultation with parents, the local authority and other stakeholders and the publication of statutory notices followed by a four week period for representations.

### **1.4 Does the school have to become a Trust School?**

No, this is a voluntary decision for the current governing body, after consulting with parents and other local stakeholders and publishing formal proposals.

### **1.5 Will it change what children and young people learn?**

The school chooses which partners can help to support its vision and priorities – it could choose a Trust with expertise in a particular area in order to give pupils more opportunities and to raise standards. In our case we anticipate that the co-operative stake-holding nature of the Trust will increase stakeholder involvement and encourage and enable parents to become more informed about their children's learning. Like all maintained schools, Trust schools will teach the National Curriculum and still be inspected by Ofsted.

### **1.6 Why does the school have to change its category to a foundation school?**

A Trust school is defined for the purpose of this document as a foundation school with a foundation acquired under the provisions of the Education and Inspections Act 2006. This means the school can strengthen its relationship with partners and their energy and expertise can support the school's leadership and direction. The governing body would retain day to day control over the school's land and assets, although formal ownership would be vested in the Trust.

### **1.7 How is it different from a maintained school?**

It isn't; Trust schools are part of the family of local authority maintained schools.

### **1.8 Isn't this the same as the old Grant Maintained (GM) schools?**

No. Trust schools remain part of the local authority family, whereas GM schools 'opted-out' and were funded directly. GM schools were allowed to select pupils by ability, whereas Trust schools will have to act in accordance with the Admissions Code and will not be able to introduce any new selection by ability.

### **1.9 How will the school be funded?**

Trust schools will be funded on the same basis as other maintained schools, according to the local authority's funding formula. They will be allocated their own capital money on the same basis as other schools.

### **1.10 How much money is the Trust going to invest?**

Working with a Trust is not about generating income for the school – there is no requirement or expectation that the Trust will contribute financially. The Trust's value is in how it strengthens the school's leadership and governance. The Trust could of course contribute financially to the school if it chose to do so.

### **1.11 Can a Trust school dispose of surplus non-playing field land?**

Yes – but if the Trust wants to dispose of land they should consult the governing body of the school. If the governing body want to dispose of land it must ask the Trust to agree – in practice as the governing body includes Trust appointed governors, this should be a fairly automatic process. The Trust must then inform the local authority of their plans to dispose of non-playing field land. Local authorities can object to proposals if they feel that they are not in the interest of the school in the long term, or would disadvantage the wider community. Local authorities will also be able to object to reinvestment proposals and to claim a share of the proceeds attributable to public investment in the land. Where local agreement cannot be reached, the matter will be referred to the Schools Adjudicator for resolution. Local authorities will not be able to force a Trust to sell any surplus land to raise money.

Trust schools will be able to benefit directly from the disposal of land, but all proceeds must be used for capital investment in educational assets in either the school itself or the maintained sector (according to the Trust's Memorandum and Articles) and the trust itself will not be able to profit from any such disposals. There is no change to the rigorous procedure for any disposal of school playing fields, which will continue to require the consent of the Secretary of State.

### **1.12 Will the Trust partners make a profit out of the school?**

No. The school budget will continue to go directly to the governing body, not to the Trust. Trusts must be constituted as not-for-profit charities – any income must be used to support their charitable aims, which must focus on the advancement of education and community cohesion. Trust-appointed governors would have a conflict of interest if the Trust (or a partner involved in the Trust) were to sell goods or services to the school. There are already rules so that these governors would withdraw from the discussion and not vote on the decision.

### **1.13 Why should the governing body be reconstituted?**

Governors look at what is best for the school: they will only decide to acquire a Trust if it (and the governors it appoints) will help the school. A Trust is a way to develop a long term and sustainable relationship with partners. The Trust will appoint governors with skills, energy and experience to strengthen the governing body now and for years to come.

Also in our case, as in most Trust schools, the Trust will only appoint a small number of governors, although it is anticipated these governors will help to further strengthen the governing body. The make-up of the governing body will still include elected parent governors, staff governors and others appointed by the local authority and co-opted from the community.

#### **1.14 Do parents have a say about Trust schools?**

Parents will be consulted about the proposed Trust and will be able to express their views. As with all maintained schools' existing arrangements, one third of the governors will be parents.

#### **1.15 What if something goes wrong?**

Acquiring a Trust is intended to be a permanent relationship, but there will be a process to remove the Trust if a school fails, or if there is real dissatisfaction at the Trust's performance. The school would become a foundation school and publicly-funded land assets held by the Trust would automatically transfer to the school's governing body. The Charity Commission will be able to intervene if there are problems with the conduct or management of a Trust.

#### **1.16 What if a school wants to remove its Trust?**

A foundation/voluntary school that had a foundation prior to the commencement of Section 18 of the Education and Inspections Act 2006 cannot remove its foundation. A school that acquired a Trust under the provisions of the Education Act 2006 must follow a statutory process, including the publication of proposals, in order to remove that Trust.

