
8 June 1998

CIRCULAR

**THE
FURTHER
EDUCATION
FUNDING
COUNCIL**

**REVISED APPROACH TO
CONSIDERING MERGER
PROPOSALS**

Cheylesmore House
Quinton Road
Coventry CV1 2WT

To

Principals of colleges
Chairmen of college governing
bodies
Chief education officers
Heads of external institutions and
higher education institutions
receiving Council funding

Circular type

Consultation

Summary

Consultation on the Council's
revised approach to considering
proposals for merger involving
further education colleges,
including revised criteria against
which the Council will consider
such proposals. Comments are
requested by 17 July 1998

Reference number: 98/19

Enquiries:
Regional directors
Elaine Carabok
Education and institutions
01203 863345

98/19

REVISED APPROACH TO CONSIDERING MERGER PROPOSALS

INTRODUCTION

1 This circular sets out the revised approach which the Council proposes to adopt in considering proposals for mergers involving further education colleges. Colleges are invited to comment on the revised approach.

2 In responding to the government's desire to see greater rationalisation within the sector, the Council proposes to:

- simplify and revise the criteria it uses for assessing merger proposals, particularly to include consideration of the implications of merger proposals for the future development of post-16 provision in the area
- simplify its procedures to reduce both the burden on colleges seeking to merge and the timescales involved, whilst continuing to ensure that the Council's consideration of proposals is robust. The revised procedures are intended to enable merger proponents to gain an earlier indication of the particular issues which the Council will expect to be addressed in proposals.

3 The Council has received guidance from the minister of state, Baroness Blackstone, regarding mergers between further education colleges and higher education institutions. A copy of this guidance is attached at annex A and is reflected in the revised criteria proposed in this circular.

4 Colleges are asked to continue to refer to Circular 97/11, *Mergers, Transfers and New Incorporations*, as the definitive source of authority on the Council's procedures. The Council intends to revise Circular 97/11 to take account of the changes proposed in this circular, subject to comments received from colleges.

BACKGROUND

5 The statutory framework for the change in status of existing further education corporations and for the establishment of new further education corporations is provided by the *Further and Higher Education Act 1992* (the Act) and by regulations

made under the provisions of the Act, particularly *The Education (Publication of Draft Proposals and Orders) (Further Education Corporations) Regulations 1992* (the regulations). The Council's responsibilities under the Act and the regulations, and the criteria and procedures it applies in discharging those responsibilities, are set out in Circular 97/11.

REVISED CRITERIA

6 The Council's criteria against which it currently considers merger proposals involving further education colleges were published in Circular 92/14 and subsequently in Circular 95/09 and Circular 97/11; the criteria are set out in annex B for reference.

7 In the light of experience, the Council now proposes to reduce the number of criteria to five. Each of these will be underpinned by more specific factors. The revised criteria are set out at annex C.

8 The revised criteria and factors have been developed to enable the Council to assess the likely effect of merger proposals on its ability to fulfil its statutory duties to secure the provision of adequate and sufficient further education in England. The Council proposes to ask merger proponents to apply these criteria and factors as a framework for formulating and presenting their proposals.

9 The revised criteria for considering all mergers which involve further education colleges are:

- a. the educational benefits of the proposed reorganisation to students, particularly in terms of access and choice;
- b. the implications of the proposal for the future development of post-16 provision in the area, including the potential impact of the proposal on other further education providers;
- c. the financial benefits of the proposed reorganisation, particularly in terms of the viability of the proposed merged institution;
- d. the extent of consultation and the consideration which has been given to alternative options;
- e. the likelihood of the proposed reorganisation being successfully implemented.

10 The most significant changes to the existing criteria are reflected in the inclusion of criterion (b) above, together with the following factors underpinning the criteria:

- proponents' plans for rationalisation of provision
- the impact of the merger on participation levels, including improvements to retention and achievement rates
- the potential effect on those institutions involved of the merger not proceeding
- in so far as it may have an effect on the provision of adequate and sufficient provision of further education in the area, the potential impact of the merger on non-Council-funded provision, including, where relevant, the local education authority's intentions in relation to the continued funding of non-schedule 2 provision at the merged institution, and the impact on any existing sponsorship arrangements
- the timescales for the harmonisation of systems
- each merger partner's history of collaboration prior to the proposal.

