

A commitment from  
**The Children's Plan**



## Introduction

*This toolkit has been created to support schools wishing to become a Trust school. It is for existing schools changing category and/or acquiring a Trust under the Prescribed Alterations regulations<sup>1</sup>.*

*Anyone wishing to set up a **new** school as a Trust school (including a replacement school where the predecessor school is closed), should consult the relevant guidance on the School Organisation website, depending on whether they are wishing to establish the school through a competition, or outside a competition, or are an independent school wishing to come into the maintained sector. This is available on:*

<http://www.dcsf.gov.uk/schoolorg/>

*This toolkit contains materials to help you:*

- *Identify partners and agree how the Trust will be organised;*
- *Work with partners to develop and agree a shared vision and aims;*
- *Engage other stakeholders, including the local authority and parents;*
- *Agree how the Trust will help the school(s) and whether it will appoint the minority or majority of governors;*
- *and navigate the statutory process.*

*The toolkit contains information and model documentation to support the process for becoming a Trust school. It has also been informed by feedback and lessons learned from the Pathfinder Trust schools.*

*The Trust and Foundation Schools Partnership (TFSP) - a consortium of the Specialist Schools and Academies Trust (SSAT), Youth Sport Trust (YST) and the Foundation and Aided Schools National Association (FASNA) - provides help to primary, secondary and special schools who wish to explore Trust status further.*

*The TFSP can be contacted by telephone on 020 7802 0967, or by email at [contact@trustandfoundationschools.org.uk](mailto:contact@trustandfoundationschools.org.uk).*

*You can visit the TFSP website at: [www.trustandfoundationschools.org.uk](http://www.trustandfoundationschools.org.uk).*

*If you are a specialist Sports College, the Youth Sport Trust (YST) can provide specific advice (contact 01509 226 600 or visit*

[www.youthsporttrust.org](http://www.youthsporttrust.org)

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<sup>1</sup> The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 SI 1289 (as updated by the School Organisation and Governance (Amendment)(England) Regulations 2007 SI 3464)

*The TFSP can also help establish links with prospective Trust partners.*

*We expect to update the toolkit later in 2009. In the meantime, please send any comments or feedback to the following mailbox:*

[contact@trustandfoundationschools.org.uk](mailto:contact@trustandfoundationschools.org.uk).

***NB This toolkit is primarily for schools which are not part of their Authority's National Challenge plans i.e. schools developing a "bottom up" approach to Trust status. A separate toolkit is available for schools and LAs where National Challenge structural solutions are required; for example, the National Challenge Trust school model. Information on National Challenge, including on National Challenge Trusts, is available at:***

[www.dcsf.gov.uk/nationalchallenge](http://www.dcsf.gov.uk/nationalchallenge)

**It should be noted that in some cases an Interim Executive Board (IEB) may exercise the functions of a governing body, in particular in some National Challenge schools. The IEB has the same powers as a governing body to propose becoming a Trust school.**

**If you are...**

**... thinking about what Trust status could offer** you will want an overview of the policy and process and some suggestions for what a Trust could look like in practice. You should start with the overview section, and then look at 'Options for Trust schools' [Stage 1: Decide who to work with and how] which suggests a range of potential models.

**... planning to become a Trust school** you will need a guide to the process. The toolkit is structured to guide you through each stage – there is information about each step, suggestions to help you develop the right answer for your school and model documents to simplify the process.

**... preparing to establish a Trust** then you will probably already have worked through the policy overview and the first stage of thinking about how the Trust will support the school [Stage 1: Decide who to work with and how]. The remainder of the toolkit will help you through the formal process. The 'Setting up a Trust' section has suggestions, information and model documentation to help you to establish and run the Trust.

**At Annex D you will find "top tips" from schools which have already been through the process** and are now Trust schools. There are also a number of publications which you may find of use. The Department has produced the following short guides and other documents which are available from the Trust and Foundation Schools Partnership:

- Your Guide to Trust Schools
- Local Authorities' Guide to Trust Schools

- Governors' Guide to Trust Schools
- Statutory Trust acquisition guidance issued by the Secretary of State, to which you must have regard.
- Prescribed Alterations regulations

In addition, the Charity Commission publishes a range of straightforward leaflets which include guidance on registering as a charity; the roles and responsibilities of trustees; trading and producing an annual report (see

[www.charitycommission.gov.uk](http://www.charitycommission.gov.uk)

and follow the link to “publications and guidance”).

Detailed information about requirements to submit accounts to Companies House is available from:

[www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)

– follow the link for “information and guidance on filing your accounts”.

## TRUST SCHOOL TOOLKIT

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## Policy overview – how Trust schools work

The Children's Plan said that:

“By promoting diversity in a collaborative system we can ensure that children, young people and parents are able to choose provision that reflects their particular needs. Schools and other settings can use their increased freedoms to innovate and find new solutions to problems which can then be shared with others to ensure all children benefit. To strengthen both diversity and collaboration, we are expecting every secondary school to have specialist, trust or academy status and every school to have a business or university partner.

Trust status provides an opportunity for schools to collaborate, underpinned by the added expertise, support, drive and ethos of partners from the voluntary, business, higher and further education sectors. It enables schools to benefit from the fresh insight and problem solving skills of their partners.”

Acquiring a Trust is a way for schools to raise standards through strengthening collaboration and drawing on the expertise and energy of their partners to support the school's strategic leadership. Trust schools build on the characteristics shared by some of our highest performing schools: confident institutions with a distinctive ethos; with a strong governing body that challenges and supports the school to improve; and working closely with others in sustainable partnerships.

It is for individual schools' governing bodies to decide whether to adopt Trust status.

### What is a Trust school?

A Trust school<sup>2</sup> is a local authority maintained school which is supported by a charity, referred to as a Trust, which appoints some of the governors.

- It operates within the same frameworks as other maintained schools: it **must** teach the National Curriculum, have an admissions policy in accordance with the School Admissions Code and be inspected by Ofsted. Teaching staff are employed under the terms of the School Teachers' Pay and Conditions Document. The local authority will fund the school on the same basis as all other local authority schools, and capital funding from DCSF will still be transferred via local authorities.
- Acquiring a Trust will not offer schools any protection or exemption from proposals to close the school and the local authority will retain its intervention powers if there are problems at the school (for example, schools identified as part of the National Challenge School Improvement Strategy). However, the governing bodies and Trusts of foundation and voluntary schools are able to appeal to the Schools Adjudicator against decisions of the local authority while the governing bodies of community schools do not have such a power.

### Partners and leadership

Many schools already benefit from the support and input of a range of

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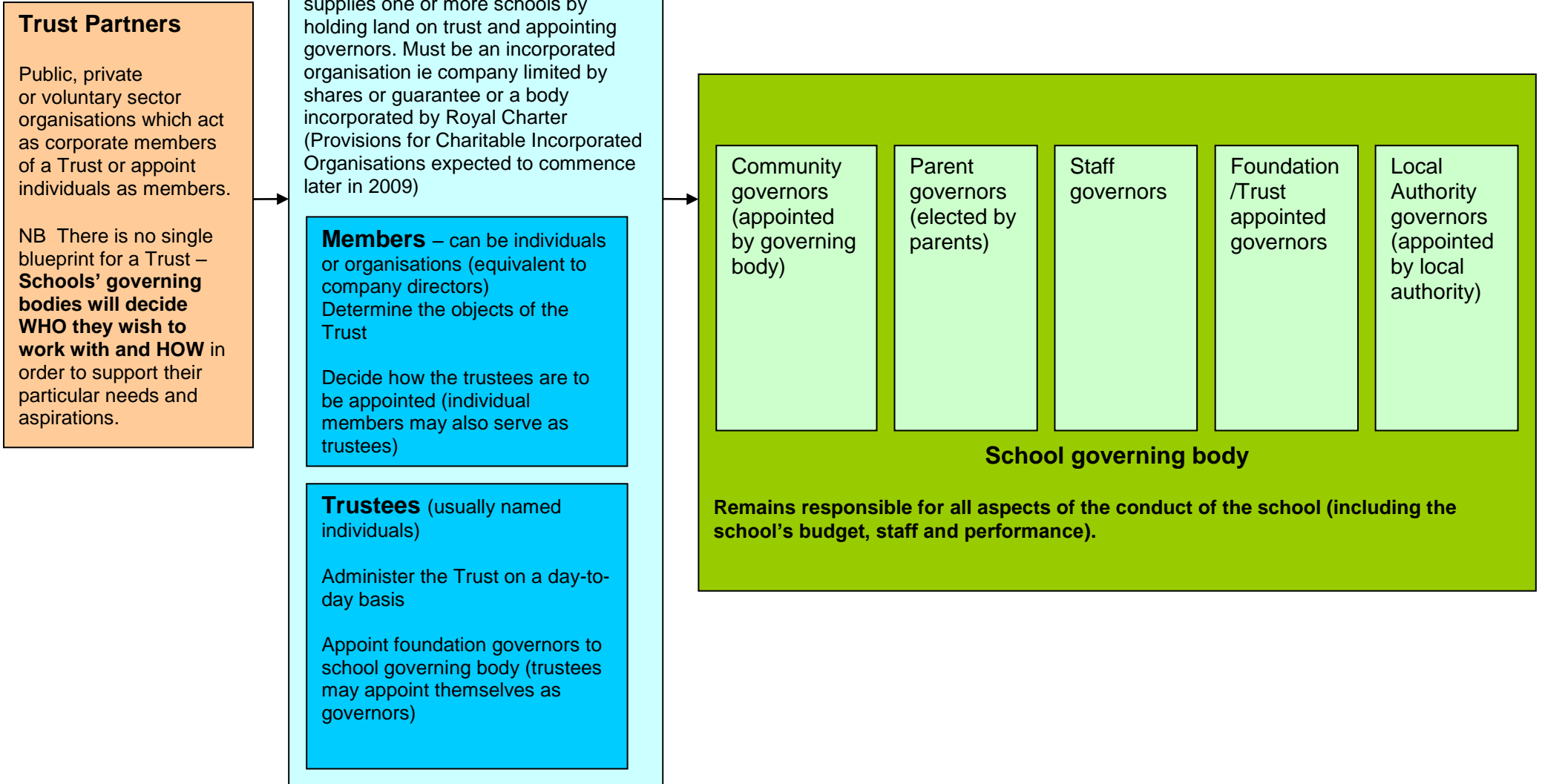
<sup>2</sup> A Trust school is defined for the purposes of this document as a foundation school with a foundation acquired under the provisions of the Education and Inspections Act 2006.

external organisations – Trusts are a way to move beyond ad-hoc projects and to put in place long-term sustainable arrangements. If appropriate, a shared Trust for several schools is one way to build on existing collaboration and to develop a shared sense of direction. This could be in conjunction with a federation of the schools.

The governing body of a Trust school (which retains parents, staff, community and local authority governors) remains responsible for all major decisions about the school and its future. The skills and experience of Trust-appointed governors will strengthen the whole governing body and make a contribution to the school's ethos. Strong leadership gives schools a clear sense of purpose and direction and makes sure that resources and effort are focused on increasing opportunity and raising standards.

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## Relationship between the Governing Body and the Trust



### Freedom and flexibility

Trust schools are foundation schools with a foundation and, as such, benefit from the same freedoms as foundation schools. They will set their own admissions arrangements in accordance with the School Admissions Code, have control over their own land and buildings, and employ their own staff.

There is no single blueprint: schools can choose who they want to work with - and how - in order to support their particular needs and aspirations. For example, a school could use a Trust to:

- give its local community and partners a stronger voice in shaping the school's direction and priorities,
- bring new perspectives on leadership and management,
- draw on a partner's expertise to strengthen a particular subject area, or
- underpin the wider collaboration necessary for Every Child Matters, the Children's Plan and the new 14-19 curriculum.

Schools and partners have a lot of flexibility to design the Trust that is right for them, and this toolkit is designed to help you through the process.

### Safeguards

There are safeguards to prevent unsuitable organisations from forming a Trust for a school, and to ensure that a Trust can be removed if there are serious problems.

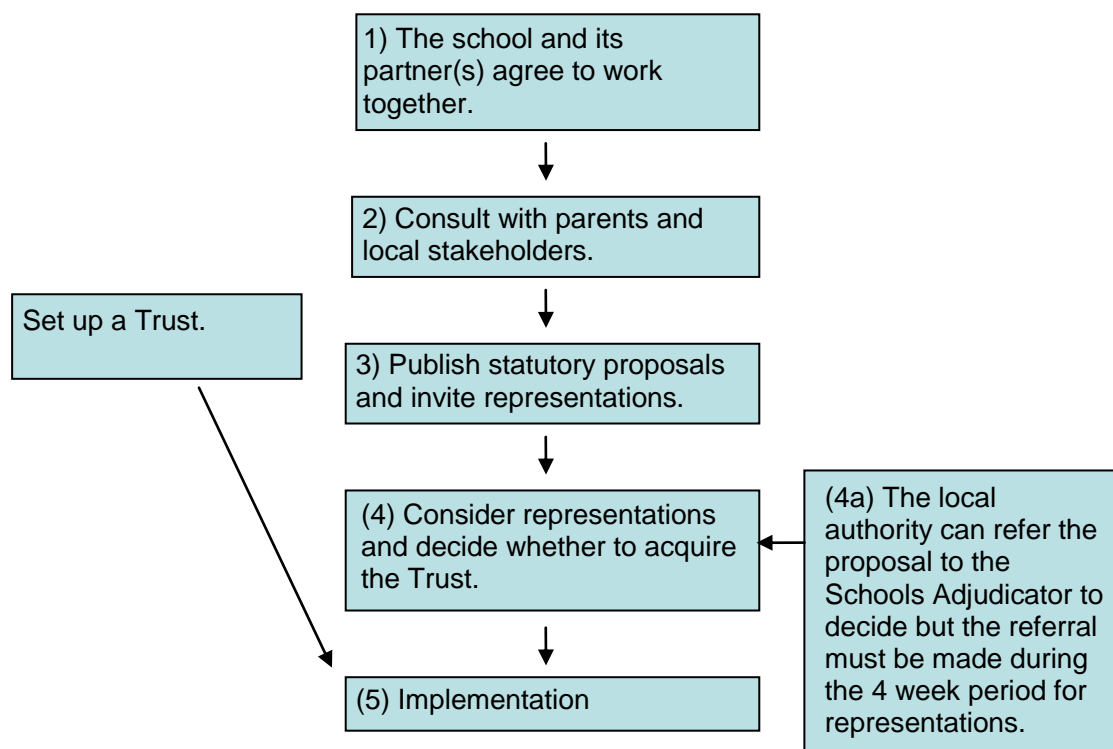
The governing body remains responsible for all aspects of the conduct of the school (including the school's budget and staff), and so responsibilities and accountabilities remain clear.

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## The process to become a Trust school

There are five stages to becoming a Trust school<sup>1</sup>. The toolkit is structured to guide you through each stage of the process and contains most of the documents and background information that you will need.

Stages 1 to 5 will be completed by the school(s) and its governing body. The Trust will be set up by the relevant Trust partner(s), working with the school, and must be in place by the implementation date of the Trust school.



The timescale will depend on how much detail has already been agreed by schools and their partners before beginning the formal process, and on how frequently the governing body meets. As a minimum the process will take at least a term<sup>2</sup> but more realistically it could be done over the course of a year – the table overleaf gives indicative timings:

<sup>1</sup> Existing foundation schools will go through this process to allow a particular Trust to appoint governors; other schools will do so to both change category (to be a foundation school) and also to work with a particular Trust.

<sup>2</sup> This would depend on proposals being well worked up in advance, and the governing body arranging meetings in weeks 6 and 13/14 with a committee/working party able to rapidly collate feedback and prepare proposals.