#### **1.17 Can other schools join an existing Trust (making it a shared Trust)?**

Yes, so long as they do not already have a foundation/Trust. The governing body of the school will need to follow the same statutory process and publish proposals to acquire the Trust for that school. Where a school already has a foundation, there are a number of different models of collaboration between that school and schools in a shared Trust.

#### **1.18 Can a school be removed from a shared Trust by the other schools in that Trust?**

No.

## **2. Governance**

#### **2.1 How is the governing body of a foundation school made up?**

The size of the foundation school governing body may range from a minimum of 9 to a maximum of 20. In addition, the governing body can, if it wishes, appoint a prescribed number of sponsor governors, this being a maximum of two (four in the case of secondary schools) sponsor governors.

#### **2.2 What is the legal requirement concerning the composition of the governing body?**

There are five compulsory stakeholder groups for foundation schools that must be represented on the school governing body. The make-up of the governing body will still include elected parent governors, staff governors and others appointed by the local authority and co-opted from the community.

#### **2.3 What are sponsor governors?**

Sponsor governors are persons who give substantial assistance to the school – financially or in kind- or who provide other services to the school.

#### **2.4 Does the governing body have to be reconfigured if Trust membership changes?**

When a school determines proposals in favour of acquiring a Trust, it will have to draw up a new instrument of government in accordance with the published proposals and send this to the local authority, which will formally 'make' it.

A subsequent change in the trustees should not necessarily mean a change in the number of foundation governors appointed by the Trust and so there needn't necessarily be a reconfiguration of the governing body. Governors are appointed for a term of office and will complete this term of office once appointed, unless either (a) they resign or (b) if the Trust (rather than individual trustees) votes to replace them. Therefore, a change in the trustees may ultimately lead to a change in the identity of the foundation governors, though a reconstitution of the governing body would not be necessary. A change in the **membership** of the Trust should have no immediate impact on the governing body, but might eventually lead to the appointment of new trustees.

The governing body and local authority can review the instrument of government at any time, and provided they have the agreement of the foundation governors and the Trust itself, they can make changes to the instrument of government. However, if a minority of governors are appointed by the Trust and the governing body wished to acquire an instrument of government that allowed for the Trust to appoint a majority of governors, it would have to follow the statutory process and publish proposals.

### **2.5 Can the Trust change its objectives without reference to the governing body?**

Possibly – it will depend on the Trust's Memorandum and Articles of Association. However, the objectives must by law always include "the advancement of the education of the pupils at the school or schools for which it acts as a foundation".

### **2.6 How many people can each Trustee appoint to the governing body, especially when a Trust consists of four or five partners? Can they all appoint a member to the Governing Body?**

Trustees do not each appoint governors – the Trust (as a single entity) will appoint an agreed number of governors depending on the instrument of government of the school. The voting rights of individual trustees on such matters will be determined by the Trust's Memorandum and Articles of Association.

There are restrictions on the number of each category of governors and the maximum size of the governing body.

### **2.7 Can the Trust add new partners after the governing body has approved the Trust acquisition? What safeguards are there?**

When a Trust is established the formal proposals to acquire a Trust must give details of who the members will be and how the Trustees will be appointed.

Once a Trust has been established new individuals or organisations, may apply to become partners. When agreeing the Memorandum and Articles for the Trust you are advised to take your own legal advice to ensure that the Memorandum and Articles meet your requirements and you should consider the safeguards you would like to keep. However, the model Memorandum and Articles of Association produced by the DFE include the following safeguards in relation to the addition of new partners and these are recommended as good practice.

Firstly, **new partners must be approved** by either the existing Directors of the Trust (the Trustees) or by the existing partners of the Trust as set out in the Memorandum and Articles – in either case it requires a majority to vote in favour. The trustees would have to satisfy themselves that the proposed new partner was interested in promoting the charitable objects of the Trust eg to act as a foundation and to advance the education of the pupils at any school in respect of which they act as a foundation. In discharging these objects they have to have regard to the obligation to promote community cohesion.

Secondly, **partnership in the Trust is not transferable**, so any individual or organisation wishing to become a partner of the Trust would have to be approved – it is not possible to become a partner and then pass that partnership to a different organisation or individual.

## **3. Money, Land and Assets**

### **3.1 Who owns the land assets for foundation schools?**

Foundation schools own their own land and assets. There is a transfer of ownership from the local authority to the school governing body. The Secretary of State has the power to issue a direction in the event of any dispute in respect of such a transfer.

### **3.2 Who controls the use of the premises of foundation schools?**

The governing body controls the use of the premises during and outside school hours. Exceptions to this might be if a trust deed says someone else has control of the use of the premises or a 'transfer of control agreement' has been made. Governing bodies are, however, expected to be sympathetic to the needs of the local community when deciding out of hours use. They must also follow any reasonable directions from the local authority as to the use of the premises on up to three days a week for education or welfare provision for young people.

