

Guidance on Change of School Category Proposals

Contact points:

change.category@dfes.gsi.gov.uk or

Mainstream Schools –

School Organisation Unit
Department for Education and Skills
Vincent House
2 Woodland Road
Darlington
DL3 7PJ

Holly Turner (01325 391276) or

Joanne Hudson (01325 391278)

Fax: (01325 391210)

Special Schools –

SEN Schools Team
Department for Education and Skills
Mowden Hall
Staindrop Road
Darlington
DL3 9BG.

Richard McElheran (01325 391203)

Copies are also available at

<http://www.dfes.gov.uk/changeat/>

Change of School Category Proposals

Introduction

1. This guidance applies to proposals to change the category of mainstream and special schools and should be read in conjunction with the “Guidance on Statutory Proposals”^a, the Education (Change of Category of Maintained Schools) (England) Regulations 2000^b and where appropriate the Education (Foundation Body) England Regulations^c. It gives details of the procedures for publishing, deciding and implementing proposals to change school category. In all cases, paragraph numbering and pagination corresponds with that of the larger “Guidance on Statutory Proposals”. This guidance is divided into 4 sections with one annex:

- a. Section A - statutory guidance to which those concerned are required by legislation to have regard. Section A, in this document, constitutes only that part of the statutory guidance which refers specifically to change of category proposals. There is a fully revised section A(1) for insertion into the “Guidance on Statutory Proposals” which incorporates this;
- b. Section A(2)- also statutory guidance to which those concerned are required by legislation to have regard. Section A(2) should be inserted at the end of the current section A(2) of the “Guidance on Statutory Proposals”;
- c. Section H - non-statutory guidance, which is provided to inform people about the legislative requirements and to assist them in carrying out their roles as effectively as possible. This should be inserted after section G;
- d. Section H(2) - changes to the “Guidance on Statutory Proposals” effected by the coming into force of the Education (Change of Category of Maintained Schools) (England) Regulations 2000. This should be inserted after section H;
- e. Annex 17- draft notice, prescribed information proforma and decision letter. This should be inserted after annex 16.

2. Under the provisions of the Change of Category Regulations it is possible for schools to change from their current new framework category to another. Proposals may be published by the governing body of any school and also, in the case of proposals to change the category of a community school to foundation or a community special school to foundation special, by the governing body or the LEA. It is not possible for a school to acquire or remove its religious character under these Regulations (to do so the school would need to close and a replacement school be opened).

^a Which can be read at, or downloaded from: <http://www.dfes.gov.uk/changes/index.htm>

^b Which can be read at, or downloaded from: <http://www.hmso.gov.uk/si/si2000/20002195.htm>

^c Which can be read at, or downloaded from: <http://www.hmso.gov.uk/si/si1999/20002872.htm>

SECTION A - STATUTORY GUIDANCE: CHANGE OF CATEGORY

Change of school category

29. All categories of school - community, foundation, voluntary aided or voluntary controlled - are of equal value. All proposals to change the category of a school should therefore be considered on their individual merits. There should be no presumption for or against any particular category. Detailed guidance on particular factors to be taken into account in considering proposals for change of school category is given in section A(2). In deciding such proposals local authorities, school organisation committees, and the Adjudicator should have particular regard to the restrictions on changing category in regulations 5-7 of the Education (Change of Category of Maintained Schools) (England) Regulations 2000.

Conditional approvals

30. Some proposals to become a foundation school may involve becoming a member of a group foundation. As noted in the more detailed guidance in Section A(2), such proposals may only be approved conditional upon the Secretary of State approving the establishment of the new foundation body, or agreeing to the school joining an existing group foundation by a specified date. All such change of category proposals must be decided by the School Organisation Committee (or Adjudicator) and may not be determined by the LEA. Where it is necessary for a trust to be established or for an existing trust deed to be varied for the school to change category, any approval must again be conditional upon this occurring by a specified date.

Consultation

31. Before publishing, those bringing forward proposals must consult interested parties. In doing so they must have regard to the Secretary of State's guidance as set out in Circular 9/99. Where the change of category will lead to a change in admission arrangements those bringing forward proposals should also take special care to ensure that all interested parties are consulted on the proposed arrangements at an early stage. These parties should include schools and parents of children already at, or likely to attend the school.