	In a term	Over a year
School and partners decide to work together.		Autumn term
Consult with parents and local stakeholders.	Weeks 1-6	Spring term
Publish statutory proposals and invite representations (NB Period for representations is 4 weeks).	Weeks 7 – 11/12	After the Easter holidays
Consider representations and decide whether to acquire the Trust.	Weeks 11/12 – 13/14	Summer term governors meeting
Implementation	Weeks 13/14-15/16	September

NB A more detailed flowchart to supplement this table is available on the Trust and Foundation Schools Partnership's (TFSP) website (see 'Project plan for acquiring Trust status' under 'Resources') at

[www.trustandfoundationschools.org.uk](http://www.trustandfoundationschools.org.uk).

These PowerPoint slides provide an indication of the timeline for a school to become a Trust school, based on the experiences of those schools which have already gone through the process. They give an overview of the activities that will need to be undertaken and the deadlines in order to achieve Trust status within one school year. It is broken down by term time, so schools will need to adjust their planning to reflect school holidays.

Where more than one school decides to work together in a shared Trust, each school must separately go through the statutory procedures to acquire the Trust. However, there is scope for governing bodies to publish a joint consultation if they are publishing proposals for the acquisition of the same Trust. Each governing body would need to consider any comments or views expressed before deciding whether to go ahead and publish proposals.

Once partners have 'signed up' to work with a school(s), around three months should be allowed to establish the Trust, which must be in place before the implementation date of the proposals. (If the trust's charitable income will be substantial, it may be necessary to register with the Charity Commission, which may extend this start-up period.)

### **Statutory Processes**

#### *Changing school category and Trust school proposals*

If a school is not already a foundation school, it will need to change category to foundation before it may become a Trust school under the 2006 Act. This can be done concurrently with the process of acquiring the Trust, but due regard should be given to the relevant guidance on both statutory processes to change category and acquire a Trust. (Schools might also undertake the change of category and acquisition of a trust in two stages, but this would require two separate statutory exercises, including consultation and the

publication of statutory notices, and therefore take more time.)

Community and voluntary schools **should** consult *Changing School Category to Foundation – A Guide for Governing Bodies* and **must** have regard to the statutory guidance contained within that document

<http://www.dcsf.gov.uk/schoolorg/guidance.cfm?id=25>.

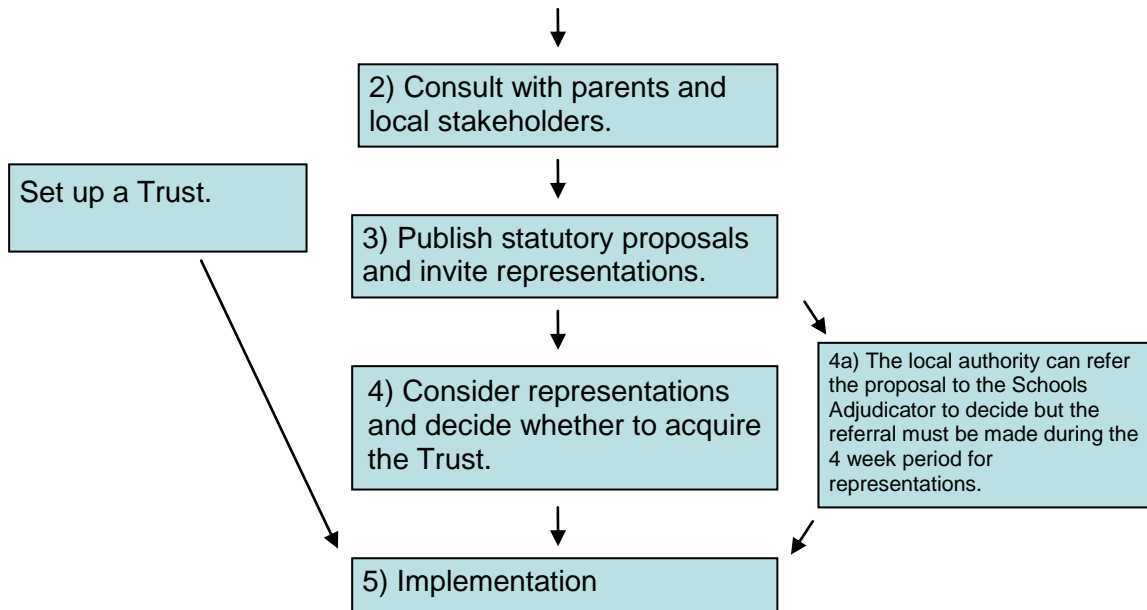
All Trust proposals **must** have regard to the statutory Trust guidance.

**Voluntary schools will need to include a statement in their statutory proposals to become Trust schools confirming that the consent of the trustees and the persons by whom foundation governors are appointed has been obtained (see Annex 3 of Stage 1 for more information for voluntary schools exploring Trust school status).** Governing bodies **should** consult *Trust School Proposals, A Guide for Local Authorities and Governing Bodies* and **must** have regard to the statutory guidance contained within that document (also available via the link above).

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## Stage 1: Decide who to work with and how

**1) The school and its partner(s) agree to work together.** Many schools will already have relationships with partners who could form a Trust, and others will need to think about who they want to work with and how to approach them. Agreement in principle should be sought from the governing body before approaching partners.  
**Timing:** discussions and decision can take place at any time. It will normally take between a term and a year to complete all five stages.



### You need to:

1. Decide (at a governing body meeting) to explore Trust status, and think about setting up a committee or working party to do the detailed work.
  - If you are thinking about a shared Trust for several schools, you should also think about how to handle decisions – will you coordinate governing body meeting dates?
2. Think about what benefits a Trust would bring to your school(s), identify partners and develop a shared vision and clear expectations.
3. If you are a community school, the governing body **must** give the local authority written formal notice of a meeting at which a resolution to consult on changing category will be considered. The local authority cannot then dispose of any land used by or for the school until the proposals have been decided or withdrawn. **We would encourage all schools to let their local authority know as soon as possible that they are considering this change.** Annex 1 of this section contains a model letter for governing bodies to use for this purpose.

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## Options for Trust schools

There is no single blueprint for how Trust schools will work – schools can choose who to work with and how. ‘Options for Trust schools’ provides a starting point for schools and partners to design a Trust that meets their needs and priorities.

The options are organised around ‘themes’ that schools might want to focus on such as transforming opportunities for young people by strengthening collaboration with other schools and partners or improving 14-19 opportunities. Each theme has suggestions for how a Trust could help the school and the kind of partners that schools should consider – this is not a prescriptive or exhaustive list.

The ‘Setting up a Trust’ section explains some of the options for establishing Trusts and how they will work in practice. There are two key points to consider at this stage:

Trusts can involve one or more partners – a school can choose to work with a Trust formed by a single partner or by several partners. Either approach would help to put relationships on a more stable and sustainable footing and strengthen the school’s leadership and direction by drawing on partners’ energy and expertise.

Schools can involve the local authority in their Trust, but its influence must be limited to 1/5 of the voting rights [See Setting up a Trust].

Trusts can support an individual school or groups of two or more schools – a shared Trust can strengthen a common sense of direction (and help to spread good practice) by appointing governors for each school. It could also underpin other forms of collaboration, and provide more stability than informal partnership, so that the collaboration continues, even if key individuals move on.

A shared Trust will not be right for all schools. For example an underperforming school might want its Trust to offer different support and input from other schools in the area; or a local partner with strong ties to a specialist school might not be appropriate for other schools.

Voluntary aided and voluntary controlled schools already have a foundation (or Trust) and a school may not have more than one foundation. These schools cannot therefore formally join a group of other schools who wish to acquire a different, shared Trust (see Annex 3 of Stage 1 which provides supplementary information for voluntary schools considering Trust status; the ‘Further Information’ section of this toolkit – ‘What would change if our school became a Trust school’ and <http://www.trustandfoundationschools.org.uk/> and the document under ‘Resources & publications’ entitled ‘Voluntary schools working with Trust schools’). Depending on the provisions of the existing foundation, however, it might be possible for it to become the Trust for other schools also (or to appoint representatives to some other Trust). It might also be possible for the school to change category to become a foundation school,

with any necessary change to the existing Trust if this is needed. Because a Trust puts relationships on a more stable footing, it can underpin other collaboration such as access to facilities and/or specific joint projects.

## Joint Governance Structures

Schools working to acquire a shared Trust may also consider joint governance structures (federation or collaboration). Joining up governance can allow schools to make shared governance decisions which can complement partnership working with a Trust. Schools can establish a joint committee of their governing body which has delegated powers to make decisions for all their schools (**collaboration**), or they can merge their governing bodies into a single body capable of making decisions on behalf of all their schools (**hard federation**).

**Joint committees** are constituted in the same way as other committees of governing bodies, except that these committees have a remit to make decisions on behalf of more than one school. It is, therefore, relatively easy to set one up (and to dissolve), only requiring the governing bodies of each of the schools to agree separately to establish this committee and which powers to delegate to it<sup>3</sup>. In the long term, **federation** of governing bodies is more flexible as a federated governing body has full powers to make decisions on behalf of all the schools on any issue, and without the risk of decisions being overturned. Federation requires a minimum of 6 week consultation period and a separate statutory process. There is scope to combine the Trust and federation consultations, but it will be necessary to ensure that the requirements for both consultations are met.<sup>4</sup>

Some possible Trust and federation scenarios:

- Schools in an existing federation are able, through their single governing body, to become a Trust school. They need to be explicit that each of the schools is acquiring a Trust (and changing category if relevant), but otherwise the federation will be able facilitate the process by accelerating decision.
- Schools looking to acquire a shared Trust can delegate some of the work on this to a joint governance committee. The committee could be established quickly and would be able to make some decisions about the trust and to manage the process.
- Schools working with a shared Trust might want to establish a joint committee of their governing bodies. The joint committee could, for example, be constituted of Trust appointed governors and could have delegated powers to make decisions on the Trust's priorities which might involve timetabling for 14-19 curriculum, or managing

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<sup>3</sup> [http://www.standards.dcsf.gov.uk/federations/pdf/20Guidance\\_Collaboration.pdf?version=1](http://www.standards.dcsf.gov.uk/federations/pdf/20Guidance_Collaboration.pdf?version=1)

It is also possible for FE Colleges to join statutory collaborations:

[http://www.standards.dcsf.gov.uk/federations/software/regulation\\_collaboration.doc?version=1](http://www.standards.dcsf.gov.uk/federations/software/regulation_collaboration.doc?version=1)

<sup>4</sup> For further statutory detail on Federations please see:

[http://www.standards.dcsf.gov.uk/federations/pdf/uk\\_i\\_20070960\\_en.pdf?version=1](http://www.standards.dcsf.gov.uk/federations/pdf/uk_i_20070960_en.pdf?version=1)

relationships with service providers.

- A 'hard' federation would support a shared Trust by enabling close partnership working on all governance issues. The schools would be able to easily share staff, resources, budgets, and facilities and the strategic vision of the trust could be easily reflected the joint decisions of the governing body.

Many of the models shown in the following examples suggest three schools with a shared Trust involving three partners – this is to illustrate the range of options rather than a standard structure. **Schools' governing bodies can choose how many other schools they want to work with and how.**

## Options: Every Child Matters

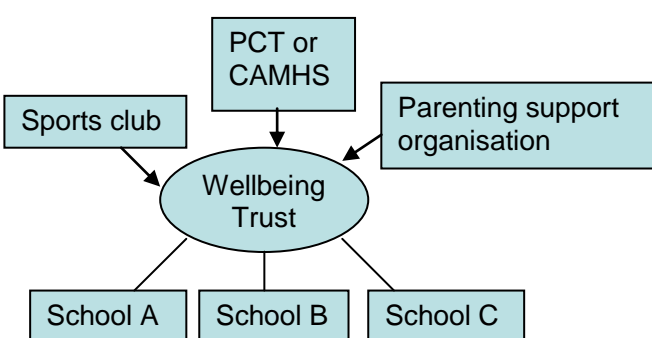
### Who could be involved in the Trust?

- Local Authority/Children’s Trust Board
- Children’s Centres and Sure Start provision
- Organisations delivering extended services, including childcare, adult learning, culture, sport and play organisations, parenting support, homework clubs, out of school hours learning
- Local Primary Care Trust or specific health services such as CAMHS (Child and Adolescent Mental Health Services).

A shared Trust for several schools could support them to take responsibility for all children and young people in their area, working together to meet their needs and make sure that none fall through the gap.

### Possible models:

**A Trust focused on ‘wellbeing’** could help schools to embed healthy lifestyles and personal development in their strategic direction.



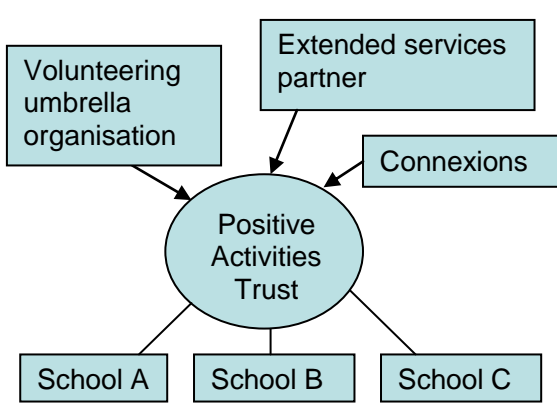
Benefits from Trust-appointed governors could include:

- Expertise, including early intervention and inclusion
- Supporting strategic direction with clear focus on developing ‘the whole child’
- Leadership and management skills and a new perspective
- More stability for joint working and other collaboration.

**Positive activities is another possible ‘theme’** for a Trust, which could help schools to play a full part in joining up local support for children and young people.

Involving partners in the school’s governance could:

- Bring a new perspective to citizenship and making a positive contribution
- Offer expertise to engage children and young people
- Help the school to promote pupils’ wider interests and development
- Put existing partnerships on a longer-term footing.



For further information, visit

[www.everychildmatters.gov.uk](http://www.everychildmatters.gov.uk)