11 For mergers between further education colleges and higher education institutions, the following additional factors have been included:

- evidence that the further education college(s) involved has given a comprehensive consideration of alternatives to merger with a higher education institution, such as the consideration of merger options with all other further education colleges in the area
- that the higher education institution's history as a provider of further education and in working collaboratively with other further education colleges should be taken into account, with particular reference to the institution's mission statement and strategic plan. In particular, the Council would not, save in exceptional circumstances, be supportive of a proposal where the merged institution's higher education status would give an unfair competitive advantage in recruitment to its general further education provision
- an assurance that the merged institution would submit itself to the Council's inspection process, including publication of the findings, in respect of the further

education provision at the institution within the first four years of the merger taking place.

12 Colleges are invited to comment on the revised criteria and the factors underpinning these. Both will be reviewed and amended by the Council in the light of the comments received and in response to changing circumstances.

13 The Council does not propose to revise the criteria against which it considers proposals for new institutions to join the further education sector through incorporation or designation, as set out in Circular 97/11.

REVISED PROCEDURES

14 The Council has developed procedures for considering merger proposals; these are described in Circular 97/11. To reduce the burden on colleges wishing to put forward proposals for merger, the Council intends to revise its procedures to simplify the process and reduce the amount of time taken for proposals to be considered. These revised procedures will not be applicable to every merger proposal; in some cases, the Council's current procedures will continue to be applicable.

15 At the first stage of the proposed new procedure, proponents will submit to the relevant regional committee an initial outline proposal. The procedures adopted by the Council thereafter in respect of the proposal will differ depending on whether the relevant regional committee supports the initial outline proposal. The purpose of this is to:

- provide the regional committee with an earlier indication of the proponents' perception of the benefits of the proposal
- enable the proponents to gain an earlier indication of the particular issues which the Council will expect to be addressed in the proposal.

16 The Council will not expect the initial outline proposal to be a comprehensive document. It is envisaged that this would comprise a brief assessment only of the proposal against the Council's criteria, following the outcome of the proponents' feasibility study.

17 The procedures described below are for those where early support for a merger proposal is given by the regional committee following submission of

the initial outline proposal. An indication is provided of the different procedures to be followed where such early support is not given. Both sets of procedures are illustrated separately at annex D.

CONSIDERATION OF PROPOSALS

Role of Regional Committee

Initial outline proposal

18 Merger proponents will submit to the relevant regional committee an initial outline proposal based on the results of a feasibility study; the regional committee will then consider the initial outline proposal. Following an initial consideration, the regional committee will indicate to the proponents its initial views on the proposal. This additional stage in the procedure is to enable proponents to gain an earlier indication of the particular issues which the Council will expect to be addressed in proposals. This revision to the procedure will be of particular benefit to those proponents whose proposals have been developed following consideration of the wider implications of the merger to the development of post-16 provision in the area, including extensive consultation with other providers.

19 Following consideration of the initial outline proposal, the regional committee will indicate to the proponents either that:

- it is content for the proponents to continue to develop their proposal
- it considers that some further consideration of the implications of the proposal needs to be given and that it wishes to see a revised initial outline proposal, or
- it considers that there are significant issues or weaknesses in the proposal and that it would wish to see a new initial outline proposal rather than a revision of the existing one. The regional committee may suggest a number of alternatives to the existing proposal which the proponents might wish to consider.

Consultation

20 Should the initial proposal outline be supported by the regional committee, the proponents should undertake local consultation on the proposal.

21 As the Council is required by statute to consult on merger proposals before submitting those it supports to the secretary of state, it will consult at the same time as the proponents. It is recommended that these two consultation exercises to be undertaken by the Council and the proponents respectively, although separate, are co-ordinated to avoid confusion locally. In practice, this will involve both consultation documents being combined and sent out together. This revision is intended to shorten the overall length of the process. The Council's consultation at an earlier stage should not, however, be interpreted as indicative support for proposals.