Implementation

32. Where as a result of a voluntary aided (VA) school changing category the Local Education Authority becomes responsible for the implementation of previously approved statutory proposals in respect of the VA school which have not yet been fully implemented, the Department would continue its support of any agreed capital costs for those proposals, and would be prepared to consider applications from an LEA to meet its share of any capital costs which previously fell to the governing body. LEAs would also be able to publish statutory proposals to be relieved of the duty to implement approved proposals in respect of the school in its previous category. Any such proposals would be decided by the School Organisation Committee or Adjudicator under the provisions of paragraph 5 of Schedule 6 to the School Standards and Framework Act.

SECTION A(2) - FACTORS TO BE CONSIDERED IN DECIDING PROPOSALS FOR CHANGES IN CATEGORY

Proposals should be considered on their individual merits and the factors below should not be taken to be exclusive. Please note that in considering proposals for changes of school category, school organisation committees should not modify proposed admission arrangements. These fall to be dealt with under the admissions provisions of the School Standards and Framework Act 1998.

Standards of provision

- the effect the proposals will have on standards of educational provision in the area.

Need for type of places

- the extent of parental or other demand for the type of school in question.

Finance

- whether, if the proposal is for a change in category to voluntary aided, the promoters have provided evidence that the governing body would be able to meet their financial responsibilities for repairs and capital work for at least a period of five years.

Views of interested parties

- where proposals are published by the LEA, the views of the governing body;
- the views of parents and other local residents;
- the concerns of any Local Education Authority affected by the proposals, for instance those Local Education Authorities which maintain statements of special educational need for pupils at the school;
- for proposals involving changes in category of schools with a religious character, the views of the relevant diocesan authority or appropriate faith group;
- the views of other schools and colleges in the area;
- the level of objections.

Other issues

- whether the statutory consultation and publication procedures have been properly carried out;
- for proposals involving schools with a religious character, the effects of any changes to the RE syllabus as a result of the school changing category;

- for proposals to change to VA or foundation, where in exceptional circumstances a trust is not to hold the freehold of the site, whether the land tenure arrangements are satisfactory;
- whether a trust deed is required or whether an existing trust deed requires variation by the Charity Commission (if so approval should be conditional upon this occurring by a certain date);
- whether the proposal is to change the category of the school and to join an existing group foundation body or to change the category of the school and jointly establish a new group foundation body (if so approval should be conditional upon the Secretary of State approving the joining or establishment of the foundation body by a certain date);
- when the proposals involve a transfer of land, and in particular the transfer by means of a “transfer agreement” of non-publicly funded land held by a school’s governing body, the trustees or a foundation body, that the parties agree the terms of the “transfer agreement”;
- whether the school is in special measures, has serious weaknesses or is subject to a warning notice by the LEA under section 15 of the School Standards and Framework Act (the Act);
- whether the LEA has given notice of its intention to suspend, or has suspended the school’s delegated budget (of potential relevance to all proposals, but of particular relevance where a school is becoming VA);
- the outcome of any OFSTED inspection under section 10 of the School Inspections Act 1996;
- if the change of category involves a school with a religious character, the outcome of any inspection under section 23 of the School Inspection Act 1996.

SECTION H

CHANGES IN THE CATEGORY OF SCHOOLS

	Page	Paragraph
Introduction	141	1
Procedures	141-2	2-5
Decision-making	142	6-7
Establishment of foundation bodies	142-3	8-10
Joining existing foundation bodies	143	11-13
Admissions -transitional measures	143-4	14
Ability of governing body to meet financial responsibilities	144	15-16
Reconstitution of governing body	144-5	17-22
Transfer of staff	146	23-25
Variation of trust deeds	146	26
Land transfer	147	27-28
Rights to use land	147	29
Restrictions on disposal of property	147	30
Land excluded from transfer	148	32
Section H(2): Differences from general guidance	149-151	1-9

SECTION H - NON-STATUTORY GUIDANCE: CHANGE OF CATEGORY

Introduction

1. The Education (Change of Category of Maintained Schools) (England) Regulations 2000 (“the Regulations”) provide for schools to change from their current new framework category to another. This change will be effected (following consultation) through the publication of statutory proposals and decisions upon them by school organisation committees.

Publication

2. Circular 9/99^d and sections C1 and C2^e to the “Guidance on Statutory Proposals”. explains how proposals should be published. A model proposal is annexed to this guidance. A copy of the proposal should be sent to the School Organisation Committee for the area, together with the information required by Schedule 1 to the Regulations. If the school is maintained by one authority but located in another, proposals should be copied to both school organisation committees. The Prescribed Information proforma for change of category, also annexed to this guidance, may be used for the purpose of providing this information. The section requiring information on other schools in the area should be completed with the assistance of the LEA.