### **3.3 What is a 'transfer of control agreement'?**

This is an agreement by which the governing body can share control of the school premises with another body or transfer control to it. One of the aims of the agreement must be to encourage local community use of the premises. The governing body is required to obtain the local authority's consent before entering into any agreement which transfers control of the premises during school hours.

Where a school has a specific foundation, the land and buildings are transferred to the trustees to hold in trust for the purpose of the school. However, the local authority still has a duty to maintain the school. As such it retains an "insurable interest" in foundation schools. The local authority has a duty to provide (and fund) new premises if, for example, a foundation school was to be destroyed or substantially damaged by a fire.

If the local authority accepts it has an insurable interest in a foundation school it can make arrangements for such cover to be funded from centrally retained expenditure or through a school's delegated budget. In the latter case, the local authority would need to satisfy itself that the insurance the school arranged satisfactorily covered the authority's risk as well as that of the governing body or foundation.

### **3.4 Does all a foundation school's land transfer to the foundation body or school governors?**

Regulations set out what land should transfer. In the case of a community school becoming a foundation school all land held and used by the local authority for the purpose of the school will transfer and be vested in the school's foundation body or, if it had no foundation body, the governing body.

In the case where the local authority holds land partly for the purposes of the school and partly for other purposes its ownership is to be determined by reference to the tests contained in Schedule 10 of the Education Reform Act 1988, as amended by regulations. The first test is to see whether it is possible practically to divide the property. If it is not possible to divide the property its ownership should be determined by having regard to which party has greater need of the security afforded by having ownership and, if neither, which party is likely to make greater use of the facility. Schedule 10 also provides for the party not granted ownership of the property to have its user rights protected.

Regulations also make provision for the local authority and the school to apply, either jointly or individually, to the Secretary of State to direct that specific land/property (and any associated rights and liabilities) be excluded from transfer.

### **3.5 What powers does a foundation school have to dispose of its land?**

Foundation schools are entitled to seek to dispose of their land, but in most cases the permission of the Secretary of State is required. It is open to the Secretary of State to decide that the local authority should have a share of the funds raised if they are not required for reinvestment in the school.

### **3.6 How are foundation schools funded?**

Foundation schools are funded through the same Local Management of Schools (LMS) formula as other schools. There are two factors within the formula which are particularly relevant. Voluntary aided and foundation schools receive additional funding through the admissions factor in the formula to recognise the additional costs to such schools of managing the admissions process including appeals. However, these schools also receive a reduced allocation through the premises factor to reflect reduced VAT on energy for schools which have charitable status.

### **3.7 Do foundation schools pay reduced rates?**

Foundation schools have charitable status and rates are reduced by 80%. LMS scheme rates are paid at actual costs, however, and so this reduction is helpful to the overall budget for school funding rather than a direct benefit to the individual school.

### **3.8 Do foundation schools have different freedoms in managing their budget than other schools?**

No. All schools have equal freedom to determine their spending priorities and secure the service they choose. All schools are subject to the provisions of the Scheme for Financial Schools which sets out the authority's requirements for financial management in schools. Under this scheme schools are, for example, required to provide budget information, provide information on a school surplus and, if necessary, to agree a budget recovery plan. Where there are grounds for serious concern, the authority may suspend delegation for any school.

### **3.9 Can a school claim a proportion of the local authority's budget if it acquires foundation category?**

No. The structure of school and local authority funding has been substantially overhauled since the days of grant maintained schools. Schools and local authority funding are separate and are calculated through different formulae. From 2006, school funding has been provided through a ring-fenced grant, the Dedicated Schools Grant. The authority's budget is aligned to its own responsibilities and its size is a matter for its Council to determine. A different set of issues arises with regard to provision for pupils made by the authority which is funded from the non-Individual Schools Budget (ISB), (non-regulated) part of the Schools Budget provided by the Dedicated Schools Grant.

It is within the remit of the local Schools Forum to provide advice to the local authority on such issues. Any decision to delegate funding and reduce central provision would apply to all schools not just a single school or group of schools.

### **3.10 Who holds the land and buildings in a Trust school?**

When a community school acquires a Trust (ie becomes a Trust school), the school's land and buildings will transfer to that Trust to be held on trust for the duration of its relationship with the school. The Trust does not have to pay for the land and assets. This means that Trust schools will be in the same situation as existing foundation schools whose foundations (or Trusts) already hold the land, and also similar to existing voluntary schools. Special arrangements can be put in place where facilities are shared with another school or provider.

### **3.11 What does 'hold on trust' mean?**

A Trust has the legal title to the land, but it holds it on trust for the purpose or benefit of the school and subject to the provisions of the Trust's governing documents. If its role ends then publicly funded land will normally revert to the governing body or the local authority.