and

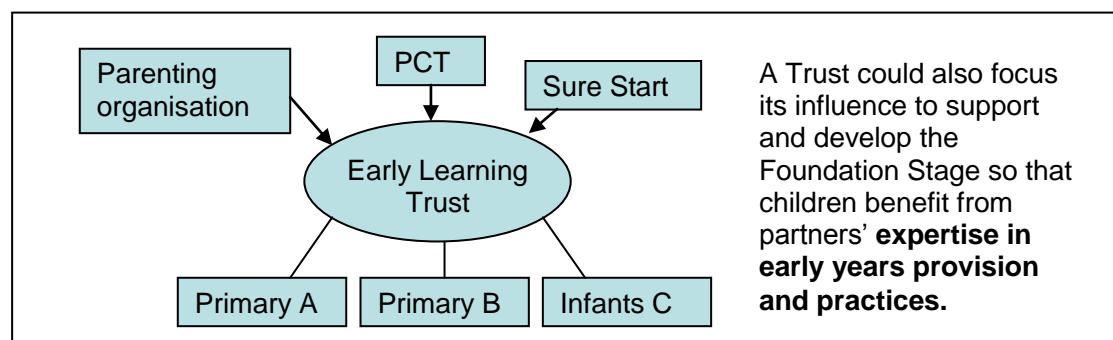
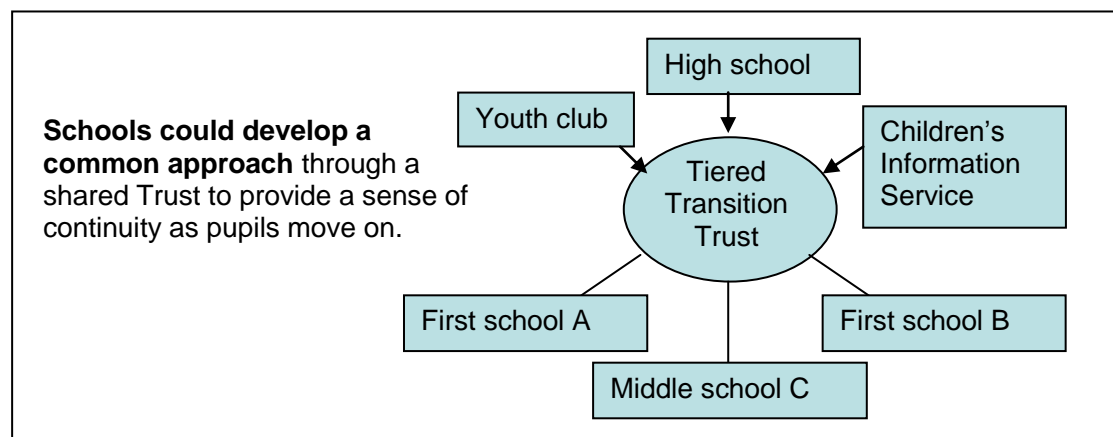
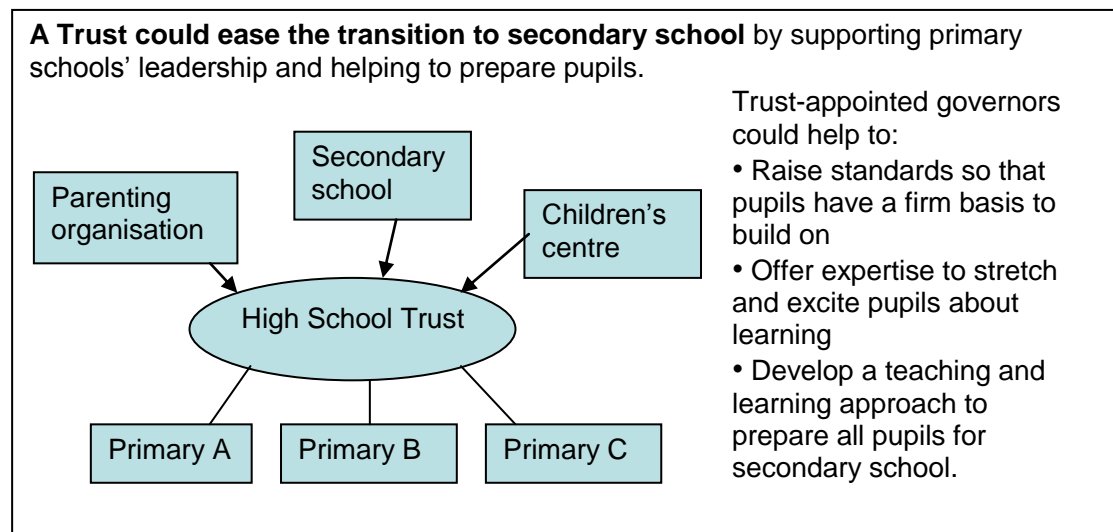
<http://www.dcsf.gov.uk/publications/childrensplan>

## Options: transition and progress

### Who could be involved in the Trust?

- Local Authority/Children's (or Family) Information Service
- Local secondary schools (or primary schools for early years' transition)
- Children's Centres and Sure Start
  - Culture, play and sport organisations
- There are evident benefits for schools to work together on this theme, to support all the children in an area in making their transition between schools.

### Possible models:



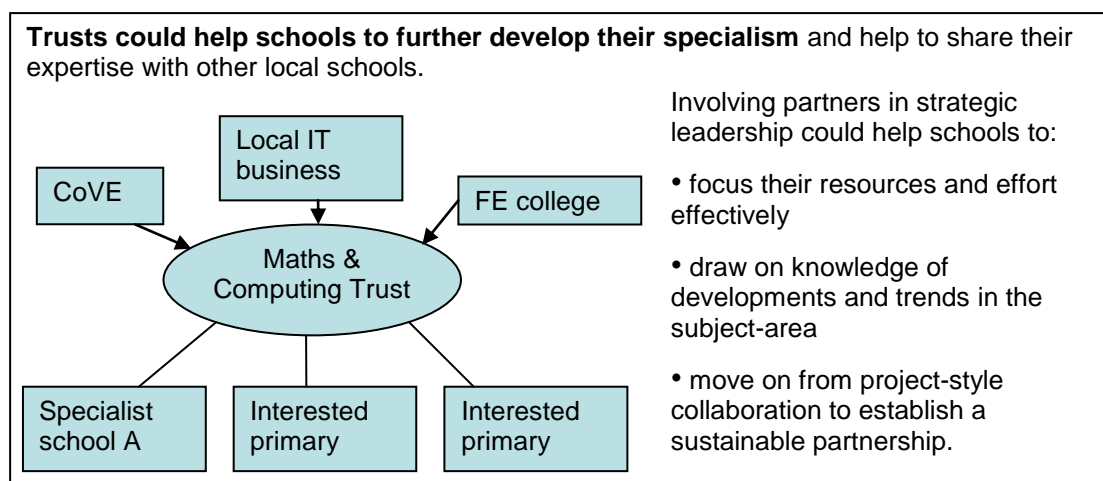
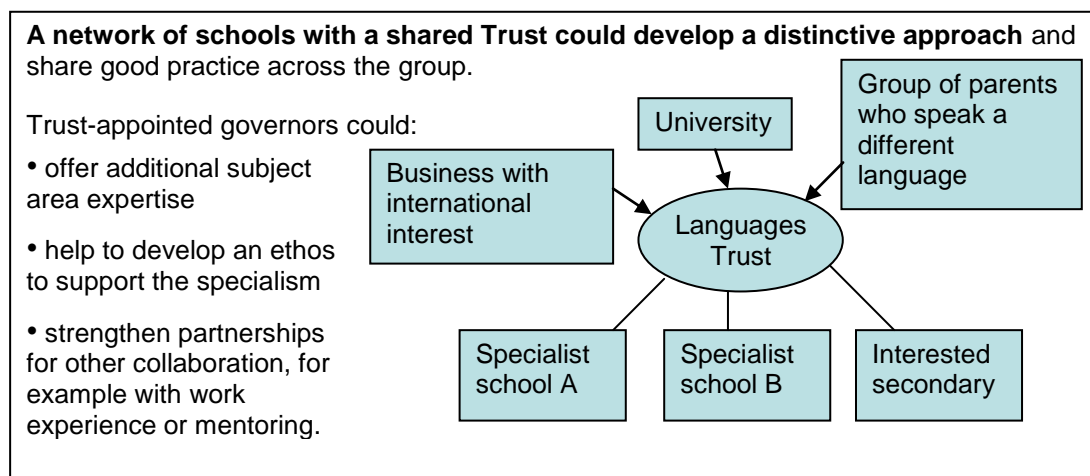
## Options: strengthen a specialism

### Who could be involved in the Trust?

- Organisations - including Small and Medium Enterprises - which operate in a sector related to the specialism
- Other specialism sponsors
- Relevant Sector Skills Council (SSC)
  - CoVEs (Centres of Vocational Excellence)
  - FE colleges, Higher Education institutions

A shared Trust for a national network of schools will need to be able to identify and appoint governors to each school – this could involve looking for partners with several regional bases, or exploring e-governance.

### Possible models:

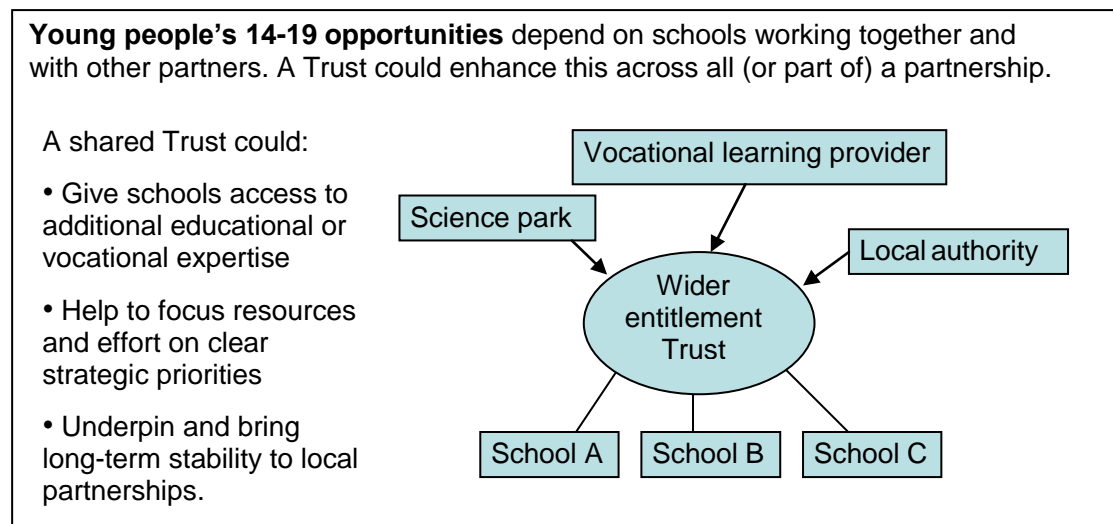
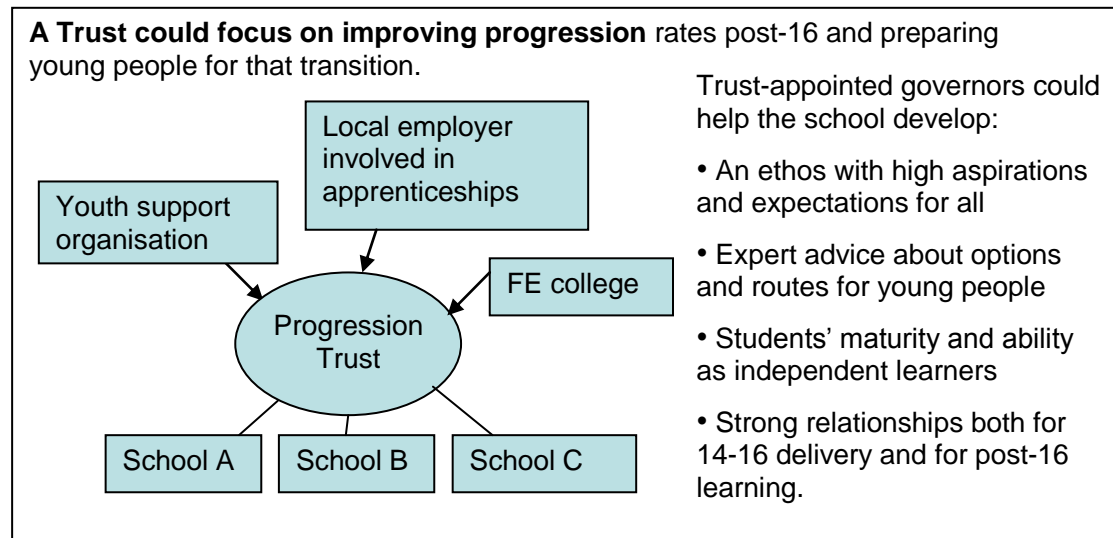


## Options: 14-19 opportunities

### Who could be involved in the Trust?

- Vocational training providers and work-based learning providers
- FE colleges and CoVEs (Centres of Vocational Excellence)
- HE institutions
- Sponsors of the schools' specialisms
- Business organisations - including local SMEs
- Organisations which provide support and/or personal development opportunities for young people.
- Local authority, Learning and Skills Council (LSC)

### Possible models:



**See also:** The 14-19 website: [www.dcsf.gov.uk/14-19](http://www.dcsf.gov.uk/14-19)

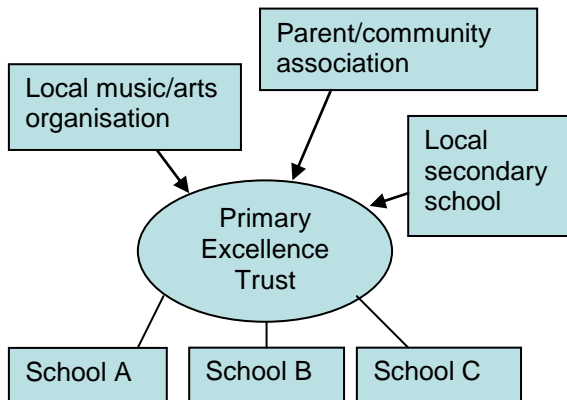
## Options: collaboration or federation

### Who could be involved in the Trust?

- HE institutions, FE colleges, secondary schools (for primary schools)
- Organisations delivering extended services
- Businesses – including local SMEs
- Local regeneration organisations; community and voluntary groups

### Possible models:

**A Trust could help schools to work together to raise standards**, providing a shared sense of direction.



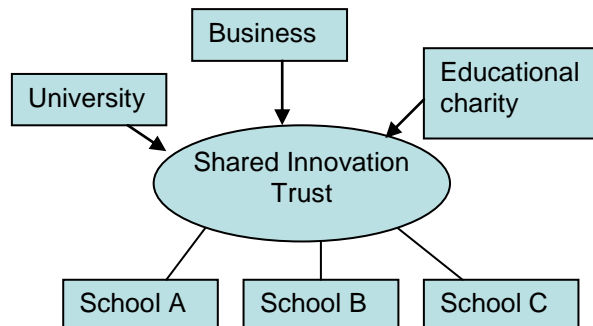
Schools could benefit from:

- Access to good governors with a range of skills and experience
- Potential economies of scale if the Trust provided 'back-room' administrative services, such as payroll
- More secure collaboration, even if key individuals move on.

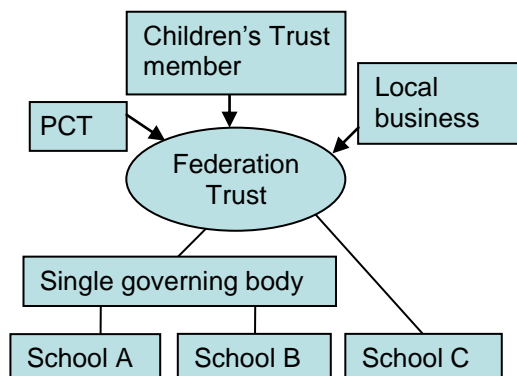
**A Trust could draw in partners with innovative ideas** or a new perspective, helping schools to develop a common approach and identity.

A shared Trust could

- Give the schools access to a wider range of experience and energy
- Spread good ideas rapidly
- Make innovation easier – a single application for the Power to Innovate on behalf of all the schools.



Schools can draw governors from a shared Trust with each retaining its own governing body. But **a Trust could also support schools working in a hard governance federation**, bringing energy, experience and expertise to support several schools through a single governing body. This could be for schools already in a hard federation, or several schools with a shared Trust could form a federation.



See also: [www.standards.dcsf.gov.uk/federations](http://www.standards.dcsf.gov.uk/federations)

## Options: raising achievement

### Who could be involved in the Trust?

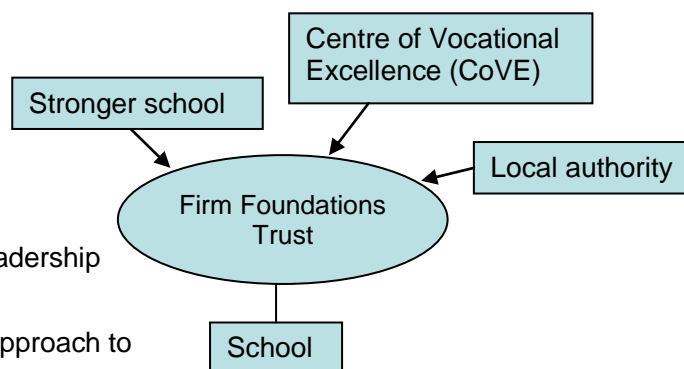
- HE institutions
- FE colleges, vocational training providers, stronger schools
- Teacher training/professional development organisations
- Business organisations – including SMEs
- Educational charities
- Local authority

### Possible models:

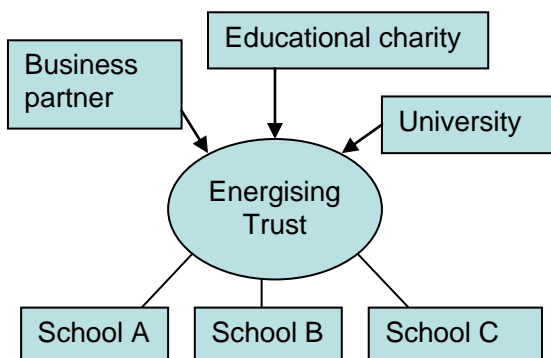
**Some schools will need support and challenge to get the basics right.** They will have access to a range of support to help raise standards – a Trust allows schools to draw on the energy, experience and expertise of partners for the long-term.