Objections

3. Objections should be submitted and handled in precisely the same way as they are for all other proposals.

Consideration by School Organisation Committee/Schools Adjudicator

4. After the statutory objection period and following receipt of comments on objections, if any, the School Organisation Committee will consider the proposals. Key factors to be taken into account by the Committee in reaching their decision are set out in Section A(2) to this guidance.

Foundation Bodies

5. It is possible for schools which do not currently have a foundation to change category to become a voluntary or foundation school and simultaneously join an

^d Which can be downloaded from: http://www.dfes.gov.uk/circulars/9_99/

^e See also section H(2) paragraph 9

existing group foundation body or to propose the establishment of a new group foundation body. Only the Secretary of State may approve the

establishment of a foundation body or allow a school to join an existing foundation body. Only voluntary or foundation schools can be part of a group foundation.

Decision-making

6. Decisions on change of category are taken in the same way as for other statutory proposals. However, see paragraph 30 of section A on the type of conditional approvals possible. School organisation committees should also note that it is not possible for them to modify admission arrangements (see section A(2)).

7. When it is proposed that schools change category and join or (with other schools) establish a group foundation body it is recommended that the information at paragraphs 8 and 11 is submitted to the Secretary of State when proposals are passed to the School Organisation Committee for consideration. In reaching a decision upon proposals which also involve establishing or joining a group foundation, school organisation committees and the Schools Adjudicator should ensure that any conditional approval allows sufficient time for the Secretary of State to consider the application to establish or join a foundation body. It is recommended that a period of at least one month is allowed between notifying the Secretary of State of the decision on the proposals and the date that it is intended that the school shall join the foundation group, or that the body be established. However, in such cases applications to establish or join a foundation body should be submitted to the Secretary of State at the same time as the change of category proposals are published.

Establishment of foundation bodies

8. The governing bodies of a group of schools may bring forward proposals to change the category of those schools and simultaneously establish a foundation body (in the case of proposals published by the LEA to change the category of a community school to foundation the application to establish the foundation body must be made by the governing body in partnership with other governing bodies). A foundation body may only be established by three or more schools acting jointly.

9. Any application to the Secretary of State must contain -
- a. a statement that the application has been agreed by the governing body of each school;
 - b. a draft instrument of government for the foundation body based on

the model set out in Schedule 1 to the Foundation Body Regulations 1999;

- c. a statement containing the names of the initial governor members of the foundation body; the proposed date on which the foundation body comes into being; the category in which it is proposed that each school will enter the group (or a statement that a particular school will enter in its existing category), and an undertaking that the foundation body will appoint foundation governors to schools in the group in accordance with the individual schools' instruments of government.

10. If the Secretary of State approves the application, a foundation body will then be established on a date specified by him in writing.

Joining existing foundation bodies

11. In the case of schools wishing to join an existing foundation body, they may only do so with the agreement of the governing bodies of all the schools which are already members of the group. Consequently any application to the Secretary of State must be made jointly by the governing body of the school seeking to join the group and the foundation body.

12. The application should contain:

- a. a statement that the governing bodies of all the schools in the group agree to the school joining the group; and
- b. the category in which it is proposed that the school will enter the group. The Secretary of State shall, if he considers it appropriate, declare that the school shall form part of the group from the date specified in the proposals.

13. When they submit the application to join the group, the foundation body must simultaneously seek the Secretary of State's approval of a modification of the foundation's instrument of government to include, at the least, the name of the school joining the group, the foundation governor appointed by the joining school, and the addition of a further community member.

Admissions - transitional measures

14. When a school changes category, and the admission authority changes too, anything done by the former authority under chapter 1 of part III of the School Standards and Framework Act 1998 ("the Act") in its role as admission authority

will, from the implementation date, have effect as if done by the new admission authority. The effect of this is that if, for instance, a community school became a foundation school the governing body would be required to honour any decisions taken by the LEA in respect of admissions to the school (both in respect of policy and offers of places) for the existing admissions round.

Ability of a governing body to meet its financial responsibilities

15. The governing bodies of VA schools have certain financial responsibilities which set them apart from the governors of other categories of school. Governing bodies' financial responsibilities are described under Schedule 3 to the Act. In its simplest form, these responsibilities consist in governors' responsibility for repairs and alterations to school buildings. Whilst the Secretary of State has the power to provide grant aid for up to 85% of these costs, the governors must provide the remaining 15% themselves. In bringing forward proposals, the governing body should be able to demonstrate to the School Organisation Committee that it has access to sufficient funds to enable it to meet 15% of its overall liabilities for at least 5 years from the date of implementation. In doing so the governing body may consider it appropriate to submit a schedule with the proposals outlining an estimate of the costs of capital work for the forthcoming five years and a statement as to how it will meet its liabilities for such costs.