### **3.12 Does this mean that the Trust is responsible for the day-to-day control of the school's land and its buildings?**

No. Trust school governing bodies will have day-to-day control over the school premises in the same way that all governing bodies do. Local authorities are responsible for maintaining school buildings, although this is usually delegated to governing bodies. Governing bodies will be able to manage their buildings and services themselves, or to enter into agreements with their local authorities or with commercial organisations for the facilities managements of their premises, if they wish.

### **3.13 Is it only the land that the Trust holds?**

Usually the school's fixtures and fittings will transfer to the Trust along with the land and buildings. Equipment, including such items as books and computers, is usually owned by the local authority but for all practical purposes it will be under the control of the governing body.

### **3.14 What is the purpose of the Trust holding the school's land?**

It establishes the long term relationship between the school and the Trust providing the basis for the Trust to support the school in developing provision for its pupils.

### **3.15 What responsibilities and liabilities does the Trust have in respect of land and buildings?**

The responsibility of the Trust to hold the land for the benefit of the school will be set out in its Memorandum and Articles of Association. The actions of the Trust will be determined by these and by the requirements of trust and charity law. It does not have responsibility for the upkeep of the land or the buildings on it or for contracts for goods or services which the governing body enters into.

### **3.16 How does becoming a Trust school affect capital funding?**

Trust schools will have the same flexibility as foundation schools to manage their own assets while remaining a full and equal part of the local authority planning process for capital spending. This has already worked successfully with foundation schools. Trust schools will continue to receive devolved formula capital in the same way as other schools.

### **3.17 Who is responsible if there is a problem with one of the buildings at a Trust school?**

As a general rule, governing bodies are only responsible for those things for which they have received funding delegated from the local authority – but the Trust must ensure that the governing body has taken out proper insurance. Where there is an emergency, local authority support would be available as for any other maintained school.

### **3.18 Can Trust schools borrow to invest in their schools?**

No school can borrow money without the permission of the Secretary of State.

However, the Trust could borrow commercially to fund investment in, for example, a sport facility on the premises, but they cannot use the assets of the school as collateral, nor can they commit the school or its authority towards repayment of the loan. In these circumstances, the borrowing would be entirely at the Trust's risk – and at no risk to the governing body of the school. In practice, a Trust will only be able to borrow if it has additional assets of its own and lenders are satisfied with its ability to repay. If a Trust defaults or gets into other financial difficulties, the assets or income of the school are not available to it or its lender. If a Trust cannot pay its debts then the Secretary of State can direct the Trust to pass ownership of the land to the governing body.

## **4. Staffing**

### **4.1 What does Trust category mean for staff?**

Staff will be employed by the governing body as is already the case in existing foundation or voluntary aided schools. For community schools, when the school acquires Trust category, existing staff will transfer to a new employer (from the local authority to the governing body). They transfer as per the prescribed regulations which protects their existing conditions of service. Existing and new teaching staff will continue to work under the terms of the School Teachers' Pay and Conditions Document (STPCD). The school will set out the terms and conditions for new support staff.

The Trust does not employ school staff and does not have any direct control over staffing issues in the school.

### **4.2 Who is responsible for employing staff in foundation schools?**

The governing body is the employer. As such, the governing body has the full range of employer responsibilities under employment law. The governing body will, however, usually delegate responsibility for day-to-day staffing matters to the head teacher.

### **4.3 Who appoints the head teacher at foundation schools?**

The school governing body is responsible for setting up a selection panel of at least three governors. The governing body may agree to grant 'advisory rights' to the local authority or to a representative of the local authority who would then be entitled to attend meetings of the selection panel and offer professional advice, but would not be able to vote. Where a governing body has not agreed advisory rights with the local authority the Secretary of State may determine that such rights should be granted. The governing body has to provide the local authority with details of the candidates selected for interview and must consider any views the local authority may have on the unsuitability of any particular candidates.



#### **4.4 What about the appointment of other teaching staff?**

The school governing body is again responsible for such appointments. The local authority or a representative will have the right to attend selection meetings to offer advice if it has been agreed by the governing body or determined by the Secretary of State.

#### **4.5 What liabilities may attach to the governing body in respect of employment matters?**

The governing body may, as employer, in some circumstances have to appear at an Employment Tribunal to defend themselves, if, for example, candidates for a post at the school complain that a governing body's decision or procedure discriminated against them, or if an employee complains that they had been dismissed unfairly.

In cases of dismissal, the local authority has to pay any compensation or legal costs awarded by an Employment Tribunal unless they can show that they have good reason to charge the school's delegated budget (for example, if the local authority had previously advised the governing body that an Employment Tribunal was likely to decide a dismissal was unfair).

#### **4.6 Who is responsible for the cost of premature retirements and compensation for redundancy?**

The governing body, as the employer, can grant premature retirement to the staff either for reasons of redundancy or can terminate a member of staff's employment in the interest of the efficient discharge of their employer function. The governing body also decides on the level of compensation to grant any member of staff they may make redundant.