22 Responses to both parties' consultation exercises should be received by the Council, which will copy these to the proponents.

23 Where the initial outline proposal has not been supported by the regional committee, the proponents may still wish to undertake local consultation on the proposal. In this case, however, the Council would not undertake simultaneous consultation (as described in paragraph 21). Instead, the Council would await the outcome of the reorganisations committee's consideration of the formal proposal before deciding whether to undertake consultation. This will not, therefore, result in a reduction in the length of time taken for the merger proposal to be considered by the Council.

Formal proposal

24 Should the proponents decide to proceed with their proposal in the light of the outcome of local consultation, they should submit for consideration by the regional committee a formal, fully documented, proposal. The regional committee will invite the proponents to make a presentation in support of the proposal. Special arrangements would be made if more than one region were involved in a particular proposal.

25 The regional committee will also invite other further education providers in the area to make oral representations to it, where the Council judges that there are legitimate concerns relating to the potential impact of the merger on the locality.

26 The role of the regional committee is to advise the Council on proposals, in the light of the Council's criteria. The regional committee is not, however, empowered to make decisions on the Council's

behalf. The reorganisations committee, which has the Council's delegated authority in these matters, has a significant role to play; it considers proposals, taking into account the advice of the regional committee and by giving further scrutiny to proposals. In particular, the reorganisations committee must be satisfied that the proposal is sufficiently robust as to be likely to be approved by the secretary of state. It must satisfy itself, above all else, that the adequacy and sufficiency of further education in the area will be maintained following merger.

Role of Reorganisations Committee

27 The reorganisations committee considers merger proposals in the light of the advice of the appropriate regional committee. Where the regional committee considers it to be appropriate, for example where it has advised that additional information should be presented in support of a merger proposal, where the proposal is judged to be contentious or unique or where new information comes to light, the proponents may be invited to make a presentation to the reorganisations committee.

28 The reorganisations committee may decide to:

- forward the proposal to the secretary of state for consideration
- seek additional information from the proponents which may involve inviting them to a further meeting of the committee to present this (where significant new information is presented, members of the appropriate regional committee will be invited to attend the meeting), or
- reject the merger proposal.

29 In circumstances where the initial outline proposal was not supported by the regional committee but, subsequently, the full proposal does receive its support and the reorganisations committee also supports this, the statutory consultation by the Council will be undertaken at this stage. The outcome of this consultation must then be considered by the reorganisations committee at a further meeting. Following this, the committee will decide whether it wishes to forward the proposal to the secretary of state.

30 Colleges are invited to comment on the revised procedures.

FINANCIALLY WEAK COLLEGES

31 In considering mergers involving one or more financially weak college, the Council may adopt a more proactive approach which:

- a. encourages merger with a specific institution, which may have been identified through a review of the adequacy and sufficiency of further education provision in the area, and;
- b. requires that opportunities for merger with all other appropriate further education colleges are considered, and the reasons for their rejection satisfactorily addressed, before merger with a higher education institution is considered.

INTERIM ARRANGEMENTS

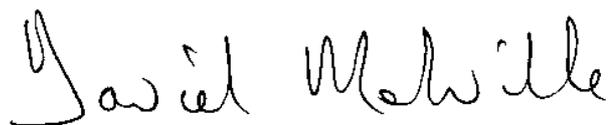
32 Colleges are asked in the interim to continue to refer to Circular 97/11 as the definitive source of authority for the Council's criteria and procedures when considering merger proposals. Once the Council has considered colleges' responses to this circular, a revised circular will be published to replace Circular 97/11.

33 Institutions currently preparing proposals for merger are advised to contact the appropriate regional office for advice on how to proceed. The addresses of the regional offices are set out at annex E.