16. Where VA schools find they cannot, or are unwilling to, meet their liabilities under Schedule 3 to the Act the governing body shall publish proposals, under paragraph 3 of Schedule 8 to the Act to become a voluntary controlled or a foundation school. The governing body is required to submit the prescribed information to the School Organisation Committee as with other change of category proposals and these will be considered by the School Organisation Committee in the normal way.

Reconstitution of the governing body

17. In changing category the governing body must be reconstituted in a form appropriate to the school's new category and also in accordance with the appropriate instrument of government, Schedules 9 and 12 to the School Standards and Framework Act 1998 and regulations 5-12 of the Main School Government Regulations 1999.

18. A period called the "implementation period" begins when a decision on the proposal is taken by the School Organisation Committee or, if appropriate, the LEA, and ends on the date the proposals are implemented. During this period the LEA and governing body are required to make a new instrument of government for the school in accordance with Schedule 12 to the Act. Modified draft

instruments of government are at Schedule 4 to the Regulations. Local authorities will also have copies of draft instruments.

19. As soon as reasonably practicable after the beginning of the implementation period, and in any case within a period of 3 months after the implementation date, the governing body and LEA are required to reconstitute the governing body. Until the governing body is reconstituted the current governing body continues to exercise its functions in respect of the school.

20. In reconstituting the governing body, if a school has surplus governors in one or more of the categories appropriate to the school's new category, unless those surplus governors voluntarily agree to cease to hold office, they shall be removed as follows:

- a. seniority - the governor with the shortest period of service being the first to cease to hold office, the governor with the next shortest period of service being the next to cease to hold office, and so on;
- b. drawing of lots - where governors are of equal seniority, determination of who shall cease to hold office shall be done by drawing lots.

21. Where it is proposed that a school should change category and join an existing group foundation body, the governing body must also request the local education authority, when making the school's instrument of government, to name the foundation body as the appointing body for foundation governors. The local education authority should make the instrument so that the appointment of foundation governors can take effect from the date that the school joins the group. This would be the implementation date of the proposals. In such cases the instrument must be made during the implementation period^f.

22. Where it is proposed that a school should change category and, along with at least two other schools, establish a new group foundation body the governing body must also request the local education authority, when making the school's instrument of government, to name the foundation body as the appointing body for foundation governors. The local education authority should make the instrument so that the appointment of foundation governors can take effect from the date that the group is established. This could be any period up to 3 months after the implementation date. However the making of the instrument and the establishment of the foundation body must be on the same day, and in accordance

^f The implementation period begins when the proposal is approved or when the local education authority determine to implement proposals they have published. The implementation period ends on the implementation date (Regulation 11(2))

with the date specified by the Secretary of State for the establishment of the foundation body.

Transfer of Staff

23. Change of school category, in certain instances, will involve a change of employer for the school's staff. This is the case when a community or voluntary controlled school becomes a foundation or voluntary aided school, when a community special school becomes a foundation special school, when a foundation or voluntary aided school becomes a community or voluntary controlled school or where a foundation special school becomes a community special school. In all the above cases Schedule 3 to the Regulations provides for all rights, powers, duties and liabilities to transfer from the Local Education Authority to the governing body or vice versa, as appropriate. Another consequence of changing category is that anything done by the LEA in respect of the employee is considered, from the implementation date, to have been done by the governing body, and vice versa.

24. The effect of this schedule is to protect an individual's employment rights on transfer. Any agreements entered into by the Local Education Authority or governing body before this date, in respect of an individual's terms and contract of employment must therefore be honoured by the new authority. Equally, if any action is being taken by an employee against the former employer in respect of a liability, duty etc. of that employer before a school changes category, the liability transfers to the new employer.

25. In addition to the above, Schedule 3, in the case of voluntary controlled and foundation schools with a religious character which change category to become voluntary aided with a religious character, ensures that any rights enjoyed by a teacher under section 60(2) of the Act will continue - i.e. a teacher cannot be disqualified because of his or her religious beliefs.