Trust-appointed governors could bring:

- Subject and/or educational expertise
- Experience and good practice
- Generic management and leadership skills
- New perspectives or a new approach to getting things done.



**A Trust could bring fresh energy to help coasting schools** to raise their game and improve their value-added score.



Involving partners in shaping the school's strategic directions could:

- Bring a new perspective to challenge assumptions
- Raise expectations about what the school and its pupils can achieve
- Provide expertise or experience to introduce or support change
- Underpin other collaboration, such as mentoring or professional development for the leadership team.

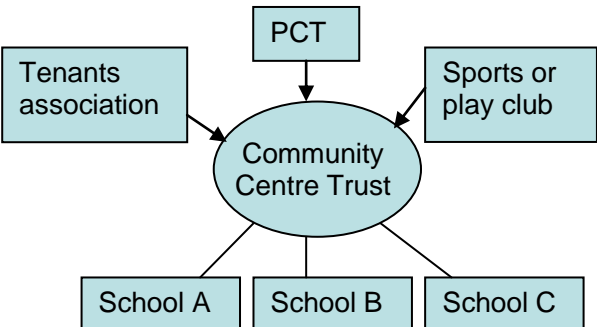
## Options: community regeneration

### Who could be involved in the Trust?

- Local authority and/or members of the Children’s Trust Board
- Regeneration consortium
- FE college/other adult learning provider
- Sure Start and Children’s Centres
- Voluntary/community groups
- Local businesses and employers

### Possible models:

Establishing a Trust with local partners could help schools to form the **heart of their communities**.



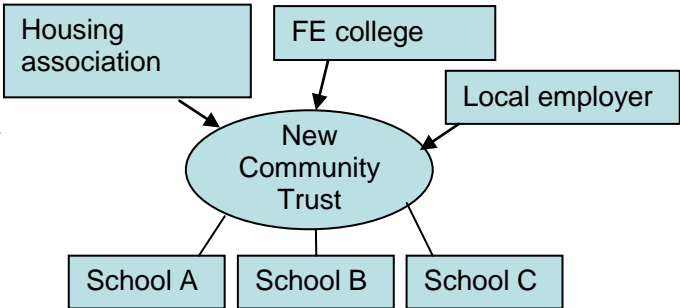
Governors appointed by the Trust could:

- bring expertise and credibility to help the school engage with hard-to-reach parents
- help the school to act as a community resource
- underpin other collaboration and co-location of services.

**Schools aiming to raise standards and aspirations** could harness their partners’ energy and experience.

Schools could benefit from:

- governors with generic management and leadership skills – *schools in deprived areas often find it hard to recruit governors.*
- the support of a range of stakeholders with an interest in the school and its community.



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## Finding an external partner

This section sets out some of the options for identifying an external partner – although some schools will already know their potential partners quite well, others will need to think about who they want to work with and how to approach them.

### Who do you want to work with?

1. This depends on what the school or group or schools wants from its Trust. Trusts are a way for schools to develop strong and stable relationships with external partners and to bring new skills and expertise to strengthen the governing body.
  
2. Once you have a sense of the kind of organisation you want to work with, you should think about approaching:
  - Your school's, or group of schools', existing partners and contacts. Local organisations: colleges, universities, support services for young people, employers, charities, voluntary groups.
  - Your local authority (and or Children's Trust) might be able to suggest partners, or help you to establish contact.
  - The Trust and Foundation Schools Partnership (TFSP) provides support for schools wishing to acquire Trust status. For further information visit the TFSP's dedicated Trust schools' website: [www.trustandfoundationschools.org.uk](http://www.trustandfoundationschools.org.uk), contact the TFSP on 020 7802 0967 or email enquiries to [contact@trustandfoundation schools.org.uk](mailto:contact@trustandfoundation schools.org.uk). For those schools with a sports specialism, please contact the Youth Sport Trust on 01509 226645 for advice.
  - The TFSP may be able to suggest potential partners to schools and help to broker relationships<sup>5</sup>. The Commissioner will focus on areas of low attainment, low diversity of schools available and/or deprivation.  
OSC is contactable on [info@dcsgsi.gov.uk](mailto:info@dcsgsi.gov.uk)
  - Local Education Business Partnerships (EBPs) will also have good contacts with local employers that could support Trust schools. Your local Chamber of Commerce or Business in the Community office might be able to help you identify local businesses with an interest in supporting schools.
  
3. If you are thinking about a shared Trust for several local schools (or a national network supported by a common Trust) then you will need to involve the other interested schools in this discussion.

You will want to check that your potential partners are suitable. At this stage you should follow your common sense, and the toolkit contains guidance to

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<sup>5</sup> The Schools Commissioner will not hold a register of Trust partners that have been 'approved' by the DCSF. However, the Office of the Schools Commissioner maintain a database of published proposals to acquire a Trust which allows a search on whether particular organisations are already acting as Trust partners through proposals which have been published and decided locally. This database is available via: [www.dcsf.gov.uk/schoolscommissioner/trusts.shtml](http://www.dcsf.gov.uk/schoolscommissioner/trusts.shtml)

help you check that partners are suitable during initial discussions and before taking a final decision. You should also refer to the statutory Trust acquisition guidance on the suitability of partners [see later in this section 'Issues and decisions for early discussion' and Stage 4: Decide whether to acquire the Trust].

### **How to identify and approach organisations**

4. Once you have decided on the type of organisation to approach, it would make sense to establish a 'working party' to do most of the work to contact organisations and have initial discussions. The full governing body should still have regular reports about progress and all governors should be involved in major decisions.

5. A booklet entitled "Making Trust Schools Their Business - a guide for schools on engaging companies" is also available to download [www.trustandfoundationschools.org.uk](http://www.trustandfoundationschools.org.uk) (Resources and see under DCSF documents) or to order via TeacherNet (search using the reference DCSF-00187-2008) <http://publications.teachernet.gov.uk/> .

6. Key points to make are:

#### *If you are speaking to a potential partner for the first time:*

- Identify the correct person to contact within the organisation
- Request a brief meeting with the organisation, emphasising that you are keen to share some information on your school and a new project in particular
- Keep the conversation informal and friendly

#### *Key points to make in early discussions with partners (not necessarily at the first meeting) should include:*

##### Tell them about your particular school and interests

- a. Provide general information about your school, e.g. key strengths, number of pupils, specialism
- b. Explain what a Trust School is and why you want to become a Trust School e.g.

Trust schools are different in that they are supported by a charitable organisation (a Trust) that appoints some of the school's governors. A Trust is a way to go beyond ad-hoc joint projects to build a long-term relationship. The focus is on bringing partners' skills and experience to support the school.

For example, if the partner were involved in a Trust for [x] school your [skills, experience] would strengthen the governing body which would help us to [make what difference to pupils?].

- c. Why you think that this particular partner could help you and the Trust

(giving some specific, time bound examples)

- d. How you think the partner could benefit from being involved with the Trust

Be clear about what Trust schools are:

- e. Trust schools are state funded schools and are covered by the same rules about the curriculum, admissions etc. They are funded by the local authority – there is no requirement or expectation for Trusts to make a financial contribution.

Check that they know how a school is run

- f. The Trust will support the school, but will not take it over or run it. The value of a Trust is in the governors it appoints, and the skills and experience they bring to support the school.
- g. Every maintained school has a governing body which is responsible and accountable for all major decisions about the school and its future. Governors have a legal responsibility to conduct the school with a view to promoting high standards of educational achievement. They work with the Head teacher to set the school's vision and strategic aims, monitor and evaluate performance, approve the school's budget and ensure the school is accountable to those it serves.
- h. A Trust school governing body will include parents and staff, governors from the community and local authority, and the governors that the Trust appoints.

Establishing a Trust - expectations on partners

Clarify with the potential partner what role they will play in establishing the Trust and what is required of a trustee. It is advisable to discuss what decision making process the partner will have to go through with their organisation (if any) to become part of the Trust.

7. The School Governors' One-Stop Shop (SGOSS) is responsible for recruiting high quality governors, mainly from business, and placing them in schools. There are two potential ways in which SGOSS could support Trusts:

- It could be a source of foundation governors if Trusts need help in identifying good people. This could be a useful reassurance to potential partners who are concerned that they do not have the capacity to provide governors from within their own organisations (particularly if the Trust is going to cover several schools);
- It could support organisations that did want to use their own staff as governors by going into those organisations to explain what being a governor is all about, and helping with recruitment.
- For further information about SGOSS please visit its website ([www.sgooss.org.uk](http://www.sgooss.org.uk)) or contact SGOSS by email at [info@sgooss.org.uk](mailto:info@sgooss.org.uk) or by telephone on 0870 2413883.

8. You might also want to give the partner copies of the 'Trust Schools and Governance' document (or the governor recruitment materials 'Help Schools Help Children' – see [www.governor.net.co.uk](http://www.governor.net.co.uk)).

8. A short DVD on the potential benefits of Trust schools and further information for partners is available on the Trust and Foundation schools website ([www.trustandfoundationschools.org.uk](http://www.trustandfoundationschools.org.uk)) shortly.

9. You might also want to give the partner copies of booklets listed at page 3 of this toolkit or the governor recruitment materials 'Help Schools Help Children - How to Become a School Governor and Recruitment Toolkit' which is available by searching the publications of GovernorNet <http://www.governor.net.co.uk>

9. The Charity Commission publishes a range of user-friendly leaflets which include guidance on the roles and responsibilities of trustees (see [www.charitycommission.gov.uk](http://www.charitycommission.gov.uk) and follow the link to "publications and guidance").

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## Issues and decisions for early discussion

Schools and their partners will need to discuss a number of questions at the outset. This will help both to confirm whether the partner is right for the school or group of schools, and to develop proposals for the Trust.

Some schools have found a 'Memorandum of Understanding' a useful way to summarise the decisions at the start of the process to become a Trust school. This is entirely optional and is not a legal requirement. A model MoU has been included at Annex 2 of this section.

### **Is the potential Trust right for the school?**

A Trust could be the natural development of an existing partnership or a means to develop a new relationship. In any case this is a deeper relationship than many other forms of partnership – although it is not irreversible, schools will want to be sure that they work with the right partners for them.

#### **1. What is the school, or group of schools, looking for in its Trust?**

This depends on the school's priorities for future development – there is no single blueprint for how a Trust could benefit the school and its pupils. It could include:

- skills, experience or an approach to strengthen the governing body;
- particular expertise, for example in a subject area; and
- a means to involve particular organisations in a stronger partnership.

#### **2. Are the school(s) and potential Trust 'in tune' about a shared vision and sense of values for the school?**

The school's Trust will appoint governors who will support and shape the school's strategic direction – schools will want to be sure that the potential Trust will share and strengthen their vision and values.

Schools should discuss their vision or mission statement with the potential Trust and talk about the school's values. Partners should be able to suggest changes – for example to introduce aspects of their own approach and ethos.

Consideration should be given to the potential impact of the partnership on other schools in the area and on any other organisations or bodies likely to be affected. Since September 2007 all maintained schools in England have had a duty to promote community cohesion, and since September 2008 Ofsted are reporting on the contribution made by all schools. Guidance and case studies are available at:

[http://www.teachernet.gov.uk/wholeschool/Communitycohesion/Community\\_Cohesion\\_Guidance/](http://www.teachernet.gov.uk/wholeschool/Communitycohesion/Community_Cohesion_Guidance/)

[http://www.teachernet.gov.uk/wholeschool/Communitycohesion/Community\\_cohesion\\_case\\_studies/](http://www.teachernet.gov.uk/wholeschool/Communitycohesion/Community_cohesion_case_studies/)

An online resource pack has been developed with the Institute for Community Cohesion (ICoCo) as a 'one stop shop' for schools on community cohesion.

The resource pack provides practical ideas, including an audit tool, for implementing the duty and includes case studies of good practice. The resource pack is available at:

<http://www.teachernet.gov.uk/wholeschool/Communitycohesion/communitycohesionresourcepack/>

In addition, the Schools Linking network (SLN) is a new agency which will support schools and local authorities in developing partnerships. It helps schools link up, giving pupils the opportunity to meet and learn from other young people from different backgrounds, which is a way of fulfilling the new community cohesion duty. SLN contact: Angie Kotler 01274 385620 or [info@schoolslinkingnetwork.org.uk](mailto:info@schoolslinkingnetwork.org.uk) /

[http://www.schoolslinkingnetwork.org.uk/home\\_page/home\\_page.aspx](http://www.schoolslinkingnetwork.org.uk/home_page/home_page.aspx)

There is a separate duty on Trusts to promote community cohesion.

### **3. Do the school(s) and Trust have the same immediate priorities?**

The school's development plan for the next 1-2 years sets out the practical steps it is taking towards its vision. Some priorities will be obvious, while others will reflect the school's values and character. Talking about priorities will help the school and Trust to check they are also 'in tune' on a practical level. It might be helpful to complete a vision and outcomes document to bring these discussions together. The document could cover details of the overarching vision and aims of the Trust, the Trust's primary focus, how it will make a difference and how it will support the school in raising standards and improving outcomes for the pupils.

Other key information might include what the Trust's added value over existing partnerships might be, how it will benefit the pupils, how it will contribute to the wider community/other schools, how partners will contribute and how their expertise will be used, and how the Trust will contribute to *Every Child Matters* outcomes.

### **4. Does the Trust (or the partner(s) who will establish it) have the experience to help the school achieve these aims?**

Different partners will bring different perspectives, experience and skills to support the school. This could be generic management and leadership skills; particular expertise in project management, finance or a particular area of the curriculum; or strong links to the local community. Does the potential Trust's experience match what the school is looking for?

Schools might also want to think about their partners' experience of working with schools – do they already work with this school or other schools? Do they already appoint governors to schools and/or support individuals who volunteer as governors?

It might be useful to talk about and agree what skills and experience the governors appointed by the Trust will have, so that expectations are clear from the outset.

## **5. Would the partner(s) be considered 'unsuitable'<sup>6</sup>?**

The governing body should satisfy itself that the partner(s) would not be generally considered 'unsuitable', for example if they are involved in activities that might be unsuitable for children and young people, or if the link to a school would be controversial and risk damaging the school's reputation.

Every Trust will have to promote community cohesion in ways that are charitable as part of its role to advance the education of pupils at the school(s) that it supports, and will be bound by the Race Relations Act duty to promote race equality (see also paragraph 2 of this section regarding the duty to promote community cohesion).

The local authority may have views on the partner(s)<sup>7</sup>, and it would be sensible to ask the partner (or use internet searches) about their business practices and customer/media profile, and check that there are no serious financial problems that might mean the partner was unable to sustain its commitment.

If the school feels that further due diligence arrangements are necessary, then the governors should ask whether the partner can fund this. If they cannot, the governing body could use its delegated budget for the purposes of undertaking such checks.

[See also: Stage 4: Decide whether to acquire the Trust and in particular the Statutory Guidance to decision makers]

## **How will it work?**

Once you have agreed that you want to work together, the school(s) and partner(s) need to resolve several practical issues. This will mean that mutual expectations are clear from the outset, and that you can properly consult parents and other stakeholders about the plans.

## **6. How will the partnership affect other schools and organisations in the area?**

The school and its partner(s) should be clear whether the Trust will involve other schools and/or organisations from the outset, and whether they expect to include others in future. How will the school work with other schools and partners that are not involved in the Trust? How will the proposals impact on other schools in the area?

## **7. Will the Trust appoint the minority or majority of governors?**

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<sup>6</sup> Individual trustees will be subject to Criminal Records Bureau (CRB) checks. All trustees should be CRB checked prior to the Trust School implementation date. Each individual CRB check specifies a particular role/purpose for its holder. Therefore even if your trustees have previously been CRB checked we would recommend that another check is carried out which specifies their specific role as trustee. We recommend applying early as they can take a while to process.

<sup>7</sup> Of course, local authorities can themselves be involved in a Trust with up to 1/5 of the voting rights.