The local authority, as the "compensating authority" has to pay "mandatory compensation" towards a teacher's annual pension and retirement lump sum if they are granted premature retirement by the governing body. However, the local authority has the power to take the costs of premature retirement from a school's delegated budget if the authority has not agreed to the premature retirement.

Similarly, the authority is empowered to take the costs of discretionary compensation for redundancy from a school's delegated budget if they have good reason to do so (an example of this might be if the local authority thought the discretionary payment in a particular case was too high in relation to its own policy).

#### **4.7 How are the pensions of teaching and non-teaching staff affected by a school acquiring Foundation Category?**

Teaching staff would stay in the Teachers' Pension Scheme and would not be subject to any change. The local authority would continue to be responsible for completing and signing off all the relevant documentation in relation to individual staff's pensions.

Support staff at foundation schools are allowed to continue to be in the Local Government Pension Scheme (LGPS) if the local authority, with the consent of the school governing body, has by a statutory resolution specified them to be eligible to belong to the scheme. Otherwise, the support staff will no longer be members of the LGPS and it will be for them and the school governing body to make alternative pension arrangements. In our case, the governing body has resolved to seek the continuity of pension arrangements for support staff through the local authority and the LGPS.

#### **4.8 What legal and personnel advice/support is available to Foundation schools from the local authority?**

Foundation schools, like all other schools maintained by the local authority, are able to purchase a range of legal and personnel services from the local authority. Foundation schools, like all other schools, are not restricted to purchasing these services from the local authority. There are a wide range of possible alternative providers. The school budget may have to stand certain costs, for example compensation or legal costs awarded by an employment tribunal, if the governing body makes an employment decision which has not been supported or advised by the local authority.

## **5. Admissions**

### **5.1 What will happen to admissions?**

The school will set its own admissions arrangements. It will operate within the same legal framework as all other maintained schools, which means it will act in accordance with the School Admission Code and will not be allowed to introduce selection by ability.

Trust schools will be required to play their full part in taking hard to place pupils, having fair admissions and working with other schools in admissions forums and co-ordinated admissions arrangements.

For foundation schools and voluntary aided schools the governing body is the admissions authority and may determine the admission arrangements for the school. This function cannot be delegated to the head teacher in terms of determining policy or deciding on the admission of particular pupils. The governing body is also responsible for managing the admissions appeal process.

### **5.2 What statutory framework governs the admissions process?**

All admission authorities must have regard to the statutory guidance within the Schools Admissions Code of Practice and the School Admission Appeal Code of Practice. The admission code of practice provides admission arrangements before determining them. The co-ordinated process ensures admission details are published according to a common timetable.

### **5.3 How are admissions difficulties resolved?**

Local authorities must establish Admissions Forums to enable all local admissions authorities to discuss existing and proposed admission arrangements and to promote agreement on any difficult admissions issues in the area. School Adjudicators, appointed by the Secretary of State, determine school organisation and admissions issues where local agreement has not been possible.

### **5.4 Can foundation schools select pupils?**

Becoming a foundation school does not introduce the right to select pupils but any existing rights would remain.

### **5.5 Can the local authority direct admissions to a foundation school?**

Under Section 96 of the School Standards and Framework Act 1998, and in accordance with the statutory code of practice on school admissions, the local authority may direct the admission of a child refused admission or permanently excluded from schools within a reasonable distance if no other local school is available. The governing body may appeal to the Secretary of State within 15 days. A foundation school may be named in a statement of SEN and the school would be legally required to admit a child under such circumstances.

### **5.6 Are there particular arrangements to allow foundation schools to expand?**

No. The arrangements for the expansion of 'popular and successful' secondary schools and the addition of sixth forms date from 2003 when the Education Act 2002 changes were implemented. Subsequent consultations have largely concerned matters of process. Community and voluntary controlled schools have the same powers as foundation and voluntary aided school governing bodies to make proposals to enlarge their school or add a sixth form.

## **6. Relationship with the Local Authority**

### **6.1 Will becoming a Trust school give us more freedom from the local authority?**

Trust schools manage their own assets, employ their own staff and set their own admissions arrangements – this is more freedom for community schools which become Trust schools.

The school will remain part of the family of local authority maintained schools:

it will still be funded by the local authority on the same basis as other schools:

- It will have to act in accordance with the Admissions Code, will be entitled to be represented on the local admissions forum and will take part in co-ordinated admissions arrangements.
- The local authority will be able to intervene in a Trust school as in any other school if it is failing or underperforming.
- The local authority will be able to publish proposals to close the school and to make certain changes to the school.

## **6.2 Can foundation schools be included in any re-organisation or amalgamation proposals developed by the local authority?**

Yes. Where proposals to change a school's category to foundation category are published and conflict with existing proposals, for example to close or amalgamate a school to take surplus places out of the education system, the Local Authority may consider an earlier proposal within the timeframe already planned. Similarly, where a school becomes a foundation school before proposals for the school are decided, the Local Authority may still make decision on the other proposals although the school has meanwhile obtained a different category.