Variation of trust deeds

26. The trust deed of a voluntary or foundation school often makes very specific provisions regarding the conduct of the school and the use of any fund held by the trust for the use of the school and premises. In bringing forward proposals, promoters will need to consider whether the school's current trust deed allows for the change in category proposed. If in doubt, or if a variation in the trust is clearly necessary, promoters are advised to make early contact with the Charity Commission to apply for the trust to be varied under the relevant trust law. The School Organisation Committee cannot unconditionally approve change of category proposals where a variation in trust deed is necessary but has not yet

taken place.

Land Transfer

27. Schedule 6 to the Regulations and Section 198 and Schedule 10 to the Education Reform Act 1998 have effect in relation to the transfer of land. Any land transfers will follow the existing patterns of ownership for maintained schools so far as possible and will take place on the implementation date.

28. Where a community or a voluntary school becomes a foundation school any land held by a local authority for the school transfers automatically to the school's trustees or, if it has no trustees, to the governing body. Where a community school becomes a voluntary school any land other than playing fields held by a local authority transfers automatically to the school's trustees. Where a foundation school or a voluntary school becomes a community school any publicly funded land transfers automatically to the local education authority. Publicly funded land is defined in Schedule 6 to the Regulations and includes, in particular, land provided by the LEA, FAS or by means of a capital grant. Any other land held by the trustees or the governing body must be transferred to the local education authority by means of a transfer agreement to be drawn up by the parties. Such a transfer agreement may be subject to an agreed payment by the local education authority. If the parties are unable to reach agreement in relation to a transfer, the Secretary of State may give a direction. For advice, contact the Schools Assets Team on 01325 391168.

Rights to use land

29. Where land held by another body was used by a school prior to its change of category (for instance a private playing field, church hall or swimming pool) the rights and liabilities connected with the use of that facility enjoyed by the school prior to the change of category will continue to apply. Therefore, where a community school has by agreement been allowed to use a playing field owned by a sports club prior to changing category to foundation, the school cannot be disqualified from using the facility merely because of the change in category.

Restrictions on disposing of property

30. Once a governing body has given notice to the local education authority that a motion to consult on change of category proposals is to be discussed by the governing body, an embargo is placed on a local authority, in whom property which is used for the purposes of the school is vested, disposing of that property or ceasing to hold or use it for the school. This embargo lasts until the proposals are decided or withdrawn.

Land excluded from transfer

31. Land may be excluded from transfer by agreement between the parties with the prior written approval of the Secretary of State, or by order of the Secretary of State on application from either party.

Land Transfer when schools join or form a foundation group

32. The Education (Foundation Body) (England) Regulations 2000 provide for the transfer of land and user rights in the case of a school which changes category and forms or joins a group foundation. These regulations follow the pattern of Schedule 6 to the Change of Category Regulations, and land (other than playing fields where community schools change category to become voluntary) will transfer to and vest in the foundation body. For more information, contact the School Framework Liaison Team on 020 7925 5804.

SECTION H(2): CHANGE OF CATEGORY PROPOSALS: DIFFERENCES FROM THE GENERAL GUIDANCE ON STATUTORY PROPOSALS

1. In general the “Guidance on Statutory Proposals” applies to change of category proposals as it does to other proposals. However, there are some differences; for example, proposals to change the category of a community school may be published by either the Local Education Authority or the governing body. All other change of category proposals can be published only by the governing body of the school. Other differences are described below. Unless otherwise specified, these changes apply to proposals for both mainstream and special schools. Underlined references are to the relevant sections and pages of the “Guidance on Statutory Proposals”.

Content of statutory notices

Section C1 page 52 paragraph 16 and C2 page 62 paragraph 7-

2. All proposals must contain the name of the body publishing the proposals, a statement regarding the process for making objections and the name and address of the body to whom objections should be sent⁹. However, unlike other proposals those to change category should give a *precise* date for implementation.

Sections C1 pages 52- 53 paragraph 17 and C2 page 62-63 paragraph 8

3. In addition, the Change of Category Regulations specify that the following information must be included in all notices:

- a statement that it is proposed to change the category of the school, stating the current category and the proposed new category of the school;
- the rationale for bringing the proposal forward;
- the identity of the admission authority for the school after the change has taken place, including a statement as to whether this involves a change in admission authority (not applicable in the case of special schools);
- whichever one of the following is appropriate:
 - a statement that the school will have or continue to have a foundation established otherwise than under the 1998 Act (in the case of schools which are currently, or which are changing category to become voluntary, foundation, or a foundation special

⁹ In the case of proposals published by the LEA, objections should be submitted to the LEA, and in the case of proposals published by governing bodies, objections should be submitted to the School Organisation Committee.

school) and the identity of that foundation; or

- a statement that the school will belong, or continue to belong to a group of schools for which a foundation body acts (in the case of a voluntary or foundation school) and the identity of that body, and the identity of the other schools in the group.
- if the school is in special measures, has serious weaknesses or is subject to a warning notice by the LEA, a statement that section 15 of the 1998 Act applies to the school, and why; and
- if the school has received notice from the LEA of its intention to suspend the school's delegated budget or if the school's delegated budget has been suspended by virtue of schedule 15 to the Act, a statement to that effect.