There are different advantages to minority- and majority-appointing Trusts. The school and Trust will need to agree which model is right for them. If the Trust appoints a majority of governors then the school must have a Parent Council and will need to think about how this would be set up.

(NB All schools are encouraged to establish some sort of parent forum or council, as part of their duty to have regard to parents' views. It is only Trust schools where the Trust appoints a majority of governors which are required to establish a Parent Council according to the School Governance (Parent Council) (England) Regulations 2007 which set out minimum membership, function and support arrangements for Parent Councils in 'majority governance Trust schools'. For statutory guidance on Parent Councils and a resource pack to help governing bodies and schools to establish a Parent Council:

<http://www.governor.net.co.uk/publishArticle.cfm?topicAreaId=3&contentId=1149&pageStart=91&sortOrder=c.publishDate>

- 1.
2. All other schools are free to establish a Parent Council in any way they wish, or not to do so at all. If they do set up a Parent Council they are not required to follow the statutory guidance but may choose to do so.
- 3.

[See also: Further Information section q.19 and Stage 5: Implementation for information about governing body models and about establishing a Parent Council]

## **8. What about plans for sustainability?**

Trusts are intended to be a sustainable means for schools to benefit from their partners' energy and expertise. How long are the initial trustees and governors willing to commit themselves for, how will the partner(s) replace the trustees, and how confident are they about identifying future governors?

[See also: Setting up a Trust section - 'Running a Trust']

## **9. Does the Trust intend to offer other support to the school?**

The school and Trust should both be clear about mutual expectations, for example if the Trust will offer services (e.g. clerking, administrative support, training for governors/staff); if it intends to contribute financially to particular projects or to pay for CRB checks for Trust-appointed governors; if there are plans to collaborate with access to facilities, shared projects etc.

## **10. What land and buildings will the Trust hold on behalf of the school?**

The school, Trust and local authority will need to agree what land will be transferred to the Trust. If the Trust's role ends, then publicly-funded land will revert to the school or local authority. In the case of buildings financed via PFI, the buildings cannot be transferred to the Trust until the PFI contract ends.

[See also: Further information on land and buildings later in the toolkit and the supplementary information for Trust schools on land and assets, capital funding, PFI and BSF on the TFSP's website under Resources & Publications – see FAQs on Land and Buildings

[www.trustandfoundationschools.org.uk](http://www.trustandfoundationschools.org.uk) ]

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**This is a legal requirement as governing bodies must notify the local authority before they discuss changing category.**

**Model letter for the governing body to notify the local authority of its intention to discuss a resolution to consult about proposals to change category**

[From chair of governors of x school (or clerk to the governing body of x school) to y local authority]

As required by Regulation 11(4)(d) of the School Governance (Procedures) (England) Regulations (SI 2003 No 1377), inserted by Regulation 30(3)(c) of the School Organisation and Governance (Amendment) (England) Regulations 2007 (SI 2007 No 3464), I am writing to give notice to the local authority that a motion for a resolution to consult about proposals to change category from community to foundation is to be considered at a meeting of the governing body of [x] school on [date].

Paragraph 11 of schedule 6 to the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 (SI 2007 No 1289) provides that the procedure for the school to change category shall be regarded as having been initiated upon receipt by the authority of such notice. Paragraph 12 of the schedule provides that while the procedure is pending, the local authority may not dispose of any land used wholly or partly for the purposes of the school, or enter into a contract to dispose of any such land, except with the consent of the Schools Adjudicator.

This is entirely optional.

## Annex 2

### Memorandum of Understanding

As you are developing plans for your Trust and talking to partners it may be useful to draft a short memorandum of understanding with potential partners, this will help to ensure that all partners are committed to exploring the proposal further and that there is a common understanding of the collaboration. You may wish to draw up a separate document for each of your partners or one document that you ask all of your partners to agree.

A 'memorandum of understanding' or 'letter of intent' is not a legally binding document but signifies a statement of intent between a number of parties to collaborate on a particular project. It is useful to set out the broad terms of a project so that all parties have a shared understanding of the nature and aims of the collaboration. There is no set format for the document, you can tailor it to meet your particular needs and the document can be revised and updated as the project progresses. An outline template is set out below with some suggestions for areas you might like the agreement to cover.

Ensure your document is signed and dated by all parties and agree a date from which the Memorandum is to take effect.

---

### Memorandum of Understanding

Insert Date:

Insert name and addresses of schools and partner organisations.

- 1 This Memorandum of Understanding signifies a statement of intent to collaborate, but is not a legally binding document.
- 2 It recognises the intention of [insert details of school(s)] and [insert details of partner(s)] to co-operate and to explore further developments in the way that they work together with a view to establishing a charitable Foundation or 'Trust' to support the education of the pupils at [name of school(s)].
- 3 The specific focus of the Trust will be *[describe your vision for the Trust and the specific outcomes you expect it to achieve. You may wish to refer to your vision and outcomes document and attach it as an Annex]*.
- 4 Both parties have a shared interest in:
  - *Insert here the areas where you think Trust partners will be contributing specific skills and expertise e.g. the development of 14-19 provision, widening access to education, staff development etc.*
- 5 Other areas you may wish to discuss with partners and include in the document:

- **Personnel**- who are key personnel, either roles/or people?
- **Meetings and Communication Processes**- how often will meetings take place, who will attend, how will key decisions be communicated? Are partners happy to be named publicly as working with the school to explore Trust status? Will each party bear their own costs?
- **Implementation and Key Milestones** – what implementation date are you working towards? What are the key next steps in the process and when are you aiming to achieve them?
- **Governance**- who will be a Trust member or a Trustee, if known at this stage? Will the Trust appoint a majority or minority of governors to the governing body?
- **Existing partnerships**- how does the Trust fit into other existing frameworks that partner(s)/school(s) are involved in? How will any potential conflicts of interest be managed?

Signed:[By partner(s) and school(s)]

Date:

## Trust Schools - voluntary aided (VA) and voluntary controlled (VC) schools

It is legally possible for any category of mainstream school to become a foundation school, with or without a Trust. But if you are currently a voluntary controlled or voluntary aided school you will already have a foundation (as do some foundation schools).

Depending on the intended constitution of the Trust and the constitution of the existing foundation, the foundation might need to be reconstituted in order to meet the requirements for Trusts in the Education and Inspections Act (EIA) 2006. In particular, while all existing foundations are in law already charities, they may not be incorporated charities of one of the types prescribed in the School Organisation (Requirements as to Foundations) (England) Regulations 2007 (SI 2007 No 1287)

Whenever a school with an existing foundation wants to change category to become a Trust school, it may only do so with the consent of the existing foundation. In addition, the school needs to be aware that the existing foundation would normally continue in ownership of the land, so unless the existing foundation agreed to transfer this to any new Trust (and this was possible under the terms of the existing Trust), or the school had access to an alternative site, it would not be practically possible for the school to continue without the existing foundation.

Furthermore, the provisions in the EIA that allow a Trust school to remove its Trust in certain circumstances do **not** apply to a school with a pre-existing foundation that becomes a Trust school under the EIA and accompanying regulations.

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Staff at a Trust school are employed by the governing body, not the Trust - this is the same position as in other foundation schools (and voluntary aided schools). So if a foundation or voluntary aided school became a Trust school, there would be no change of employer. Where a community or voluntary controlled school became a Trust school, the staff would cease to be employed by the local authority but would become employed by the governing body. In this situation, staff would transfer under the provisions of the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007, SI 2007 No 1289 (Paragraphs 29 to 32 of Schedule 1). These provisions protect the contracts of employment of staff at the school on transfer. The view of the Department is that the TUPE Regulations 2006 would not apply because this is either an administrative reorganisation of public administrative authorities or the transfer of administrative functions between public administrative authorities and is therefore **not** a relevant transfer for the purposes of TUPE. However, governing bodies need to take account of the Cabinet Office statement of practice, "Staff Transfers in the Public Sector". This ensures that the principles of TUPE are followed so that

those involved are treated no less favourably than had the TUPE Regulations applied.

#### Voluntary Controlled Schools

Should a VC school wish to become a Trust School on its own (i.e. it does not want a shared Trust) it may be possible to do so without the foundation being reconstituted. It has always been the intention that a VC school should be able change category to foundation without its foundation having to be reconstituted, provided the school continues to have a minority of foundation governors. This is covered at section 23A(3) of the School Standards and Framework Act (as inserted by section 33 of the Education and Inspections Act 2006) where the requirements as to foundations do not apply to such schools.

This means that VC schools could easily change category to foundation - thereby becoming their own admission authorities and employers - without altering the existing foundations. A VC school simply changing category to foundation would not therefore have to state in its proposals that it was acquiring a foundation – unless it wished its foundation to appoint a majority of its governors. In that case, it would need to seek the consent of its existing trustees before publishing proposals and its foundation would need to be reconstituted to meet the requirements as to foundations.

Voluntary or foundation schools which have a religious character ('faith' schools) would retain this as a Trust school, and would have the same freedoms around admissions, staffing and the RE curriculum as foundation schools with a religious character. No school can acquire, lose or change its religious character by becoming a Trust school. However, it should be noted that VA schools with a religious character have more control over the appointment of staff of the religion of the school than other categories of school with a religious character, and that this would be lost if a school were to change from being VA to being a foundation or Trust school. In addition, foundation schools would normally teach the locally agreed syllabus for RE, whereas a VA school would normally teach RE in accordance with the tenets of the faith.

If it is intended to retain the same foundation, it may need to be reconstituted so that it meets the requirements as to Trusts in the Education and Inspections Act 2006. The governing body and foundation should discuss as soon as possible whether this is necessary.

It should be noted that the Diocesan Boards of Education Measure is in effect for schools that have the religious character of a Church of England school (but not for schools with other designations). This gives the local Church of England Board of Education the right to be consulted before certain changes may be proposed for the school, and the right to veto certain proposed changes at CE Voluntary Aided schools.

#### Shared Trust model

Since the central function of the foundation in relation to the school is to hold

the land and buildings, a school may only have one foundation of this kind, and another foundation cannot easily be substituted for this. Voluntary schools with existing foundations cannot therefore formally join a group of other schools in a different, shared Trust.

The foundations of schools with existing foundations may, however, become members of other charitable trusts (if their foundation documents do not prevent them from doing so) and governing body members may also be members of other trusts. Schools of all categories, with or without trusts, may also become members of federations which will allow them to collaborate more closely.

A separate document is available from the Trust and Foundation School Partnership's (TFSP) website which details how voluntary schools can work with Trust schools if they do not wish to/cannot acquire Trust school status (see under 'Resources' then DCSF documents 'Voluntary schools working with Trust schools' [www.trustandfoundationschools.org.uk](http://www.trustandfoundationschools.org.uk) )

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## Checklist: Stage 1 – Decide who to work with and how

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### Action

### Date completed

Initial discussion at governing body meeting to gain agreement in principle to consider change of status and discuss the benefits that involvement of external partners would bring.

If working as a group of schools, agree how to divide up the work, consider a joint working party etc.

Inform the local authority that you are considering a change of school category. (Feedback from the Pathfinders also suggests engaging local/district councillors at an early stage to be beneficial so they understand what the school is trying to achieve)

If you are a community school, the governing body **must** give the local authority formal notice of a meeting at which a resolution to consult on changing category will be considered. The local authority cannot then dispose of any land used by or for the school until the proposals have been decided or withdrawn.

Agree which potential Trust partners to approach, both with individual governing bodies and with other schools, if appropriate. Use the 'Issues and decisions for early discussion' as a guide. (You should consider informing feeder primary schools at this stage so they understand what the school is trying to achieve. More active steps will be important in subsequent stages e.g. for the consultation stage, providing a draft letter for primary schools to send to their own parents)

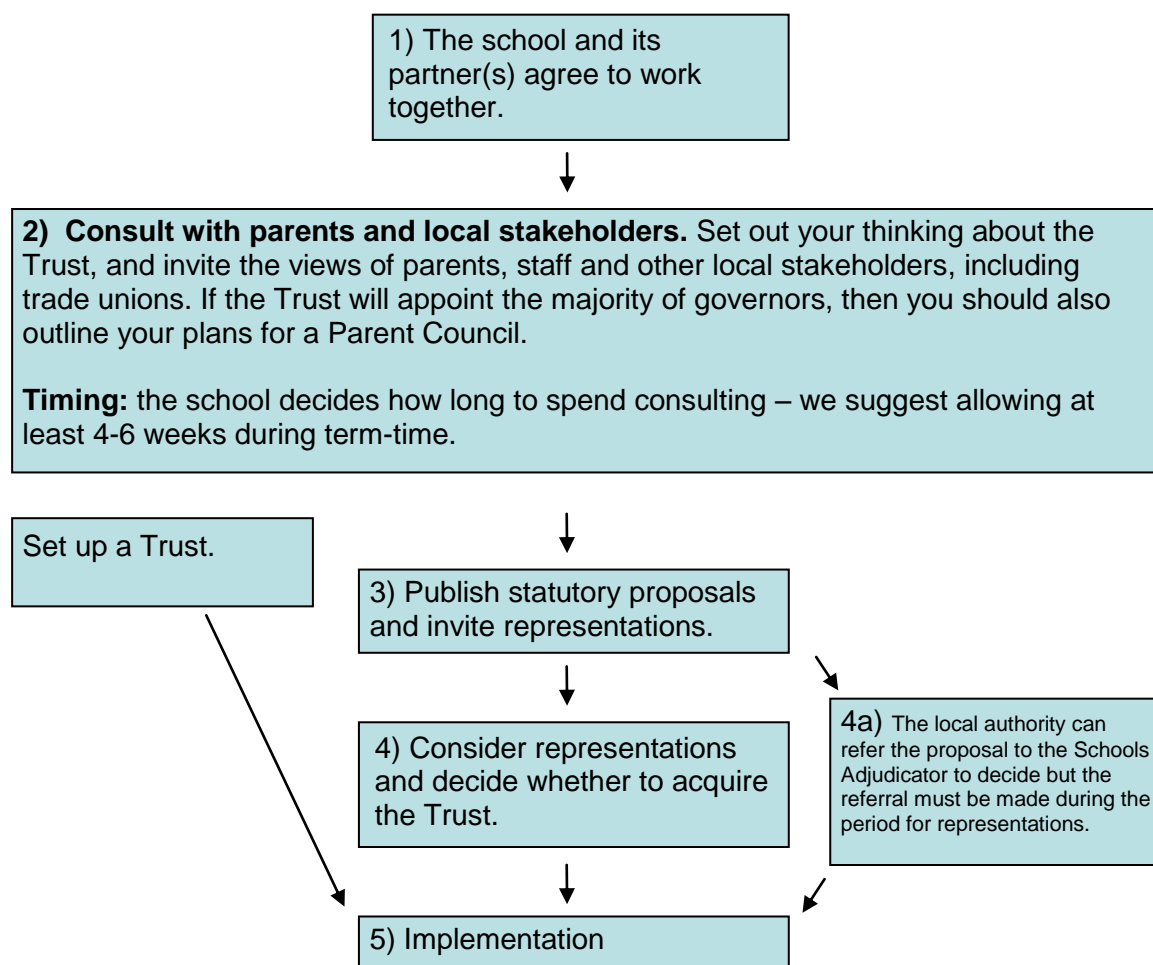
Prepare a vision and outcomes document setting-out the Trust's overarching vision and aims, how it will help to raise standards etc.

Consider suitability of possible partners, referring to the Decision Makers' guidance on acquisition of Trusts (see section 4).

Take forward initial discussions with partners in order to seek their agreement to take forward proposals.

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## Stage 2: Consult with parents and local stakeholders



### You need to:

- 1 Set out information about the proposals.
- 2 Invite views from parents and local stakeholders, including trade unions – you should think about holding a meeting to discuss the proposals as well as carrying out written consultation.
- 3 Review comments and feedback and decide whether to proceed and whether to amend the proposals.

### This section of the toolkit contains:

- Model letters for parents and staff
- Suggested consultation questions

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## Consultation guidance

Governing bodies **must** comply with the requirements of the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 in respect of consultation on proposals.

