



Department
for Education

School Organisation

Maintained Schools

Annex C: Foundation and Trust Proposals

**(Including: changing school category to foundation,
acquiring/removing a Trust and acquiring/removing a
Foundation majority governing body)**

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Contents

Key Points	3
Foundation Proposals: Changing category to foundation, acquiring a Trust and/or acquiring a foundation majority	4
The statutory process	4
Removal Proposals: Proposals for removing a Trust and/or removing a foundation majority	8
The statutory process	8
Further guidance on the implementation of foundation and Trust proposals	13
Reconstitution of the governing body	13
Variation of foundation and voluntary school Trusts	13

Key Points

1. The guidance in this annex relates to Schedule 1 to [The School Organisation \(Prescribed Alterations to Maintained Schools\) \(England\) Regulations 2013](#) and the [School Organisation \(Removal of Foundation, Reduction in the Number of Foundation Governors and Ability of Foundation to Pay Debts\) \(England\) Regulations \(2007\)](#).
2. The statutory purpose of a foundation is to hold land on trust for one or more schools; they may also appoint foundation governors to those schools where the instrument of government allows.
3. A 'Trust school' is a foundation school with a charitable foundation complying with the requirements set out in section 23A of the SSFA 1998. These include that the Trust must have a charitable purpose of advancing education and must promote community cohesion.
4. This guidance will use the term 'acquire a foundation majority' to mean acquiring an instrument of government whereby the school's Trust has the power to appoint a majority of governors on the governing body.
5. While a voluntary or foundation school may be initially established with a religious character, it is not possible for any school to gain, lose or change religious character through a change of category.
6. It is possible for the governing body of a school to complete the statutory process to change category to foundation at the same time as the statutory process to acquire a Trust and/or give the Trust the power to appoint a majority of governors.

Foundation Proposals: Changing category to foundation, acquiring a Trust and/or acquiring a foundation majority

The statutory process

7. Where a school’s governing body considers changing category from community, voluntary-aided or voluntary-controlled to foundation or, from community special to foundation special, acquiring a Trust and/or acquiring a foundation majority on the school’s governing body, the following five-stage statutory process must be followed:

Stage 1	Initiation	The governing body considers a change of category to foundation/acquisition of a trust/ acquisition of a foundation majority.
Stage 2	Publication	1 day (having gained consent where appropriate).
Stage 3	Representation (formal consultation)	Must be 4 weeks (as prescribed in regulations). (The LA may refer a Trust proposal to the Schools Adjudicator during this period if it considers the proposal to have a negative effect on standards at the school).
Stage 4	Decision	The governing body must decide within 12 months of the date of publication (unless the LA has referred the proposal to Schools Adjudicator at Stage 3).
Stage 5	Implementation	No prescribed timescale. Must be as specified in the statutory notice, subject to any modifications agreed by the decision-maker.

Stage 1 - Initiation

8. In the case of a proposal to change the category of a school to foundation, the governing body should inform the LA in writing, at least seven days in advance of a meeting, if a motion to consult on a change of category proposal is to be discussed.

9. The existing trustees and whoever appoints the foundation governors must¹ give consent before the governing body can publish a proposal to change category from a voluntary-school to a foundation school or acquire a foundation majority.

Stage 2 - Publication

10. Part 1 of Schedule 1 to the Prescribed Alterations Regulations specifies the information that the statutory proposal must contain. When drafting a proposal the proposer will need to be mindful of the factors that will inform the decision-maker's assessment when determining the proposal (see Decision-makers Guidance at [Annex B](#)).

11. Part 2 of Schedule 1 to the Prescribed Alterations Regulations specifies which bodies must be sent copies of the proposal and where a brief notice of the proposal must be published.

12. Where a proposal is 'related' to another proposal, details of this should be made clear in the notice.

Stage 3 - Representation Period

13. The representation period starts on the date of the publication of the proposal and must last four weeks. During this period, any person or organisation can submit comments on the proposal to the governing body to be taken into account when the decision is made.

14. During the representation period, the LA has the power² to require the referral of a proposal to acquire a Trust/foundation majority to the Schools Adjudicator for decision if they consider it will have a negative impact on standards at the school. The specific circumstances in which a referral can be made are prescribed in paragraph 8(2) and paragraph 10 of Schedule 1 to the Prescribed Alterations Regulations. The LA does not have this power in respect of a proposal solely to change category to foundation³.