Decisions on proposals

Section D pages 79-80 paragraphs 7-8

4. As with proposals which are published by governing bodies and promoters, the Committee should make a decision within two months of the end of the objection period or, if later, two months from the date the Committee receive the prescribed information which has to be submitted with the proposals.

5. The School Organisation Committee must not modify admission arrangements which fall to be dealt with under the admissions provisions of the School Standards and Framework Act 1998.

6. As with other proposals, interested parties should be informed of any decision and the reason for it (Schedules 1 and 2 to the Regulations: Paragraph 6 of Schedule 6 to the School Standards and Framework Act as modified by these Regulations).

Implementation of proposals

Section C1 page 58 paragraph 32

7. The LEA or governing body are under a statutory duty to implement all proposals approved by the School Organisation Committee or which an LEA has determined to implement. Therefore, proposals which have been approved but not yet implemented in respect of a school with proposals to change its category under consideration, must be implemented. Those responsible for the implementation of outstanding proposals when a school changes category are

specified in Regulation 8 of the Education (School Organisation Proposals) (England) (Amendment) Regulations 2000. In brief, all proposals in respect of schools which were, or will become community or community special, fall to be implemented by the LEA; proposals in respect of a school which has changed category from VA to become foundation or VC also fall to be implemented by the LEA and proposals in respect of a school which has changed category from foundation or VC to become VA fall to be implemented by the LEA, promoters and governing body as if the school had remained a foundation or VC school.

8. If implementation of the change of category proposals would be unreasonably difficult or if circumstances have so altered since the proposals were approved that implementation would be inappropriate, those publishing the proposals can formally request that the Committee or Adjudicator determine whether the LEA or governing body may be relieved of their duty to implement. The publication of notices is not required.

Special School Proposals

Sections C2 pages 64 to 66 paragraphs 13 - 20 and F2 page 125 paragraph 5

9. Proposals to change the category of special schools are published in exactly the same manner as those for mainstream schools. That is, by being posted in a conspicuous place in the area served by the school, at or near the main school entrance(s) and in at least one newspaper circulating in the area served by the school. Furthermore, those publishing proposals are required to consult interested parties prior to publication (and it is strongly recommended that any LEA which maintains a statement for a pupil at the school should be amongst those consultees) but, in contrast to other special school proposals, are required simply to submit the notice and prescribed information to the School Organisation Committee for the area. Where the school is situated in an area other than that of the maintaining Authority, it is recommended that the information should be sent to both committees. The Committee of the maintaining authority should take into account the views of the other Committee in reaching its decision.

ANNEX 17

CHANGE OF CATEGORY: MODEL NOTICE, PRESCRIBED INFORMATION PRO-FORMA AND REVISED DECISION LETTER^h

^h suitable for both mainstream and special schools

EXAMPLE OF A STATUTORY NOTICE

TO CHANGE THE CATEGORY OF A MAINTAINED SCHOOL

[Name of proposers]

Notice is hereby given in accordance with paragraph [2 or 3] of Schedule 8 to the School Standards and Framework Act 1998 that [name of LEA or governing body] propose that [name] [category] school shall change category and have made the following proposals for that purpose:

That with effect from [date] the school shall become a [category] school.

[if appropriate] The school will, from that date, be known as

It is proposed that the school should change category because ...[a short statement as to the reason for the proposals].