Statutory guidance on consultation, to which governing bodies **must** have regard, is contained within *Trust School Proposals, A Guide for Local Authorities and Governing Bodies*:

<http://www.dcsf.gov.uk/schoolorg/guidance.cfm?id=25>

This document also contains non statutory guidance to which governing bodies are strongly advised to refer. It is also strongly recommended that governing bodies study the guidance to local authorities on their powers to refer Trust proposals, which is also contained within that document.

Governing bodies should also consider the inclusion of a paragraph in their consultation documents which covers potential sharing of information and confidentiality. This may be particularly relevant if, for example, a request is made to see consultation responses. The following is a suggested form of words but you may wish to seek your own advice on this matter:

“The information you provide in your response will be subject to the Freedom of Information Act 2000 and Environmental Information Regulations, which allow public access to information held by public institutions. (This does not necessarily mean that your response can be made available to the public as there are exemptions relating to information provided in confidence and information to which the Data Protection Act 1998 applies. [You may request confidentiality by ticking the box provided, but you should note that neither this, nor an automatically-generated e-mail confidentiality statement, will necessarily exclude the public right of access.]”

### **What happens to staff when a school becomes a Trust school?**

Staff of a Trust school are employed by the governing body, not the Trust - this is the same position as in other foundation schools (and voluntary aided schools). So if a foundation or voluntary aided school became a Trust school, there would be no change of employer. Where a community or voluntary controlled school became a Trust school, the view of the Department is that the TUPE Regulations 2006 would not apply. Such reorganisations should nevertheless offer no less protection to staff than TUPE would. In a change of category to foundation school, staff would transfer under the provisions of the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007, SI 2007 No 1289 (Paragraphs 29 to 32 of Schedule 1). These provide for all rights, powers, duties and liabilities relating to the contracts of employment of staff members to transfer from the LA to the governing body. The effect of these provisions is to protect an individual's employment rights on transfer. Any agreements entered into by the LA before this date, in respect of an individual's terms and contract of employment (including pension arrangements), must be honoured by the new employer. Teaching staff will continue to be employed under the terms of the

## School Teachers' Pay and Conditions Document.

Support staff at Trust schools are allowed to continue to be in the Local Government Pension Scheme (LGPS) if the local authority, with the consent of the school governing body, has by a statutory resolution specified them to be eligible to belong to the scheme. It is advantageous to initiate early discussions with your LA so that this happens well before the implementation date.

The Department cannot however offer a definitive interpretation of the law and you should obtain your own legal advice on how the transfer provisions may apply to your own particular case. You may also wish to refer to the 'Staff Transfers in the Public Sector' statement of practice which can be accessed at [http://beta.civilservice.gov.uk/Assets/stafftransfers2\\_tcm6-2428.pdf](http://beta.civilservice.gov.uk/Assets/stafftransfers2_tcm6-2428.pdf) for more general advice.

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## Model letters

You could use some of the paragraphs from these model letters during the consultation phase, and add information about your proposals.

You might be able to use the same letter if several schools are planning to have a shared Trust. You might also want to

- attach a summary of the proposals
- produce some simple questions and answers (e.g. Will the uniform change? What will happen to my child's teachers?)
- add a note so that parents and staff know where they can get a copy of the full proposals.

**Parents** (You may wish to consider producing an easy to read summary to accompany the consultation documents as feedback from the Pathfinders suggests this is more successful in engaging parents in the process)

Bridgehill High School is thinking about becoming a Trust school – this letter is to explain our ideas and proposals and to ask for your views.

### **Our proposed Trust**

Trust schools are a new kind of school – part of the local authority system, but supported by a Trust which will appoint some of the governors. The governing body will continue to run the school and be responsible for its performance, and Mrs Keane will continue as Head teacher.

As you know, we collaborate with Lowdale High School and Bridgeton Community College to make sure that local pupils get the widest possible options for their GCSEs, and so that we can offer a range of support for pupils who fall behind for any reason. The proposal is that all three schools will be supported by a charity formed by Metropolitan University, Practical Ambitions (a local charity which supports careers education and particularly promotes practical and vocational learning) and the Bridgehill youth support service.

We already have strong links with Metropolitan University: they run science master classes for our year 9 pupils thinking about their options, and some of their trainee teachers do placements at the school. Parents with children in years 10 and 11 may have heard about the assembly and form group sessions that Practical Ambitions have done to encourage students to think about their ambitions and to plan their next steps. And as many of our pupils use the local support services, we are keen to develop a proper partnership.

### **What does this mean for pupils?**

The Bridgehill motto is that learning is for life – our partners share this commitment and will help us to make it a reality for all our pupils. We will continue to teach the National Curriculum, but will benefit from partners' experience and ideas to:

- tailor lessons and options to meet every pupil's needs
- strengthen practical and vocational opportunities for all our pupils, and

particularly those who have lost interest in school

- build on our strong academic record and go further (especially in science – we want to make science more exciting and more relevant, and have already been talking to the university and Practical Ambitions about their ideas)
- support pupils to decide what they want to do with their lives and plan how to get there, and give them realistic advice.

Existing projects will continue, and the new relationship will make it easier to plan for the long-term. We are starting to think about how we can give every student a ‘taster day’ of life at university, and about bringing some of the Connexions services into school so that pupils have easier access to the support they offer.

### **What does this mean for parents?**

The school will [continue to] set its own admissions arrangements. We will continue to be bound by the School Admissions Code (like all other schools). This means that we will continue to have fair admissions and that we will not introduce any selection by ability. We expect to keep very similar arrangements and criteria to what we have now.

[Possible – if the Trust is to appoint a majority of governors] There will be fewer elected parent governors, but we will establish a Parent Council which parents can use as a means to raise concerns and suggestions with the governors. Governors will also consult the Parent Council about major decisions that they are going to take. The Council will allow more parents to get involved, and will be driven by what parents want to raise and feed into the governing body. The Council is your forum – we want to reflect your views in how it is set up:

- should every parent be a member? should people be nominated or elected?
- how often and where should it meet?
- are evenings or daytime meetings better for you?
- what issues would you want the Parent Council to address?

### **Consultation process**

Please let us know what you think about the proposal. You can

- talk to the parent governors (Frances Flowerday, Gail Gee, Huw Howells, and Isaac Imoiko)
- send back our consultation questionnaire or write to us at the school (the address is at the top of the letter)
- come to the open meetings on 8 March (8pm in the school hall) and 10 March (10.30am in the library area) to discuss the proposals with the head, governors and representatives of our school’s partners.

You can comment until 30 April. The governors will review all the comments and will decide whether to go ahead (and whether to amend the proposals to reflect your suggestions and concerns). There will be another chance to comment on the formal proposals during the summer term before a final decision is taken.

## Staff

The governors are thinking about Bridgehill High School becoming a Trust school – this letter is to explain the ideas and proposals and to ask for your views.

### **Our proposed Trust**

Trust schools are a new kind of school – part of the local authority system, but supported by a Trust which will appoint some of the governors. We already collaborate with Lowdale High School and Bridgeton Community College around 14-19 opportunities and to provide additional support to some pupils. The proposal is that all three schools will be supported by a charity formed by Metropolitan University, Practical Ambitions (a local charity which supports careers education and particularly promotes practical and vocational learning) and the Bridgehill youth support service.

We already have strong links with Metropolitan University: the science department work with them to run the Y9 science master classes, and many teachers will have supported the PGCE students who do a placement at Bridgehill. Practical Ambitions deliver some of the careers/future learning work that years 10 and 11 do in assembly and form groups and also do some targeted work with students at risk of disaffection and dropping out. The idea of involving youth support services was thrown up by several members of staff suggesting at the last INSET/planning day that we should strengthen the relationship.

Bridgehill (and our pupils) will benefit in several ways:

- The partners share the school's commitment to learning for life and will help us to make it a reality for all our pupils. The partners will appoint governors with experience in the different options open to pupils at 16, and with ideas and a track record in helping young people to decide what they want to do with their lives, and then supporting them to get there.
- Trust-appointed governors will strengthen the curriculum committee's work – we can draw on their expertise and their different perspectives will help to challenge our assumptions and expectations. They will also help us to strengthen our work to develop personalised learning by making sure that strategic decisions reflect the diversity of our pupils' needs and the range of opportunities available to them.
- Existing projects will continue, and the new relationship will make it easier to plan for the long-term. We are starting to think about how we can give every student a 'taster day' of life at university, and about bringing some of the support services into school so that pupils have easier access to the support they offer.

### **What does this mean for staff?**

The governing body, not the Trust, will continue to run the school and to be responsible and accountable for its performance. The school budget will continue to be delegated to the governing body.

The existing rights of teachers will be fully protected if the school acquires a Trust. We will still be bound by the School Teachers' Pay and Conditions Document. You will [still] be employed by the school governing body [*or if currently a Community school*: instead of the local authority – all staff will be covered by the School Organisation (Prescribed Alterations to Maintained Schools)(England) Regulations 2007 - <http://www.opsi.gov.uk/si/si2007/20071289.htm> - which provide for all rights, powers, duties and liabilities in the contracts of employment of members of staff to transfer from the LA to the governing body (paragraphs 29 to 32 of Schedule 1)] and we will continue to recognise the same unions. The Trust will not be the employer.

The governing body will still have to include at least two members of staff.

The school will remain part of the local authority's family of maintained schools – this means that we will still teach the National Curriculum, and will be bound by the School Admissions Code – we will continue to play our full part in taking hard to place pupils, and will not introduce selection by ability. Although the school will [continue to] set its own admissions arrangements, we expect to keep very similar arrangements and criteria to what we have now.

[Possible – if the Trust is to appoint a majority of governors] The school is required to establish a Parent Council, with a consultative/advisory role. We want to make sure that the Council is a useful route for parents to raise suggestions and concerns with the governing body and will make sure that it is not used inappropriately as a route for complaints about individual pupils or members of staff. Please let us know if you have ideas which you would like the Council to discuss – we will feed them into the proposals.

### **Consultation process**

Please let us know what you think about the proposal. You can

- write to the governors (the office will pass on all messages)
- talk to the staff governors: Judith Jones and Kirsty Keane (Head)
- come to the meeting on 14 March at 4pm to discuss the proposals with governors and representatives of the partners.

You can comment until 30 April. The governors will review all the comments and will decide whether to go ahead (and whether to amend the proposals to reflect your suggestions and concerns). There will be another chance to comment on the formal proposals during the summer term before a final decision is taken.

### **Trade Unions**

Under Paragraph 5 of Schedule 1 to the Prescribed Alteration Regulations, any Trade Unions representing staff at the school must be consulted about the proposed change.

(Union Main Office Address)

Dear Colleague

Re: XXXXXXXXX school change of category to a foundation school and acquire a foundation (Trust).

I am writing to inform you that the governing body of.....school is proposing to become a foundation school and acquire a Trust with ..... as the implementation date.

I am confirming that, if the proposals come into effect, the employer of your members would cease to be ..... local authority and would become the governing body of.....school from that date.

The governing body would ensure that the terms and conditions of employment would be no less favourable than those currently enjoyed. The governing body has no further proposals at present with regards to this transfer.

If you have any comments you wish to make please contact me within two weeks of receipt of this letter.

Yours sincerely

Chair of Governors

## Possible consultation questions

The governing body can decide how it wants to consult – you might decide to use a questionnaire, or to invite views from parents and other stakeholders in other ways.

You could use some of these questions to encourage people to respond to the consultation, and to be clear about which aspects they like and/or are concerned about. You might need to amend the content or tone to suit your school's situation and your target audience.

### Questions about Trust status

1. How do you feel about Bridgehill High School adopting Trust status?  
I support the proposals  
I'm not sure and would like more information on...  
I don't think the school should become a Trust school because....

### Questions about partners

2. How do you feel about Bridgehill High School working with
  - a. Metropolitan University
  - b. Practical Ambitions
  - c. the youth support service?These are the right partners  
I'm concerned about the school working with ...because ...  
I think the school should think about working with ... as well/instead because ...
3. The partners share our commitment to the school's motto "Learning is for life". The Trust will appoint governors who have the expertise to help the school to make this a reality for all our pupils. Our vision is:
  - A school ethos that values learning
  - Excellent vocational and academic provision for all our pupils
  - Support for every pupil to decide their aims and reach their potential.How do you feel about this vision?  
This is right for the school  
I don't think ... should be a priority in the vision because .....  
I would like to see ... included in the school's vision.
4. How do you feel about Bridgehill High School working with Lowdale High School and Bridgeton Community College?  
This is right for the school and its pupils  
I would be concerned about developing the collaboration because...

### If the Trust will appoint the minority of governors

5. We propose that the Trust should appoint a minority of governors – this would bring in expertise from our partners, but no group would have overall control and one third of governors would still be elected parents. Do you think this model is right for the school?

- Yes – this sounds like a good idea
- Yes – but I am concerned about ... and I will want more information to be sure about the proposal.
- No - would prefer the Trust to appoint more governors because ...
- No – don't like this proposal because ...

**If the Trust will appoint the majority of governors**

6. We propose that the Trust should appoint the majority of governors – this would bring in expertise from our partners, and would help the school to develop a clear direction for future developments. Do you think this model is right for the school?

- Yes – this sounds like a good idea
- Yes – but I am concerned about ... and I will want more information to be sure about the proposal
- No - would prefer the Trust to appoint a minority of governors because ....
- No – don't like this proposal because ...

Parent Council (a)

7. A third of the governors will still be parents, but most of these would be appointed by the Trust rather than elected by parents. We are going to establish a Parent Council as a forum for parents to put forward their views to the governing body. Governors will have to take parents' views into account in the decisions they take about the school.

Would you be interested in joining the Council?

- Yes
- No
- Maybe, but I'd like more information about...

8. How should we choose who is on the Parent Council?

- Elections – 1 or more parents for each class or year group
- Anyone who wants can join the Council
- Every parent should be a member
- Are there any particular groups who should be represented...
- Other:

9. How often do you think it should meet?

- Every month
- Every half-term
- Every term

10. Would you prefer meetings during the school day or in the evenings?

- At the start of the school day
- Before the end of the school day
- During after-school club time
- In the evening

11. Where should the Parent Council meet?

In school  
Somewhere else: ...

12. The Council will not discuss individual pupils or teachers, but parents will be able to raise any comments or suggestions they have to help improve the school. Would you want to raise any topics?

Parent Council (b)

13. We are going to establish a Parent Council as a forum for parents to put forward their views to the Head teacher and governing body.

*The Bridgehill High parents group suggests that our Parent Council should meet for an evening every term, and that each meeting should have a main theme (such as behaviour, extra-curricular activities), which would be advertised in the school newsletter and on the website. Any parent could attend any meeting if they were interested in the theme, and one of the parent governors would report the Council's views to the school governing body.*

Do you agree with this proposal? What would you change?

14. The Council will not discuss individual cases or teachers, but parents will be able to raise any comments or suggestions they have to help improve the school. Would you want to raise any topics?