## **6.3 Does the local authority have any powers of intervention in foundation schools?**

The code of practice on LA – school relations (issued in 2001) does not distinguish foundation schools from any other local authority maintained schools in terms of the authority's powers of intervention in certain circumstances. Statutory guidance from the DFE makes it clear that all schools causing concern should receive support from their local authority. Both local authorities and the Secretary of State have powers of intervention to tackle problems of schools requiring special measures or which have serious weaknesses.

Local authorities also have powers to intervene in schools which have been the subject of a formal warning and where the governing body has not complied with that formal warning. The local authority is able in such circumstances to appoint extra governors and/or suspend the school's governing body. They may also seek approval from the Secretary of State to replace the governing body by an interim executive board where the use of other intervention powers has failed or would in their view be likely to fail.

## **7. Extended Services**

### **7.1 What powers does the governing body of a foundation school have in relation to extended services?**

The governing body has the power to provide, or enter into contracts to provide, any facilities or services that will further any 'charitable purpose' for the benefit of pupils at their school, families of pupils and people who live and work in the local community. 'Charitable purpose' in this context means services and activities such as childcare, adult and family learning, parenting support, co-ordinated health and social services etc. The governing body can provide such services directly or indirectly (through third parties) enter into agreements, incur expenditure and charge for services or facilities subject to certain limitations. Any profits that a school may make from providing such services must be reinvested in the service or in the school.

### **7.2 What limitations are there on such activities?**

A governing body cannot engage in any activity that might interfere with its legal duty to conduct the school with a view to promoting high standards of educational achievements at the school. The governing body's powers in this respect are also limited by any restrictions contained in the school's instrument of government or in its trust deed (if it has one) and to any directions issued by the local authority regarding the control of school premises.

The governing body must consult the local authority, amongst others, before providing community services and facilities and must have regard to any advice given to them by the local authority.

## **8. Wider Partnerships**

### **8.1 How do Trusts fit with specialist status?**

A specialist school can become a Trust school. Some schools will work with the same partners to form a Trust – many already have sponsor-appointed governors and so this is a natural next step. A shared Trust could underpin work with local secondary and primary schools to spread the subject specialist expertise. A specialist school could equally choose to work with different partners and draw on a different set of ideas and experience.

## **8.2 How do Trusts fit with federation?**

Schools can federate without a Trust and equally a Trust can support several schools with no federation. However, federations may find it helpful to have a Trust which can reinforce the long-term agreement between schools.

## **8.3 Can Trust schools work with schools that aren't part of the Trust?**

Trust schools can continue to work with other schools in the same way as they did before acquiring a Trust, but if several local schools were to acquire a shared Trust it could strengthen their existing relationship by making it more sustainable.

# **9. Health & Safety**

## **9.1 Who is responsible, under the relevant legislation, for Health & Safety issues at a foundation school?**

Statutory health and safety responsibilities fall to the governing body (as the employer) and on the head teacher and staff (as employees).

Under the Health & Safety at Work Act and related regulations, the governing body has a range of legal responsibilities, as employer, including devising and implementing a health and safety policy for the school, allocating adequate resources, carrying out accident reporting and investigation, ensuring access to a 'competent person' to assist with the management of health and safety, implementing various monitoring procedures and keeping up-to-date with changes in the health and safety legislation.

# **10. Liabilities**

## **10.1 Does foundation category confer any additional liabilities on the school governing body?**

The governing body has additional liabilities related to its responsibilities as the employer of staff, the owner of the school land and buildings and as its own admissions authority. The governing body will need, therefore, to take out adequate insurance to cover its potential liability for negligence in carrying out these responsibilities. This can be either arranged by the governing body or through the local authority. If a governing body makes its own arrangements, rather than buying into a policy arranged by the local authority, the local authority is entitled to check that the arrangements are adequate and, if they are satisfied that they are not, can charge the cost of additional insurance to the school's delegated budget.

## **10.2 Are individual governors personally liable for the governing body's decisions and actions?**

Because it is a corporate body, individual governors are generally protected from personal liability in such circumstances. Provided they act honestly, reasonably and in good faith any liability will normally fall on the governing body as a whole rather than on individual members.

# **11. Children with Special Educational Needs**

## **11.1 What responsibilities for children with special educational needs relate to foundation schools?**

All schools, including foundation schools, must take account of the statutory code of practice on special educational needs.

The governing body must admit any pupil with special educational needs whose statement issued by the local authority names their school. Before naming a school in a statement, the local authority must consult the school governing body.

The governing body is responsible, with the head teacher, for deciding the school's general policy and approach to meeting children's special educational needs, for those with statements and those without. The governing body has a legal duty to make every effort to ensure that the necessary special arrangements are made for any pupil who has special educational needs.

Governing bodies do not have a right of appeal to the SEN and Disability Tribunal over issues concerning the statutory assessment and statementing procedures for children with special educational needs.