CONSULTATION

34 Colleges are invited to comment on the revised approach outlined in this circular, using the form at annex F. Responses, which should be returned no later than 17 July 1998, should be sent to:

Elaine Carabok
Education and institutions
The Further Education Funding Council
Cheylesmore House
Quinton Road
Coventry CV1 2WT.



DfEE GUIDANCE ON MERGERS

Lord Davies of Oldham
 Chairman
 Further Education Funding Council
 Cheylesmore House
 Quinton Road
 Coventry CV1 2WT

DEPARTMENT FOR EDUCATION AND EMPLOYMENT
 SANCTUARY BUILDINGS GREAT SMITH STREET
 WESTMINSTER LONDON SW1P 3BT
 TELEPHONE 0171 925 5000
 BARONESS BLACKSTONE
 Minister of State

Dear Bryan,

David Blunkett and I have been very pleased to see the wide range of action that the Council is taking forward on collaboration and rationalisation. You will be aware that we attach considerable importance to these areas of Council activity, not just within the sector itself but also across sectors. However, we have some concerns about mergers between further and higher education institutions and we considered that we should give the Council additional guidance in this area.

Although we would wish to encourage well-founded mergers within the FE sector we are aware that among the considerable number of proposals that are coming forward there are a small number between further and higher education institutions. We certainly wish to encourage improved collaboration between the further and higher education sectors. We see considerable benefits accruing to both sectors through the development of closer links, particularly where these facilitate lifelong learning. There may also be opportunities to use resources more effectively through closer working between the sectors. However, we have some reservations about the merit of formal mergers of further education colleges with institutions in the higher education sector and would wish the Council to take account of the following considerations in its criteria for assessing such proposals.

There may be cases where the case is compelling, for example, where there are clear vocational progression routes from further to higher education for a substantial proportion of a college's provision and where a merger would remove hindrances to that progression. Mergers may be an appropriate way of maintaining the unique provision made by specialist colleges. But generally the Council will wish to bear in mind that we shall need to be convinced that proposals that come forward to the Secretary of State do not undermine the focus that institutions in the further education sector should have on the delivery of foundation and intermediate qualifications and of provision for persons with learning difficulties, and the Council's ability to fulfil its statutory duties in respect of adequacy and sufficiency.

We would also wish to be satisfied that proposed FE/HE mergers would not adversely impact upon other FE institutions in the area, especially if the merged institution's higher education status would result in an unfair competitive advantage in recruitment to general further education provision. We would not wish cross-sector mergers to be used primarily as a means for rescuing a failing FE institution, if this would mean the diversion of resources that the Secretary of State has allocated for higher education purposes, or vice versa, although the financial viability of the merged institution should not be ignored.

In respect of higher education institutions involved in merger proposals with FE colleges, we would be concerned if merger distract higher education institutions from their distinctive missions. Where relevant, we shall need to be persuaded that the higher education institution that results from merger would be able to deliver effectively high quality 16–19 provision, an area where some higher education institutions have no well-established tradition of delivery, and from which others have withdrawn in recent years. We should also wish to be satisfied that it would not be misleading for an institution in the higher education sector to use the title 'university' should it merge with a large FE college.

We should be grateful if the Council would pay attention to all these points in its evaluation of mergers between FE and HE institutions, in conjunction with the HEFCE where appropriate. It is unlikely that we would approve cross-sector mergers involving non-specialist FE colleges that did not demonstrate robustly how our concerns would be met.

A copy goes to Michael Checkland.

Tessa Blackstone

THE COUNCIL'S EXISTING CRITERIA FOR CONSIDERING MERGERS OR THE TRANSFER OF CORPORATIONS BETWEEN THE FURTHER AND HIGHER EDUCATION SECTORS

Criteria to be applied to all proposals

- a. the benefits to the education provision in the area;
- b. the benefits to existing and future students in terms of access and choice;
- c. retaining and improving the cost-efficiency of provision, particularly with respect to Council funds;
- d. the advantages to the institutions concerned;
- e. the realism of achieving the merger in managerial terms, including the provision of satisfactory arrangements for assuring financial accountability;
- f. the extent and result of local consultation, including consultation with other providers and users of further education in the area and with those responsible for schools which have links with the colleges affected;
- g. the steps taken to reflect in the governing body the changed nature of the institution in terms of area and interests served;
- h. evidence that alternative arrangements to merger, such as collaborative activities and franchising and alternative institutions with which to merge, have been thoroughly examined, and the reasons for their rejection;