15. Where a proposal is referred to the Schools Adjudicator, the governing body must forward any objections or comments it has received to the Schools Adjudicator within 1 week of the end of the representation period.

Stage 4 - Decision

16. Paragraphs 13 to 16 of Schedule 1 to the Prescribed Alterations Regulations prescribe the decision-making process.

17. Where a proposal to acquire a Trust or a foundation majority is linked to a proposal to change category to foundation, they will fall to be decided together.

¹ Under section 20 of the EIA 2006.

² Under section 23 of the EIA 2006 and paragraphs 8 to 11 of Schedule 1 to the Prescribed Alterations Regulations.

³ However, where such a proposal is related to a proposal to acquire a Trust, then the whole set of proposals will be referred to the Schools Adjudicator.

18. Unless a proposal has been referred to the Schools Adjudicator (see paragraph 14), the governing body will be the decision-maker. Decisions must be taken in accordance with the 'Decision-makers Guidance' (at [Annex B](#)). The governing body must determine the proposal within 12 months of the date of publication of the proposal.

19. When issuing a decision, the decision-maker can:

- reject the proposal;
- approve the proposal without modification; or
- approve the proposal with modifications, having consulted the LA.

20. Where the LA has referred a proposal to acquire a Trust/foundation majority to the Schools Adjudicator for decision, any related proposal(s) (including a change of category to foundation) will also fall to be decided by the Schools Adjudicator.

21. The decision-maker may conditionally approve a proposal subject to a prescribed event⁴. When doing so it must set a date by which the event must occur, but this can be modified if required. This date must be before the proposed implementation date of the proposal. If the event has not occurred by the date specified, the proposal must be referred back to the decision-maker for re-consideration.

22. Decision-makers must give reasons for their decision irrespective of whether the proposal was rejected or approved. They must also arrange for a copy of the decision (together with reasons) to be posted on the website where the original proposal was published and for it to be forwarded to the bodies specified in paragraph 17 of Schedule 1 to the Prescribed Alterations Regulations.

23. Where a proposal has been decided by the governing body and is to change the category of a VA school to foundation (with or without the acquisition of a Trust/foundation majority), the following bodies have the right of appeal to the Schools Adjudicator⁵:

- the LA;
- the local Church of England diocese; and
- the local Roman Catholic diocese.

Stage 5 - Implementation

24. The governing body is under a statutory duty to implement any approved proposal by the approved implementation date, taking into account any modifications made by the decision-maker.

⁴ The events are those listed in paragraph 16 of Schedule 1 to the Prescribed Alterations Regulations.

⁵ The specific circumstances in which a referral can be made are prescribed under paragraphs 15 of Schedule 1 to the Prescribed Alterations Regulations.

25. Modifications can be made to a proposal by the governing body after determination but before implementation (see paragraph 20 of Schedule 1 to the Prescribed Alterations Regulations).

26. There is no limit on the time between the publication of a proposal and its date of implementation⁶ but circumstances may change significantly if a long period passes. If the proposer cannot implement an approved proposal because circumstances have changed so that implementation would be inappropriate or implementation of the proposal would be unreasonably difficult, they must publish a revocation proposal to be relieved of the duty to (see paragraph 19 of Schedule 1 to the Prescribed Alterations Regulations).

27. Once proposed changes have been implemented, the proposer must⁷ inform the Secretary of State by ensuring that the department's Register of Educational Establishments (EduBase) is updated. Guidance on how schools and LAs can update EduBase is available at: www.education.gov.uk/edubase/faq.xhtml.

28. Requirements as to the revision or replacement of the school's instrument of government, reconstitution or replacement of the governing body, transfer of staff and transitional admission arrangements are prescribed in Schedule 4 to the Prescribed Alterations Regulations.

29. Requirements as to land transfers, when a school changes category or acquires a Trust, are prescribed in Schedule 5 to the Prescribed Alterations Regulations.

⁶ For a proposal to acquire a foundation majority, proposers should build in enough time for a new instrument of government to be made (where required).

⁷ Under paragraph 18(2) of Schedule 1 to the Prescribed Alterations Regulations.