**General**

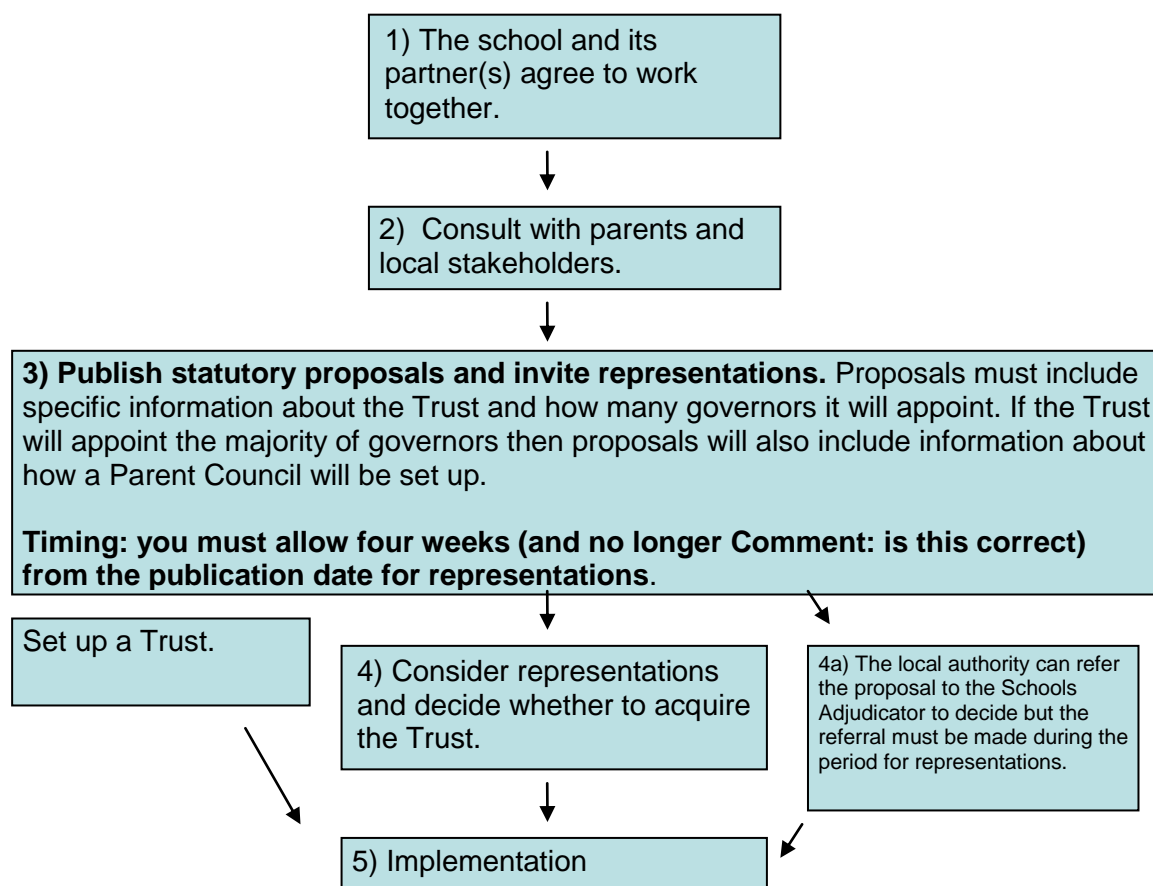
15. Do you have any other concerns or suggestions that we should think about before we publish formal proposals?

## **Checklist: Stage 2 – Consult with parents and local stakeholders**

Action	Date completed
Decide on timing for consultation, avoiding school holiday periods.	
Develop consultation plan, paying particular consideration to the following: <ul style="list-style-type: none"><li>- send letter to all parents, staff and union representatives (consider model letters in the toolkit)</li><li>- hold open meetings for staff and parents</li><li>- put information about the proposals on the school website</li></ul>	
Work through statutory list of individuals and organisations that schools should consult about their proposals (in this section of the toolkit).	
Consult the local authority to agree the detail of land transfer.	
After the consultation has been completed, review responses and decide whether to proceed with publishing proposals.	

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## Stage 3: Publish statutory proposals



### You need to:

- 1 Confirm all the details of your plans.
- 2 Publish proposals (regulations specify what information to include and where the proposals must be posted. NB For shared Trusts, you must each produce proposals and notices, although most of the information can be duplicated in each proposal).
- 3 Invite representations from parents and other stakeholders – you should think about whether a meeting would be helpful.

**You should also refer to** the statutory guidance on consultation [Stage 2: consult with parents and local stakeholders] and it would be useful to look ahead to the guidance for deciding the proposal [Stage 4: Decide whether to acquire the Trust].

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## Proposals and notices

Governing bodies must comply with the requirements of the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 when publishing proposals to become Trust Schools. These are available on the school organisation at:

<http://www.dcsf.gov.uk/schoolorg>

Statutory guidance (i.e. guidance to which you **must** have regard) on this process is available in the documents:

1. *Trust School Proposals, A Guide for Local Authorities and Governing Bodies* <http://www.dcsf.gov.uk/schoolorg/guidance.cfm?id=25>
2. *Changing School Category to Foundation – A Guide for Governing Bodies* (website address as above)

(NB Some schools may need to change category to become a foundation school in order to be a Trust school but both stages can be undertaken concurrently, with due regard to the relevant statutory guidance).

Schools must publish formal proposals to become a Trust school, and must post notices in a number of public places, so that parents, staff and other stakeholders in the community can express their views. If several schools are working together, you must each produce proposals and notices, although most of the information can be duplicated in each proposal. The Prescribed Alterations Regulations set out what information must be included.

Proposals: The governing body need to compile information about the proposed changes and about the consultation so far – the requirements are set out in the guidance. These formal proposals are a legal requirement, and you **must** include all the relevant information. You will have talked about most of the issues during initial conversations with the school's partners.

Notice: You will also produce a 'notice', containing the same information as the proposal except for the information about earlier consultation). The DCSF School Organisation website ([www.dcsf.gov.uk/schoolorg/](http://www.dcsf.gov.uk/schoolorg/)) contains a 'notice builder' facility to ensure that all the required information is included. You will need to register your details in order to access the notice builder - <http://www.dcsf.gov.uk/schoolorg/members-login.cfm> See also the [Annex to this Stage which gives some practical tips for using the notice builder.](#)

Governors may ask the School Organisation Unit at the DCSF to check the part of the notice which is to be published but the Unit's staff are not in a position to check the full proposal. The notice should be in line with the "notice-builder" available from the school organisation website at

<http://www.dcsf.gov.uk/schoolorg/>

A key point to note is that it is a legal requirement to state the implementation date in the notice. If it is not possible to implement by that date then the proposals **must** be officially modified by publishing the proposals and changing the implementation date.

The notice **must** be published in at least one local community newspaper, and must also be posted at the main entrance to the school (or all if more than one) and at some other conspicuous place in the area, such as a post office or community centre. **You must allow 4 weeks (and no longer) from the date of publication of the proposals for people to make comments, objections and other representations** before you take a decision. Further detail on requirements is set out in the guidance but to note a 4 week representation period is prescribed in current legislation which does not allow for this period to be extended; for example, to allow for school holidays. So, during consultation, it is good practice to indicate when the Notice is likely to be published; ideally you should aim for a four-week representation period outside of school holidays.

The proposed implementation date **must** be stated in the published Notice - this should be a specific date in the future, which allows sufficient time between publication and implementation, for an informed decision to be made on the proposals, and the necessary steps to be taken e.g. a revised Instrument of Government drawn, established the Trust as a charitable company etc. See Stage 5 for further information.

Copies of both the published notice and the full proposals (since amending Regulations came into force on 21/1/08, consultation documents are no longer required) **must** be sent to the local authority and to the School Organisation Unit at the Department for Children, Schools and Families (email: [school.organisation@dcsf.gsi.gov.uk](mailto:school.organisation@dcsf.gsi.gov.uk) or by post to School Organisation Unit, 2F Area A, Mowden Hall, Staindrop Road, Darlington DL3 9BG ). The Unit **must** also be notified in due course of the governing body's decision on acquiring a Trust.

The School Organisation Unit's mailbox is to be used by mainstream schools. Special schools should send copies of their Trust schools statutory notices and notifications of decisions to the following mailbox:  
[SpecialSchool.REORGANISATION@dcsf.gsi.gov.uk](mailto:SpecialSchool.REORGANISATION@dcsf.gsi.gov.uk).

In addition to the statutory requirements, 'tips' received from the Pathfinder Trust schools include:

- check that all contact details in the notice and proposals are correct, especially email addresses and websites;
- confirm that all intended Trust Members are still willing to act as partners (this might be done by sending them a copy of the draft notice and proposals in advance and setting a deadline for them to confirm their position);

- write to all who responded to the initial consultation thanking them for their comments, enclosing a copy of the consultation feedback and informing them of where they can obtain the published notice and proposals (some schools have chosen to notify all those contacted as part of the original consultation, whether or not they responded); and
- ensure you have enough copies of the notice and full proposals available at the school's reception on the day of publication and that they are posted on the school's website.

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### Checklist: Stage 3 – Publish Statutory proposals

Action

Date completed

Compile formal proposals, including detail of the proposed changes and the consultation carried out so far. A list of the information all proposals **must** contain is included in the guidance for governing bodies.

Produce a formal notice, using the 'notice builder' facility on the DCSF School Organisation website.

Ask the DCSF School Organisation Unit to check the part of the notice which is to be published.

Publish the notice. As a minimum, the notice **must** be published:

- in at least one local community newspaper
- at the main entrance to the school, or if there is more than one main entrance, all of them
- at some other conspicuous place in the area, e.g. post office or community centre.

A copy of the full proposals and published notice **must** be sent to the local authority and Schools Organisation Unit at DCSF.

4 weeks **must** be allowed for people to make comments, objections and other representations before taking a decision on the proposals.

## Practical advice on using the DCSF Notice Builder Facility

The Notice Builder tool is designed to help local authorities, governing bodies and other proposers who will be publishing statutory proposals to construct a statutory Notice which contains all the information required by law. On a practical/cost level, it can also help to avoid the unnecessary expense of publishing more information than is required.

By answering questions and/or providing information relating to the proposal under the relevant template, the tool will be able to create a draft Notice. The user can then, prior to publication, either:

- submit their draft to the DCSF's School Organisation Unit (SOU) for checking and comments by clicking on the relevant button, and/or
- copy and paste the resulting draft Notice into a word document, where, after adding any additional information, linking more than one proposal together etc, submit it for checking and comments from SOU, and/or
- seek their own legal advice on the draft.

The draft created on the Notice Builder is an 'extract' of the information required to be included in the 'Complete Proposal' - it is the part that needs to be published in the newspaper as a Statutory Notice, displayed at the school gates and at least one other location. For this reason, it is meant to be succinct and the tool does not have capacity for large amounts of text - if more text is required, you can put some in the boxes (just copy and paste the questions, so that you know what information you need), then copy and paste the resulting draft into a Word document. You can then add any additional information/detail, if required, bearing in mind that the majority of this information can be expanded in the 'Complete Proposal'.

NB. Ensure that boxes that require numbers contain ONLY numbers, no text or symbols, otherwise an error message will result and the draft may not be saved.

Following creation of the draft, the tool allows you to link to a template of the 'Complete Proposal', relevant to the type of proposal drafted, by clicking on the 'finalise notice' button. This is the information specified in legislation which forms the Proposal (similar to what was previously referred to as 'prescribed information').

Clicking on this button, does NOT mean that the Department receives a copy of the 'final' notice, nor that the draft cannot be amended further; a dated copy of the published Notice and the complete proposal (minus consultation documentation) **MUST** be sent to the Department within one week of publication. A copy of the Complete Proposal (including consultation and other information not required to be published in the newspaper notice **must** also be sent to everyone included in the relevant guidance - <http://www.dcsf.gov.uk/schoolorg/index.cfm> and anyone else who requests a copy.

The Notice Builder can be used to build all types of notices, including competitions, closing a school, changing category to become a Trust school (i.e. foundation school with a Trust), school expansion etc.

Any notices that you create will appear on the page, under the relevant builder, when you log in to the members' area, where they can be viewed, edited or deleted. BEWARE - there is a time-out of about 30 minutes, so if you are going to leave the tool for any length of time, it is wise to save it, even if you need to put placeholder text - or 'gobbledegook' - in to some compulsory fields - you can then re-access the draft by selecting 'edit' and continue inputting information. If you 'time out', you will receive an error message only when you try and save the document, and the document will not save.

Specifically regarding Foundation proposals - these can be either proposals to:

- change category (from community, voluntary aided or voluntary controlled) to foundation (select to change category, but not to become a Trust School)
- change category to foundation and Acquire a Foundation established otherwise than under the School Standards and Framework Act 1998 (select to change category to become a Trust School with a governing body containing a minority of foundation governors)
- change category to foundation and Acquire a Foundation established otherwise than under the School Standards and Framework Act 1998 and Acquire a Majority of Foundation Governors (select to change category to become a Trust School with a governing body containing a majority of foundation governors)
- existing foundation school Acquiring a Foundation established otherwise than under the School Standards and Framework Act 1998 (select to become a Trust School with a governing body containing a minority of foundation governors)
- existing foundation school Acquiring a Foundation established otherwise than under the School Standards and Framework Act 1998 and Acquiring a Majority of Foundation Governors (select to become a Trust School with a governing body containing a majority of foundation governors)
- existing foundation school with a Foundation established otherwise than under the School Standards and Framework Act 1998 Acquiring a Majority of Foundation Governors (select to change from a Trust School with a governing body containing a minority of foundation governors to a Trust School with a majority of foundation governors)

Whichever of these options are chosen at Step 1b on the Notice Builder (depending on the current category of the school, will depend on the available

options), once you select 'finalise notice', you will be linked to the same 'complete proposal' template; you are only required to complete the relevant sections:

- Part 1 must be completed for ALL foundation proposals,
- Part 2 is only required where the prescribed alteration is a change of category to foundation,
- Part 3 is only required where the school is becoming a Trust school (a foundation school with a foundation),
- Part 4 is only required where a Trust school is acquiring a majority of foundation governors on the governing body.

In other words, if the proposal is ONLY to change category from community or voluntary to foundation, Parts 1 and 2 must be filled in; if the proposal is to change to a majority on the governing body where a Trust already exists, Parts 1 and 4 are required; and, if the school is changing category, acquiring a Trust AND a majority on the governing body, then all 4 Parts must be completed.

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## **Stage 4: Decide whether to acquire the Trust**

### **You need to:**

- 1 Review representations on the proposals.
- 2 Decide (at a governing body meeting) whether to acquire the Trust (NB Only a permanent governing body can take the decision to acquire a Trust; although a temporary governing body can start the process e.g. issue consultation documents)

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## Local authority referral criteria

1. The Schools White Paper and Education and Inspections Act 2006 set out a strong, clear role for local authorities in relation to education in their area. Local authorities will act as commissioners of school provision and as the champions of parents and pupils in their area, responding appropriately to their needs.
2. In keeping with their new role as champions of parents and pupils, local authorities have the power to refer Trust proposals to the Schools Adjudicator in certain circumstances. Grounds for referral are:
  - a. Inadequate consultation – i.e. the governing body has failed to meet the requirements set out in The Education and Inspections Act 2006 and the associated regulations;
  - b. The governing body has failed to have regard to responses to the consultation;
  - c. Concern that the Trust will have a negative impact on standards.

The referral **must** be made before the end of the four week period for representation on proposals. Where proposals have been referred to the adjudicator, the governing body must forward any objections or comments they have received to the adjudicator within one week from the end of the representation period.

3. *Trust School Proposals, A Guide for Local Authorities and Governing Bodies* contains statutory guidance to local authorities on their power to refer proposals:

<http://www.dcsf.gov.uk/schoolorg/guidance.cfm?id=25>

**More information about the Schools Adjudicator** is available online at [www.schoolsadjudicator.gov.uk](http://www.schoolsadjudicator.gov.uk). If you cannot find the information you need, you can send enquiries to: [OSA.TEAM@dcsf.gsi.gov.uk](mailto:OSA.TEAM@dcsf.gsi.gov.uk) or telephone 0870 0012468.

## Deciding Proposals

4. As noted above, the ‘decision maker’ will normally be the governing body, but could be the Schools Adjudicator if your local authority has specific concerns about the proposals and refers the decision. Whether the proposals are decided by the governing body or the Schools Adjudicator, the Decision Maker **must** have regard to the statutory guidance to Decision Makers. This is available from the school organisation website in the following documents:

1. *Changing School Category to Foundation – A Guide for Governing Bodies*
2. *Trust School Proposals, A Guide for Local Authorities and Governing Bodies*

5. Whoever is the Decision Maker, the proposal must be determined on its merits. Criteria for approval will be:
- a. That the Trust meets legal requirements;
  - b. That consultation was adequate – the governing body met the requirements set out in regulations and had regard to consultation responses (see also stage 3 above). If the governing body has failed to meet the statutory requirements for consultation, the proposals may be deemed invalid and therefore should not be decided;
  - c. Evidence that the Trust:
    - i. Is likely to contribute to raising standards at the school;
    - ii. Is likely to promote community cohesion.
  - d. Trust members and proposed trustees (where the trustees are specified in the proposals) are not involved in activities that may be considered inappropriate for children and young people – e.g. tobacco, gambling, adult entertainment, alcohol;
  - e. The reputation of Trust members and proposed trustees (where the trustees are specified in the proposals) is in keeping with the charitable objects of a Trust.
  - f. Trust members and proposed trustees (where the trustees are specified in the proposals) are not involved in illegal activities and/or activities which could bring the school into disrepute, but would not otherwise be disqualified under regulations.