[For all proposals apart from those for special schools] The current admission authority for the school is [name of body]. After the change in category is implemented this will [remain unchanged/become- normally the LEA in the case of community, and voluntary controlled schools - the governing body in every other case]

[if the new category of the school is to be voluntary controlled or voluntary aided] insert a statement that the foundation was or will be established other than under the School Standards and Framework Act 1998 or that the school will belong or continue to belong to a group of schools for which a foundation body acts, whichever is appropriate to the particular case, and also identify the foundation. *i.e - either "The school's foundation is [name] which was/will be established under the terms of [relevant trust law]" or "It is intended that the school will belong to the [name] group foundation which acts for the following schools [list schools]"*

[if the new category of the school is to be foundation] insert a statement that the foundation was or will be established other than under the School Standards and Framework Act 1998 or that the school will belong or continue to belong to a group of schools for which a foundation body acts and also identify the foundation *i.e - either "The school's foundation is/will be [name] which was/will be established under the terms of [relevant trust law]" or "It is intended that the school will belong to [name] a group foundation which acts for the following schools [list schools].* If the school will be a foundation school not falling into either of these categories (i.e. without a foundation) insert the following *"the school will not have a foundation"*.

[if the new category of the school is to be foundation special] insert a statement that the foundation will be established other than under the School Standards and Framework Act 1998 and also identify the foundation. *i.e - "The school's foundation will be [name] which will be established under the terms of [relevant trust law]"*

[if appropriate] that section 15 of the School Standards and Framework Act 1998 applies to the school. *i.e "The governing body are subject to a warning notice issued by the local education authority under section 15(1) of the Act" or "Section 15(4) of the Act applies to the school which has been identified by OFSTED as having serious weaknesses" or "Section 15(6) of the Act applies to the school which has been identified by OFSTED as requiring special measures"*

[if appropriate] that schedule 15 of the School Standards and Framework Act 1998 applies to the school. i.e “[name] Local Education Authority has by virtue of schedule 15 to the School Standards and Framework Act 1998 [given notice of its intention to suspend/has suspended] the governing body’s right to a delegated budget”]

Within two months after the date of publication of these proposals (*one month in the case of a school to which section 15 of the Act applies*), any person may object to the proposals by sending their objection to [in the case of proposals by governing bodies, the School Organisation Committee for the area, in the case of proposals by an LEA, the LEA] at [Address]. [In the case of proposals by the LEA, within a month after the end of the objection period (*two weeks in the case of a failing school as described above*), the LEA will send to the School Organisation Committee for the area copies of all objections made (and not withdrawn in writing) within the objection period, together with the Authority’s observations on them]

Signed [Name] for the governing body or LEA

[Date]

[Explanatory Note giving further information to explain the background to the proposed changes and fill out the details may be given here if needed]

PREScribed INFORMATION

CHANGE OF SCHOOL CATEGORY

School Name

Local Education Authority area.....

Diocese (if applicable).....

Proposals published by.....

Date Proposals published

Proposed implementation date.....

Note: Not all the required information can be provided on the face of this pro forma; copies of consultation documents, list of schools, a map of the location of schools and, if the school is to become a foundation, foundation special or voluntary school, details of trusts and land tenure arrangements, as appropriate, will also be required, as detailed within.

All sections apply to all types of school unless otherwise stated.

This information is to be regarded as in the public domain and may be shown to interested parties without further notification.

PLEASE PROVIDE THE FOLLOWING INFORMATION (typewritten):

1. Please give details of what consultation has taken place. Copies of: consultation documents, and the views and responses of the persons consulted should be attached.

2. Please provide a map showing the location of the school and all other maintained (community, voluntary, foundation and if appropriate special) schools within the relevant radius of the school (two miles for primary, three for secondary).

3. Please provide a list of all maintained schools within the relevant radius of the school changing category stating which of the schools are maintained by a different local education authority, together with the following information in respect of each school for the current school year, and (except for the information specified in sub-paragraph a) the previous school year:

the lower and upper age limits of pupils attending the school;

the physical capacity of the school (or in the case of a special school the number of pupils for whom the school is organised to make provision); and

the number of pupils at the school.

and a forecast of the matters specified in sub-paragraphs b and c for each of the subsequent five school years.

4. Please provide the following information relating to the school:

the lower and upper age limits of pupils attending the school;

the physical capacity of the school (or in the case of a special school the number of pupils for whom the school is organised to make provision); and

the number of pupils at the school.

and a forecast of the matters specified in sub-paragraphs b and c for each of the subsequent five school years.

School	Age Range	MOE * cap'ty	NOR						
			last year	current year	forecast years **				
School in public notice									
Other schools									

*The calculation for assessing the capacity of primary schools is set out in annex 12 to the DfES "Guidance on Statutory Proposals" LEAs and school organisation committees have copies of this guidance. Annex 13 sets out the calculation for assessing the capacity of secondary schools.