Additional criteria for mergers involving further education colleges and higher education institutions

- i. the importance of preserving full-time and part-time further education facilities and opportunities for students to progress between further and higher education;
- j. the arrangements to be made for access by students from groups not well represented in higher education;

- k. how the distinctive characteristics of institutions in the FE sector – cost-effectiveness, vocational orientation, responsiveness to changing needs – are to be maintained in the new institution;
- l. evidence that the further education provision at the new institutions will continue to ensure that there is sufficient and adequate provision for further education in the area;
- m. the proportion of the total full-time equivalent enrolment numbers, calculated in accordance with schedule 9 to the *Education Reform Act 1988*, who would be pursuing courses of higher education at the merged institution; and
- n. results of consultation with the Higher Education Funding Council for England;

Additional criterion for mergers of further education colleges with local education authority provision giving rise to a new further education corporation

- o. regard to the local education authority's intentions in relation to the continued funding of non-schedule 2 work at the new institution.

PROPOSED REVISED CRITERIA FOR CONSIDERING MERGERS OR THE TRANSFER OF CORPORATIONS BETWEEN THE FURTHER AND HIGHER EDUCATION SECTORS AND THE UNDERPINNING FACTORS

Criterion (a) – the educational benefits of the proposed reorganisation to students, particularly in terms of access and choice

Criterion (b) – the implications of the proposal for the future development of post-16 provision in the area, including the potential impact of the proposal on other further education providers

All mergers:

- an indication that the benefits of the proposal to post-16 provision in the area have been assessed
- an indication of plans for rationalisation of provision, including details of any additional courses to be offered
- the impact of the merger on participation, together with improvements to retention and achievement rates, including proposals for greater inclusion of students with learning difficulties and/or disabilities
- details of additional benefits to students which would arise from the proposal, including enhancement to facilities for learning, student support and quality assurance.

Additional factors for mergers involving higher education institutions:

- how the Further Education Funding Council would be assured that the further education provision in the area would remain sufficient and adequate
- the steps to be taken to ensure that there would not be ‘academic drift’ at the merged institution, and that the institution would continue to offer entry, foundation and intermediate level provision, including adult/basic education and programmes for students with learning difficulties and/or disabilities

- that the higher education institution’s history as a provider of further education and in working collaboratively with other further education institutions should be taken into account, with particular reference to the institution’s mission statement and strategic plan. In particular, the Council would not, save in exceptional circumstances, be supportive of a proposal where the merged institution’s higher education status would give an unfair competitive advantage in recruitment to its general further education provision
- an assurance that the merged institution would submit itself to the Council’s inspection process, including publication of the findings, in respect of the further education provision at the institution within the first four years of the merger taking place
- an assurance that students at the merged institution would have access to impartial information on progression routes in other institutions.

Criterion (c) – the financial benefits of the proposed reorganisation, particularly in terms of the proposed merged institution’s viability

All mergers:

- the impact of the merger on the cost-efficiency of provision, together with details of how any cost-efficiencies would be reinvested in the merged institution
- the potential effect on either institution of the merger not proceeding
- an outline of an accommodation strategy for the merged institution, including proposals for the removal or replacement of facilities and for new development
- in so far as it may have an effect on the provision of adequate and sufficient further education in the area, the potential impact of the merger on provision not funded by the Council, including, where relevant, the local education authority’s intentions in relation to the continued funding of non-schedule 2 work at the merged institution, and the impact on any existing sponsorship arrangements.

Criterion (d) – the extent of consultation and the consideration which has been given to alternative options

All mergers:

- the extent and results of local consultation, including consultation with other providers and users of further education in the area and with those responsible for schools which have links with the colleges affected
- evidence that alternative arrangements to merger, such as collaborative activities and outward collaborative provision and alternative institutions with which to merge, have been thoroughly examined, and the reasons for their rejection provided.