### **11.2 How does the Disability and Discrimination Act affect foundation schools?**

In the same way as any other maintained school. The Special Educational Needs and Disability Act 2001 amended the Disability and Discrimination Act 1995 to include education in school. There is now a duty on all schools, including foundation schools, not to discriminate against disabled pupils or prospective pupils on the grounds of disability. Schools, and the local authority, are also under a statutory duty to plan to increase access to education for disabled pupils over time.

## **12. School Attendance**

### **12.1 Who is responsible for enforcing the attendance of pupils of compulsory school age who attend foundation schools?**

The local authority has the legal duty to enforce school attendance. The school governing body, for its part, has a legal duty to assist the local authority in this respect by keeping an admissions and attendance register in the format required by statutory regulations and for telling the local authority about any pupils who do not attend regularly or who are absent for long periods.

## **13. Exclusions**

### **13.1 Who is responsible for exercising the power to exclude a pupil from school at a foundation school?**

Like all other maintained schools, only the head teacher (or acting head teacher) has the power to exclude a pupil, for a fixed period or permanently.

### **13.2 What is the governing body's role in exclusions?**

The governors' role is to review the head teacher's exclusion decision in the case of permanent exclusion and some fixed period exclusions and can reinstate the pupil if appropriate. In reaching a decision whether or not to direct reinstatement the governing body (or its discipline committee) is required to have regard to any guidance given by the Secretary of State. They must also have regard to any representations made by the parent and the local authority.

### **13.3 Who deals with appeals against any decision of the governing body of a foundation school to uphold a permanent exclusion?**

Such appeals are heard by an appeal panel established by the local authority. Its decisions are binding on all parties to the appeal. If the governing body considers the panel's decision to be perverse it may seek a judicial review. The Secretary of State has no power to quash or amend the decision of a properly constituted appeal panel.

## **14. What if Something Goes Wrong?**

This section summarises the accountability and intervention regime which covers all local authority maintained schools and explains what would happen if there were problems with the Trust.

Although there is a clear relationship between schools and the Trusts, there is also a clear distinction of responsibilities: the governing body remains responsible for the school and the Trust's role is to appoint good governors.

### **14.1 Problems in the school**

**14.1.1 School Standards:** Like all maintained schools, Trust schools will be subject to Ofsted inspection arrangements. The local authority's and Secretary of State's intervention powers if the school is failing or underperforming, apply to all maintained schools (including Trust schools).

Ofsted will, in future, ask Trust schools to describe their distinctive aims and features and Inspectors will assess the impact of Trust-appointed governors on the school's work.

**14.1.2 Keeping the children safe:** The governing body is responsible for establishing safeguarding procedures and for health and safety within the school and on school trips. The governing body must

ensure that safeguarding and health and safety requirements will be met if external partners come into school. (All Trustees will need to have a CRB check. Schools might require Trust members to undergo a CRB check, depending on the Trust's activities within the school and the school's safeguarding arrangements.)

**14.1.3 Finance:** The school will continue to be funded by the local authority through the governing body. Trust schools will follow the financial reporting procedures laid down by their authority, which will be able to suspend the right to a delegated budget if there are serious problems.

**14.1.4 Employment:** As the employer, the governing body (not the Trust) is responsible for all staffing issues. Teachers will continue to be covered by the School Teachers' Pay and Conditions Document (STPCD) and the pay and conditions (including union recognition) of all staff will be treated in the same way as those protections set out in the Transfer of Undertakings Protecting Employees (TUPE) regulations.

## **14.2 Problems in the Trust**

There are a number of safeguards to prevent and address problems in the Trust's management and conduct. Trusts will be charitable companies. As charities, Trusts are not allowed to make a profit and the Charity Commission has a range of statutory powers.

For example, it can act on complaints if there is evidence of:

- Fraud or criminality.
- Maladministration putting significant assets or funds at risk.
- The charity's assets being applied in significant breach of the terms of the governing document.
- Trustees acting in significant breach of the provisions of the charity's governing document or of charity or trust law.
- Risk of the charity being brought into serious disrepute, for example, through association with public disorder or links to terrorist organisations.
- The administration of the charity having broken down to such an extent that it is not working effectively.
- The trustees seriously misleading the public, or the Commission, or others with an interest in the charity (eg funders, beneficiaries or employees) about matters of material importance.
- Adequate accounts not being kept.
- Trustees receiving unauthorised benefits from the charity.
- Fund-raising or administration costs that are excessive.
- The charity undertaking improper political activities.

The Secretary of State also has the power to remove a trustee if he is satisfied that the trustee has either:

- Acted in a way that is incompatible with the aims and objectives of the Trust; or
- Is liable to harm the reputation of any schools that the Trust supports.

Most issues will be best resolved within the Trust or by the schools and Trust and so we expect this power to be used only in extreme situations.

The school is not responsible for any liabilities incurred by the Trust. Members' liabilities are limited to the amount set out in the Trust document (normally £1) and as long as trustees act "prudently, lawfully and in accordance with their governing document" then they are unlikely to be held personally liable.