Removal Proposals: Proposals for removing a Trust and/or removing a foundation majority

The statutory process

30. There are five or six statutory stages (depending on the proposal and circumstances) to remove a Trust and/or to reduce a Trust majority. It may be triggered in two different ways – either by a majority or a minority of the governing body:

Stage 1	Initiation	<p>Majority</p> <p>A majority of governors considers publishing a proposal to remove a Trust/reduce the number of governors appointed by the Trust.</p> <p>or</p> <p>Minority</p> <p>A minority (of not less than a third of the governors) notify the clerk of the governing body of their wish to publish a proposal to remove a Trust/reduce the number of governors appointed by the Trust.</p>
Stage 2	<p>Land Issues</p> <p>(applicable only to removal of Trusts)</p>	<p>In cases of removing Trusts, the governing body, Trustees and the LA must resolve issues related to land and assets before a proposal is published.</p> <p>If not resolved within 3 months, disputes must be referred to the Schools Adjudicator.</p>
Stage 3	Consultation	<p>Majority</p> <p>It is for the governing body to determine the length of consultation (a minimum of 4 weeks is recommended).</p> <p>or</p> <p>Minority</p> <p>No consultation required.</p>

Stage 4	Publication and representation	<p>Majority</p> <p>No specified timescale by which to publish – followed by a 6 week representation period.</p> <p>or</p> <p>Minority</p> <p>Where there are no land or asset issues – publish within 3 months of receipt of notice by governing body clerk – followed by a 6-week representation period.</p> <p>Where there are land issues, publish within 1 month of receipt of School Adjudicator’s determination – followed by a 6-week representation period.</p>
Stage 5	Decision	<p>The governing body must decide within 3 months.</p> <p>(A proposal initiated by a minority of governors may not be rejected unless at least two-thirds of the governing body are in favour of the rejection).</p>
Stage 6	Implementation	<p>No prescribed timescale, but must be as specified in the statutory notice, subject to any modifications agreed by the decision-maker.</p>

Stage 1 - Initiation of Statutory Process

31. A proposal for removing a Trust and/or removing a foundation majority can be triggered by a (a) majority or (b) minority of the governing body:

a) under regulation 4 of the Removal Regulations, by a simple majority of the governing body or a committee deciding to publish a proposal. The decision to publish must be confirmed by the whole governing body at a meeting held at least 28 days after the meeting at which the initial decision was made; or

b) under regulation 5 of the Removal Regulations, by at least one-third of the governors requesting in writing to the clerk of the governing body, that a proposal be published. No vote of the governing body is required as they are obliged to publish a proposal. To prevent on-going challenges there are a number of prescribed

circumstances in which there is no obligation to follow the wishes of the minority of governors⁸.

32. All decisions must be taken in accordance with the processes prescribed in Procedures Regulations⁹.

Stage 2 - Where a proposal is to remove the school's Trust - resolution of issues relating to land and assets

33. Once the decision has been taken to initiate the process of removing the school's Trust (whether triggered by a majority or a minority of governors), the governing body must¹⁰ reach agreement with the Trust and LA on issues relating to the school's land and assets. Where such issues remain unresolved within 3 months of the initial decision (majority) or receipt of notice by the clerk (minority), they must be referred to the Schools Adjudicator for determination.

34. On the removal of the Trust, all publicly provided land held by the Trust for the purposes of the school will transfer to the governing body¹¹. Where the land originated from private sources (for example, where land was gifted on trust), the land will transfer to the governing body in accordance with a transfer agreement, providing for consideration to be paid by the governing body to the Trust where appropriate. However, there may be land which has benefited from investment from public funds which remains with the trustees under the transfer agreement.

35. Alternatively, there may have been investment by trustees in the publicly provided land or from public funding in the land provided by the trustees. In either of these cases, it may be appropriate for either the trustees or the public purse to be compensated. The possibility of stamp duty land tax may also need to be taken into account.

36. The Schools Adjudicator will announce its determination in writing to both parties.

Stage 3 - Consultation

37. Where a minority of governors initiated the process, this stage does not apply.

38. Where a majority of governors initiated the process, before publishing a proposal the governing body must consult local stakeholders as prescribed in regulation 7 of the Removal Regulations.

Stage 4 - Publication and representation period

39. Where the decision to publish a proposal was made by a majority of governors, the governing body at this stage must decide whether to go ahead with publishing the proposal.

⁸ See regulation 5(4) of the Removal Regulations for further details.

⁹ Except as otherwise provided by the Removal Regulations.