Additional factor for mergers involving higher education institutions:

- evidence that the further education college(s) involved has given a comprehensive consideration of alternatives to merger with a higher education institution, such as the consideration of merger options with all other further education colleges in the area.

Criterion (e) – the likelihood of the proposed reorganisation being successfully implemented

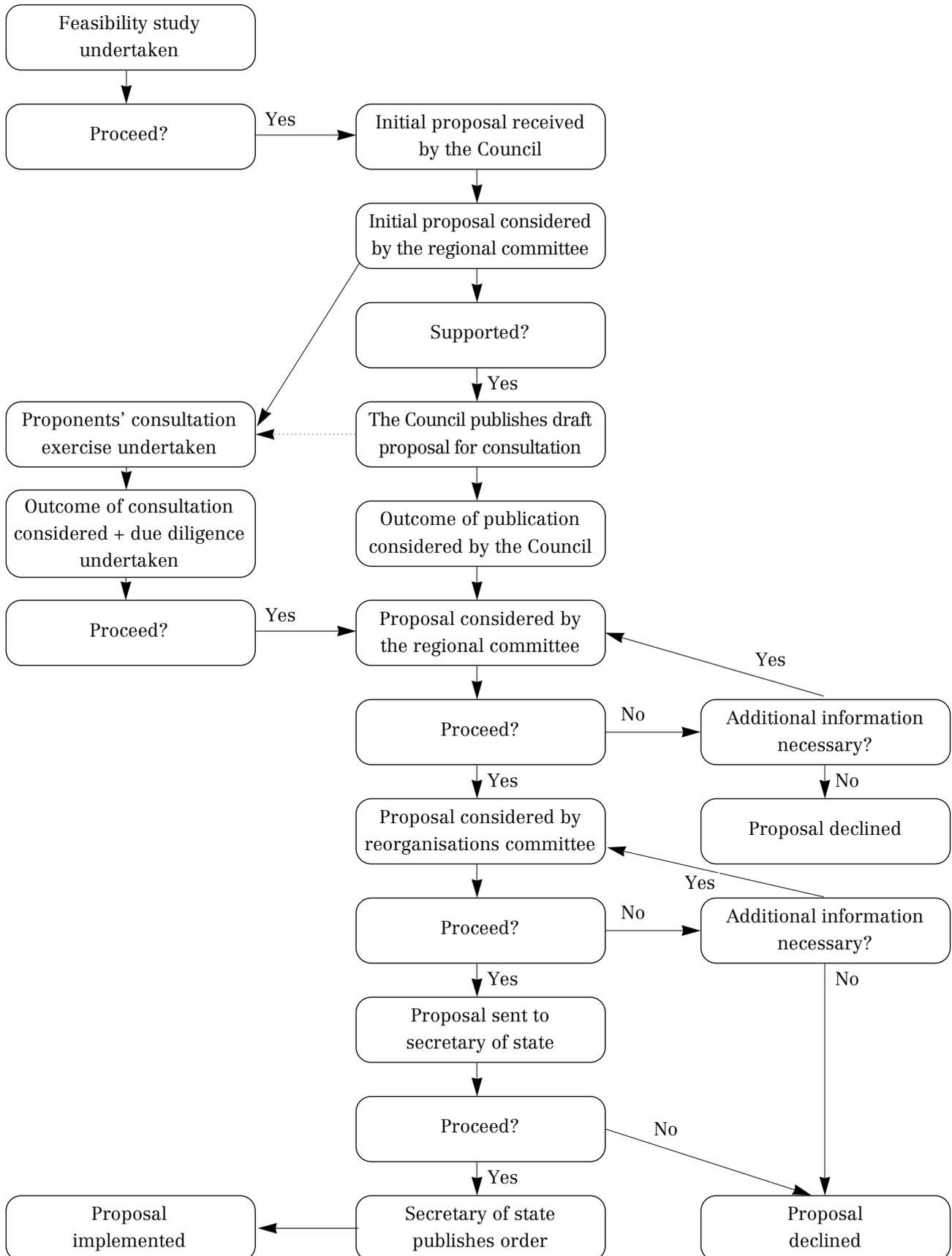
All mergers:

- the steps taken to reflect in the governing body the changed nature of the institution in terms of area and interests served
- the proposed governance structure for the merged institution, including plans for subcommittees and advisory groups
- the proposed management structure for the merged institution, including details of arrangements for financial management and quality assurance
- an indication of a work plan for the implementation of the proposal, including timescales for the harmonisation of systems
- each merger partner's history of collaboration prior to the proposal, including with each other.

PROCEDURE (1) WHERE REGIONAL COMMITTEE SUPPORTS INITIAL OUTLINE PROPOSAL

PROPONENTS

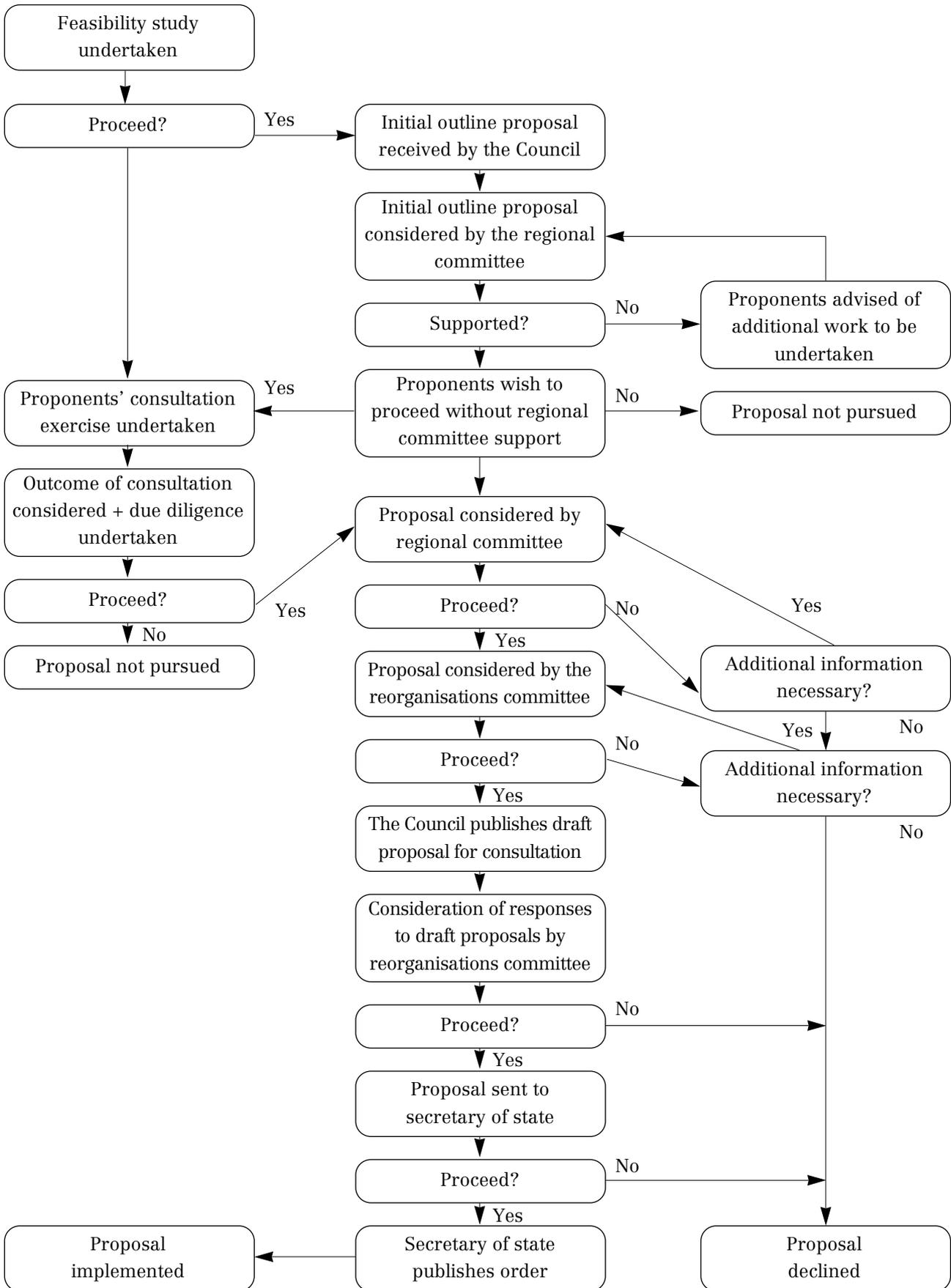
COUNCIL/DfEE



PROCEDURE (2) WHERE REGIONAL COMMITTEE DOES NOT SUPPORT INITIAL OUTLINE PROPOSAL

PROPONENTS

COUNCIL/dfEE



REGIONAL OFFICES

East Midlands Region

Regional director: Christine Frost
Cheylesmore House
Quinton Road
Coventry CV1 2WT

Telephone: 01203 863000
Fax: 01203 863359

Greater London Region

Regional director: Kate Anderson
Metropolis House
22 Percy Street
London
W1P 0LL

Telephone: 0171 312 4100
Fax: 0171 312 4134

Eastern Region

Regional director: Martin Lamb
2 Quayside
Bridge Street
Cambridge
CB5 8AB

Telephone: 01223 454500
Fax: 01223 454535

Northern Region

Regional director: Susan Bickerton
Clough House
Kings Manor
Newcastle upon Tyne
NE1 6PA

Telephone: 0191 211 2200
Fax: 0191 211 2235

North West Region

Regional director: Emily Thrane
10 Brindley Road
City Park Business Village
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M16 9HQ

Telephone: 0161 877 3811
Fax: 0161 876 2936

West Midlands Region

Regional director: Celia Cohen
Cheylesmore House
Quinton Road
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Telephone: 01203 863000
Fax: 01203 863358