** For future years show the expected distribution of pupils which would result from the proposals being approved.

(where the school is proposed to become a community special school or a foundation special school)

5. Please provide the following information:
 - a. details of the special educational needs of pupils for which the school is organised to make provision;

9. Please provide:

- a. a statement as to whether the school has been inspected under section 10 of the School Inspection Act 1996, as amended, during the period starting three years before the date of the publication of the proposals;
- b. where the school has been inspected during that period, the date of the inspection and details of the outcome of the inspection.

(if the school is a voluntary or foundation school with a religious character)

- c. a statement as to whether the school has been inspected under section 23 of the School Inspection Act 1996, during the period starting three years before the date of the publication of the proposals;
- d. where the school has been inspected during that period, the date of the inspection and details of the outcome of the inspection.

10. For the school which is the subject of these proposals, please provide details of any intervention by the LEA or Secretary of State in relation to schools causing concern during the period starting three years before the date of publication of the proposal.

11. Please provide:

- a. details of the tenure (freehold or leasehold) on which the site of the school will be held, and if the site is to be held on a lease, details of the lease;

DECISION LETTER PRO FORMA FOR CHANGE OF CATEGORY

Dear Sir/Madam

1. (LEA)
2. (SCHOOLⁱ / PROPOSALS TO CHANGE CATEGORY)

With reference to the (Authority's / governors') proposals published on (date), the requirements of paragraph (2 or 3) of Schedule 8 to the School Standards and Framework Act 1998 ("the 1998 Act") and the Education (Change of Category of Maintained Schools) (England) Regulations 2000 relating to the publication of proposals having now been fulfilled, the School Organisation Committee has considered the (LEA's / governors') proposals to change the category of [name] School from [category] to [category] with effect from [implementation date].

The School Organisation Committee, in exercise of the powers conferred on it by paragraph 3(2) of Schedule 6 to the 1998 Act, as modified by Schedule 1 to the Education (Change of Category of Maintained Schools) (England) Regulations 2000,

[ALTERNATIVE A

hereby approves the proposals.]

[ALTERNATIVE B

and after consultation with the [Authority / governors], hereby approves the proposals with the following modification:

that for "[whatever was specified in the proposals]" shall be substituted "[the revised wording - e.g. a later implementation date]".]

[ALTERNATIVE C

hereby approves the proposals conditional upon the School Organisation Committee being informed by [date] that [condition] [- e.g. that a scheme relating to any charity connected with the school is made by [date] / that the Secretary of State gives notice under regulation 5(1) of the Foundation Body Regulations 1999 [that a foundation body shall be established and that the school shall form part of a group for which the foundation shall act by [date] / that the Secretary of State makes a declaration that the school shall form part of a group for which a foundation body acts under regulation 21(2) of the Foundation Body Regulations 1999 by [date]]

[If relevant:] In considering the proposals, the School Organisation Committee has had regard to the objections received. [Reasons:] [e.g. it considered, however, that approval of the proposals was in the best interests of education in the area because....[It may be important that all the relevant reasons are given in case of future legal action by objectors]]]

[TO BE INCLUDED IN ALL APPROVALS

The Local Education Authority must, prior to the implementation date of the proposals, make an instrument of government. Pro-forma instruments of government are included in Schedule

ⁱ refer to the new name of the school, if appropriate

4 to the Education (Change of Category of Maintained Schools)(England) Regulations 2000.

The governing body should be fully constituted as soon as reasonably practicable thereafter and, in any event, within a period of three months from the implementation date of the proposals. During the period between the coming into force of the instrument of government for the school and the governing body being reconstituted, the current governing body continues in existence and shall exercise its functions under the Act, the School Government Regulations and the Education (Change of Category of Maintained Schools)(England) Regulations 2000.]

[ALTERNATIVE D

hereby rejects the proposals.

[Reasons:] *[e.g. The School Organisation Committee did not consider that the proposals were in the best interests of education in the area because....]]*

[TO BE INCLUDED FOR ALL PROPOSALS PUBLISHED BY THE GOVERNORS

A copy of this letter has been sent to the Local Education Authority.]

[ADDITIONAL MATERIAL IN THE CASE OF FOUNDATION AND VOLUNTARY SCHOOLS

The Authority should initiate action quickly if, in order to fulfil any conditions attached to this approval, any modification of the Trust Deed appears to be required.]

[ADDITIONAL MATERIAL IN THE CASE OF SCHOOLS WITH A RELIGIOUS CHARACTER

A copy of this letter has also been copied to [name] Diocese.]

Yours faithfully

for School Organisation Committee