¹⁰ Under regulation 6 of the Removal Regulations.

¹¹ By virtue of regulation 17(1) of the Removal Regulations

40. Where the decision to publish a proposal was made by a minority of governors and there are no land issues to be determined, the governing body must publish the proposal within 3 months of the receipt of the notice by the clerk. If land issues were referred to the Schools Adjudicator, the proposal must be published within 1 month of receipt of its determination.
41. Regulations 8 and 9 and Schedules 1 and 2 of the Removal Regulations specify the information that the statutory notice must contain, where it must be published and the bodies to whom the proposal must be sent.
42. The representation period starts on the date of the publication of the proposal and must last six weeks. During this period, any person or organisation can submit comments on the proposal to the governing body to be taken into account when the decision is made.
43. Unlike the Trust acquisition process there is no power for the LA to refer to the Schools Adjudicator a proposal to remove a school's Trust or to reduce the number of governors appointed by the Trust. However, governing bodies must bear in mind that failure to follow the requirements of the statutory process could lead to a complaint to the Secretary of State under Section 496/497 of the Education Act 1996, and/or ultimately be challenged through judicial review.

Stage 5 - Decision

44. The governing body is the decision-maker for a removal proposal and must determine the proposal within 3 months of the date of its publication. Decisions must be taken in accordance with the Decision-makers Guidance (at [Annex B](#)).
45. If a proposal was brought forward by a majority of governors, then it may be determined by a majority vote of those governors present¹².
46. If a proposal was brought forward by a minority of governors, then the governing body may not reject the proposal unless two thirds or more of the governors indicate that they are in favour of its rejection¹³.
47. The governing body must notify the relevant LA and Trustees of their decision.

Stage 6 – Implementation

48. The governing body is under a statutory duty to implement any approved proposal, as published, by the approved implementation date, taking into account any modifications made.
49. Modifications can only be made to the implementation date and the proposed constitution of the governing body. This can only be done in line with paragraph 12(2) of the Removal Regulations.

¹² As per the School Governance (Roles, Procedures and Allowances) (England) Regulations 2013.

¹³ As per regulation 11(2) of the Removal Regulations.

50. Removal of a Trust must be implemented in accordance with regulations 14-18, and reconstitution of the governing body must be implemented as per regulation 14-16 of the Removal Regulations.

51. **Once proposed changes have been implemented, the governing body must¹⁴ inform the Secretary of State by ensuring that the department's Register of Educational Establishments (EduBase) is updated. Guidance on how schools and LAs can update EduBase is available at:**
<http://www.education.gov.uk/edubase/faq.xhtml>.

¹⁴ Section 538 of the Education Act 1996 imposes an obligation on governing bodies of maintained schools to provide information to the Secretary of State that he may require for the purpose of the exercise of his education functions. Section 29(5) of the Education Act 1996 requires LAs to publish information at such times and in such manner as may be required by regulations in respect of their arrangements relating to primary or secondary education.

Further guidance on the implementation of foundation and Trust proposals

Reconstitution of the governing body

52. In changing category, an implementation period begins when the proposal is decided and ends on the date the proposal is implemented. During this period the LA and governing body are required to make a new instrument of government for the school, so enough time must be built into the timeframe for this to happen. The governing body must then be reconstituted in a form appropriate to the school's new category and also in accordance with the appropriate instrument of government taking into account the School Governance (Constitution) (England) Regulations 2012.

53. When removing a Trust or a Trust majority, a governor may continue as a governor in the corresponding category (e.g. staff governor, parent governor) if that category remains under the new instrument of government. A member of a current governing body who continues as a governor on these grounds holds office for the remainder of the term for which he or she was originally appointed or elected. Where a school with a religious character has no foundation, the governing body must appoint partnership governors with a view to ensuring that the religious character of the school is preserved and developed in accordance with the School Governance (Constitution) (England) Regulations 2012. There is nothing to prevent the appointment of a former foundation governor being reappointed by the governing body as a partnership governor.

Variation of foundation and voluntary school Trusts

54. The Trust 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 a proposal to change category, proposers will need to consider whether the school's current Trust allows for the change in category proposed. If in doubt, or if a variation in the Trust is clearly necessary, promoters and the relevant site trustees are advised to make early contact with the Charity Commission to apply for the trust to be varied under the relevant trust law.



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