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Regional director: Catherine Christie
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TA1 2PF

Telephone: 01823 444404
Fax: 01823 443815

South East Region

Regional director: Marilyn Frampton
3 Queens Road
Reading
RG1 4AR

Telephone: 0118 955 4200
Fax: 0118 955 4220

Yorkshire and Humberside Region

Regional director: Julia Lacey
1 Blenheim Court
Blenheim Walk
Leeds
LS2 9AE

Telephone: 0113 245 2644
Fax: 0113 245 2477

RESPONSES TO CONSULTATION

(Reference Circular 98/19)

Please photocopy, complete and return this form to Elaine Carabok at the Council's Coventry office no later than 17 July 1998

**THE
FURTHER
EDUCATION
FUNDING
COUNCIL**

 Institution name

 Contact (*please print*)

 Signature

 Telephone no.

Cheylesmore House
Quinton Road
Coventry CV1 2WT

Telephone 01203 863000
Fax 01203 863100

CONSULTATION RESPONSES

<i>Criteria</i>	<i>Support</i>	<i>Do not support</i>	<i>Comment</i>
	<i>(please tick appropriate box)</i>		
a. the educational benefits of the proposed reorganisation to students, particularly in terms of access and choice	<input type="checkbox"/>	<input type="checkbox"/>	
b. the implications of the proposal for the future development of post-16 provision in the area, including the potential impact of the proposal on other further education providers	<input type="checkbox"/>	<input type="checkbox"/>	
c. the financial benefits of the proposed reorganisation, particularly in terms of the proposed merged institution's viability	<input type="checkbox"/>	<input type="checkbox"/>	
d. the extent of consultation and the consideration which has been given to alternative options	<input type="checkbox"/>	<input type="checkbox"/>	
e. the likelihood of the proposed reorganisation being successfully implemented	<input type="checkbox"/>	<input type="checkbox"/>	
Procedures	<input type="checkbox"/>	<input type="checkbox"/>	