## **14.3 Removing the Trust**

Becoming a Trust school is meant to establish a permanent relationship. Sometimes, however, things change and so there are provisions for ending a Trust's role which could be invoked (for example) if:

- The school is judged by Ofsted to be failing or is given notice to improve.
- There is real dissatisfaction with the Trust's performance.
- The Trust partners are no longer able/willing to support the school for any reason.

**14.3.1 Removing the Trust of a failing school:** the Trust relationship is automatically ended when a failing school closes.<sup>1</sup> Local authorities have a range of intervention powers in failing schools: if an

interim Executive Board is put in place then the Trust's role (other than holding land) would be temporarily put on hold. If the local authority appoints additional governors then Trust-appointed governors would be a smaller proportion of the governing body – this could mean that the Trust loses its majority. In either case, the Trust would resume its original role once the intervention powers end.

**14.3.2 Removing a Trust because of dissatisfaction** (or changing from a majority to a minority of Trust governors) will broadly follow the same process as acquiring a Trust: initial decision, consultation, publish proposals, representation, final decision. A majority of the governing body will be able to publish proposals at any time to remove the school's Trust or to move from a Trust appointing a majority of the governors to a Trust appointing a minority.

Where the Trust appoints the majority of the governing body, one-third of the governors will be able to trigger the publication of proposals, but only after the Trust has been in place for 7 years or no less than 7 years after any previous proposals to remove the Trust, it will be removed or it will change to appoint a minority of the governors in the future.

If the Trust is removed pursuant to the process outlined above, the school will become a foundation school without a foundation. Publicly funded land will transfer to the school's governing body when the trust is removed. Land which was originally provided by the Trust may also transfer to the governing body in accordance with any transfer agreement entered into between the governing body and the Trust.

All questions relating to the transfer of the land, including the terms of any transfer agreement (and considered to be paid to the Trust) and any compensation payable (if the Trust has invested in the school's land/buildings, for example) will have to be resolved by the governing body and the Trust (and the local authority, where appropriate) before a decision to remove the Trust is taken. If they cannot reach agreement, the Schools Adjudicator will determine questions around the transfer of the land and compensation before the decision is taken. Further details about the process are set out in regulations and guidance.

**14.3.3 If a Trust ends the relationship for any reason** then publicly funded land will revert to the governing body and the school will continue as a foundation school without a foundation. If the Trust originally provided the school's land, it must give 2 year's notice<sup>2</sup>, so that another site can be found, if necessary.

<sup>1</sup> The relationship also ends if the school closes for any other reason.

<sup>2</sup> If the Trust originally provided the land but becomes insolvent, the land is protected for 2 years for the same reason.

## 15 For More Information

### 15.1 Co-operative Schools.

For more information on Co-operative Schools visit:

<http://www.co-op.ac.uk/schools-and-young-people/co-operative-schools/>

and

<http://www.school.coop/>

Also see the DFE booklet *Co-operative Values Make a Difference – In the Curriculum and Governance of Schools*

[http://www.co-op.ac.uk/wp-content/uploads/2010/06/4050\\_Co\\_op\\_leaflet\\_WEB.pdf](http://www.co-op.ac.uk/wp-content/uploads/2010/06/4050_Co_op_leaflet_WEB.pdf)

### 15.2 For more information on the Co-operative College visit

[www.co-op.ac.uk](http://www.co-op.ac.uk)

### 15.3 The process for changing category

- The DFE School Organisation website: [www.dcsf.gov.uk/schoolorg](http://www.dcsf.gov.uk/schoolorg)
- FASNA (Foundation and Aided Schools National Association) has expertise on the issues around Foundation category: [www.fasna.org.uk](http://www.fasna.org.uk)
- DTI advice on TUPE provisions: [www.dti.gov.uk/files/file20761.pdf](http://www.dti.gov.uk/files/file20761.pdf)
- Schools Adjudicator: [www.schoolsadjudicator.gov.uk](http://www.schoolsadjudicator.gov.uk)

### 15.4 School Governance

The national organisation for school governors is the National Governors' Association.

<http://www.nga.org.uk/>

### 15.5 Setting up a Trust

- National Council for Voluntary Organisations: [www.ncvo-vol.org.uk](http://www.ncvo-vol.org.uk)
- Charity Commission: [www.charity-commission.gov.uk](http://www.charity-commission.gov.uk)
- Companies House: [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)

### 15.6 Legal and accounting support for Trusts

Trusts are eligible to use the cross-government framework contract: [www.ogcbuyingsolutions.gov.uk](http://www.ogcbuyingsolutions.gov.uk) and follow the links to 'consultancy services'.

### 15.7 Equality duties for Trusts

Commission for Racial Equality: [www.cre.gov.uk](http://www.cre.gov.uk)

Disability Rights Commission: [www.drc-gb.org](http://www.drc-gb.org)