The statutory guidance provides more detail on the above issues.

6. After the four week representation period following publication of the notice, the governing body **must** decide the proposals. It can approve, with or without modification, or reject. The decision **must** be made within 6 months of the date of publication (or the proposals “fall”) and before the implementation date specified in the Notice is reached. If it is felt that the proposed implementation date is no longer achievable, or if the decision is taken after the implementation date has passed, then any approval **must** be 'with modification' of the implementation date to a future date, allowing sufficient time for the implementation to take place, including the issuing of the Instrument of Government (IOG). For information on the revocation or modification of proposals, please refer to paragraphs 141-150 of the *Trust School Proposals, A Guide for Local Authorities and Governing Bodies* <http://www.dcsf.gov.uk/schoolorg/guidance.cfm?id=25>

7. If the published proposals are approved, the governing body **must** send a revised draft of the IOG to the LA, which will set out whether the Trust is going to appoint the minority or majority of governors (as per the proposals in the published notice). The LA **must** 'make' the IOG, before the implementation date stated in the published notice (or by the approved modified date).

8. If it is not possible for the IOG to be in place by the approved implementation date, then the governing body **must** meet and modify the proposed implementation date BEFORE the previously approved date is reached, informing both the LA and DCSF that the implementation date has been modified to the later date.

9. More information on the IOG and a model IOG is available in the next stage of the toolkit (i.e. Stage 5 Implementation).

#### **Checklist: Stage 4 – Decide whether to acquire the Trust**

Action

Date completed

Review any representations received on the published proposals.

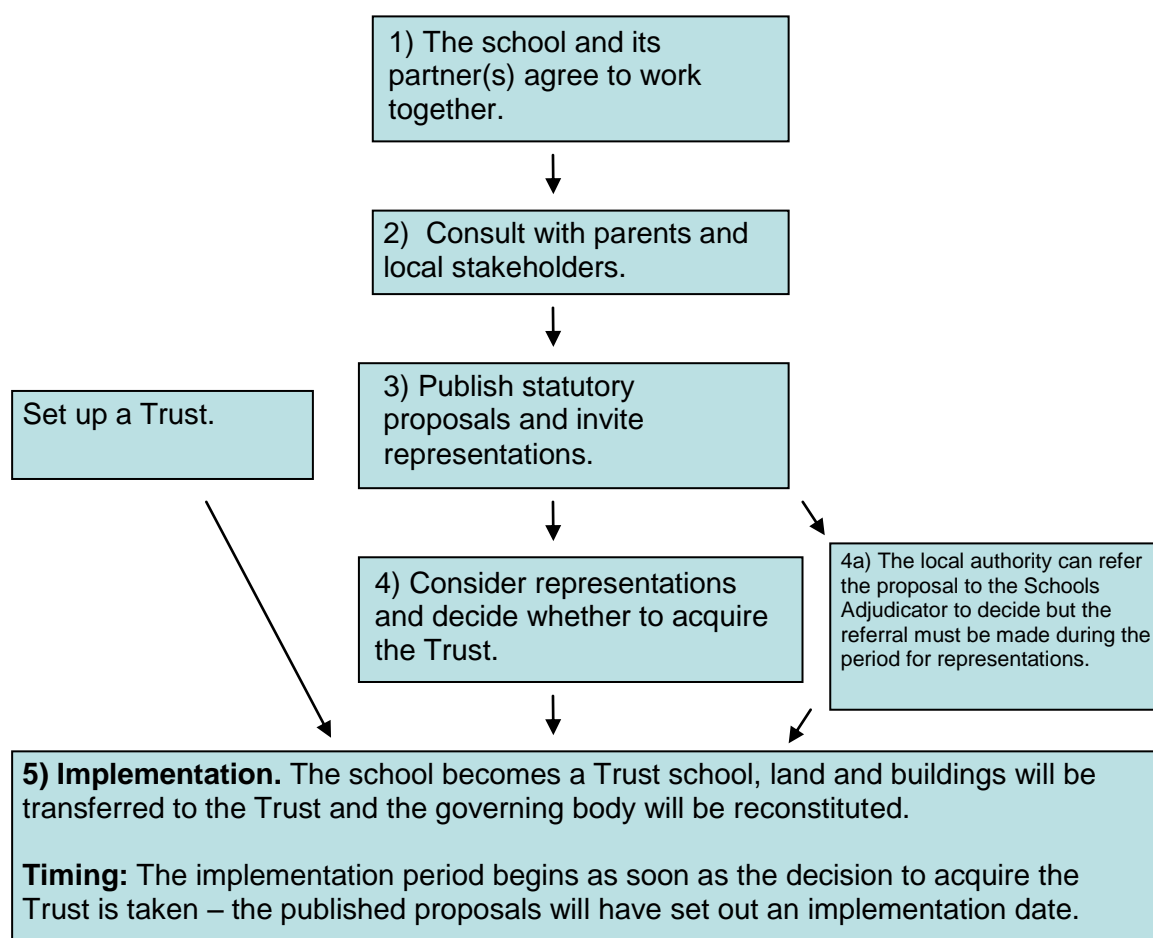
As decision maker, the governing body **must** work through the statutory guidance for decisions makers on the acquisition of Trusts before making a decision.

Decide at a governing body meeting whether to acquire the Trust, unless the local authority has referred the decision to the Schools Adjudicator.

Notify the local authority and School Organisation Unit at DCSF of the governing body's decision to either Approve, Approve with Modification (i.e. proposed later date for implementation) or Reject the proposals (a model instrument of government is included at the end of this section)	
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## Stage 5: Implementation



**The local authority will** complete the formal transfer of land and buildings (if you were a community school).

**You and your partner(s) will have** established the Trust [Setting up the Trust section]

### You need to:

- 1 Draw up a new instrument of government (a model instrument of government is included at the end of this section). This must be in place on the date of implementation; the governing body needs to reflect the IOG within three months of the implementation date.
- 2 Establish a Parent Council (if the Trust will appoint the majority of governors)
- 3 Complete the formal transfer of land and buildings (if you were a foundation school – the local authority does this in the case of community schools)
- 4 Start to manage your own admissions arrangements
- 5 Ensure all arrangements are in place to reflect the change of employer e.g. changes to staff contracts (if you were a community or voluntary

controlled school); LA has passed a statutory resolution for LGPS membership for support staff (if you were a foundation school).

**This section of the toolkit contains:**

- Implementation process (including modification to proposals)
- Information on the make-up of Trust school governing bodies
- Parent Councils – guidance and good practice
- Further Information on Land and Buildings
- Information on what to do if something goes wrong.

## Implementation process

Your proposals will have set out an ‘implementation date’ from which the school will be a Trust school. Some preparations for implementation can happen as soon as you have decided to acquire the Trust, and others will begin in the months that follow.

### The Trust

1. The school and partners need to have established the Trust as a charitable company by the implementation date so that it can hold the land and start to appoint governors.
2. If you are currently a voluntary controlled or voluntary aided school you will already have a foundation (as do some foundation schools). The foundation may need to be reconstituted so that it meets the requirements as to Trusts [see Annex 3 of Stage 1 which provides more information for voluntary schools considering Trust school status; also Stage 5 of this guidance and the information on Setting up a Trust].

### Appoint governors

3. Your proposals will set out whether the Trust is going to appoint the minority or majority of governors. Once you have decided to become a Trust school, you send a revised draft Instrument of Government to the local authority, which ‘makes’ the instrument, before the implementation date.
4. The Trust will start to appoint governors from the implementation date, and you will complete the reconstitution of the governing body during the next 3 months [see information about Trust School governing bodies in this section]. You will need to induct Trust-appointed governors in the same way as other new members of the governing body, and to make sure they are aware of governor training and support services.
5. If there are more governors of any category after the implementation date than are required in that category by the new instrument of government, and the excess is not eliminated by governors resigning, those governors who have been in office for the shortest time **must** be the first to cease to hold office. More detail is given in Paragraph 28 of Schedule 1 to the Prescribed Alteration Regulations.

## **Land transfer**

6. Legal title to the school's land will be automatically vested in the Trust on the implementation date. Community schools should therefore agree the detail of the transfer with the local authority during the consultation stage [Stage 2: Consult parents and local stakeholders]. The local authority will also complete a formal transfer, which could take several months (NB If the Trust and LA have not executed a transfer agreement within six months of the implementation date then either party may apply to the Schools Adjudicator to determine any dispute). In the case of an existing foundation school, the land will transfer from the governing body to the Trust.

[See also: [Further Information on Land and Buildings](#) later in this section].

## **Parent Council – if the Trust appoints the majority of the governors**

7. If the Trust appoints the majority of the governors, the school **must** have a Parent Council. All other schools are encouraged to do so, as a good way to meet the duty to have regard to parents' views.

[See information about Parent Councils later in this section. For statutory guidance on Parent Councils see:

<http://www.governor.net.co.uk/publishArticle.cfm?topicAreaId=3&contentId=1149&pageStart=91&sortOrder=c.publishDate>].

## **Admissions – for community and voluntary controlled schools**

8. The governing body of a Trust school sets its own admissions arrangements. Like all other admission authorities, it must act in accordance with the School Admissions Code. The governing bodies of foundation and voluntary aided schools already set their own admissions arrangements.

9. All maintained schools will be entitled to be represented on local admission forums, which consider how to handle difficult issues and advise admissions authorities on ways to improve their arrangements. The school will have to have regard to any advice it receives from the local forum about its arrangements.

10. You **must** comply with local arrangements and with the statutory timetable for admissions – this means that you **must** have completed consultation on your proposed arrangements by 1 March if you want them to come into force the following autumn. You could ask the local authority to manage the process once you have set your oversubscription criteria.

11. Where a school changes category, and as a result changes admissions authority, the new admissions authority **must** honour any decisions taken by the original admissions authority for the existing admissions round (both in respect of policy and offers of places).

## **Employment – for community and voluntary controlled schools**

12. The governing body generally employs all staff at a Trust school – this is no change for foundation and voluntary aided schools, but the governing body of former community and voluntary controlled schools will take on this additional responsibility.

13. The employer will change automatically from the implementation date, and so over the next year you **must** make relevant amendments to staff contracts and to any of the school's policies and documents that refer to the local authority as employer. You will need access to good quality personnel advice either from the local authority or an independent provider for any future personnel issues.

14. The School Organisation (Prescribed Alterations to Maintained Schools)(England) Regulations 2007 - <http://www.dcsf.gov.uk/schoolorg> - which came into force on 25 May 2007 provide for all rights, powers, duties and liabilities in relation to the contracts of employment of members of staff to transfer from the LA to the governing body (Paragraphs 29 to 32 of Schedule 1). In other words, the transfer of staff takes place under Education Legislation. The effect of these provisions is to protect an individual's employment rights on transfer. Teachers will continue to be covered by the School Teachers' Pay and Conditions Document (and so would keep the same pensions arrangements), but the governing body can set pay and conditions for new support staff taken on after the school has become a Trust school. Support staff at Trust schools will continue to be in the Local Government Pension Scheme (LGPS) if the local authority, with the consent of the school governing body, has by a statutory resolution specified them to be eligible to belong to the scheme.

### **Revocation or modification of proposals**

For information on the revocation or modification of proposals, please refer to paragraphs 142-151 of the *Trust School Proposals, A Guide for Local Authorities and Governing Bodies*

<http://www.dcsf.gov.uk/schoolorg/guidance.cfm?id=25>

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### Indicative timetable

This chart shows a notional implementation date of 1 September. You might not need to complete all the actions.

	After the decision	Implementation date – 1 September	Month 1 September	Month 2 October	Month 3 November
<b>The Trust</b>		The Trust must be established by the implementation date.			
<b>Appoint governors</b>	The governing body sends its new instrument of government to the LA before 1 September.	The Trust starts to appoint governors.			The governing body must be fully reconstituted three months after implementation.
<b>Land</b>		Legal title to the land is automatically vested in the Trust (the governing body has control of the land and buildings). The local authority will also complete a formal transfer.			Governors should check progress with the formal transfer
<b>Parent Council</b>	A Parent Council can be set up at any time	The Parent Council must be established, ready to start work during the Autumn term			
<b>Employment of staff</b>	Local authority passes resolution to specify that support staff remain part of the local government pension scheme	The governing body becomes the employer of all staff. Contracts should be updated to reflect this over the next year.		Governors review performance management policy Governors consider whether to amend terms and conditions for <u>new</u> support staff.	
<b>Admissions</b>		The governing body becomes the admissions authority from next admissions cycle.		The governing body considers admission arrangements – consultation must be complete by 1 March.	

## Trust school governing bodies

Governing bodies are responsible for the conduct of the school. Like all maintained schools, Trust schools have a 'stakeholder model' of governance. They also include Trust-appointed governors, in varying proportions.

This note provides

- information about the 'guiding principles' for how the governing body is made up, and a number of options which conform to these rules,
- a model instrument of government, and
- information about transition arrangements.

It also summarises the conflict of interest rules, although the governing bodies of Trust schools are covered by the same rules as all others - see [www.governor.net.co.uk](http://www.governor.net.co.uk) for more information about eligibility and procedures.

### Principles

There are five compulsory stakeholder groups for Trust schools: parents, school staff, the Local Authority, the community and Trust-appointed governors.<sup>8</sup> Sponsors form a sixth, optional group<sup>9</sup>.

Governing bodies have between 9 and 20 members (excluding any sponsor governors). Within this range, the number of seats for each stakeholder group must comply with specific principles.

**If the Trust is to appoint the minority of governors** the governing body must comprise:

- Trust-appointed governors: at least two, and up to 45% of the governing body.
- Parent governors: at least a third of the governing body.
- Staff governors: at least two places but no more than a third of the governing body. One place is reserved for the head teacher even if he or she chooses not to be a governor. At least one staff governor (in addition to the Head teacher) must be a teacher unless no teacher stands for election. If there are to be three or more staff governors, at least one must be a person who is not a teacher, unless no such person stands for election.

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<sup>8</sup> For the purposes of this document, a Trust school is a Foundation school with a foundation. Trust-appointed governors are referred to in law (including regulations about the composition of governing bodies) as foundation governors.

<sup>9</sup> Governing bodies can also decide to appoint associate members who can contribute particular expertise but who are not actually members of the governing body and do not have voting rights

- Local authority-appointed governors: at least one but no more than one fifth of the governing body.
- Community governors (appointed by the rest of the governing body): at least one tenth of the governing body.

You can adopt any model that complies with these principles. Below are some of the possible options for the governing body. However, the list is not comprehensive and other options may satisfy the guiding principles (for example, in the table below, one option for a governing body of 20 members may be to have 7 Trust appointed governors, but it is also possible to have a governing body of 20 with the minimum composition of Trust appointed governors i.e. two).

Size of governing body	Elected parent governors	Trust-appointed governors	Community governors	Staff governors	Local authority governors
9	3	2	1	2	1
10	3	3	1	2	1
11	4	3	1	2	1
12	4	4	1	2	1
13	4	5	1	2	1
14	5	5	1	2	1
15	5	5	2	2	1
16	5	6	2	2	1
17	6	6	2	2	1
18	6	7	2	2	1
19	6	8	2	2	1
20	7	8	2	2	1

**If the Trust is to appoint the majority of governors** the governing body must comprise:

- Trust-appointed governors: **must** outnumber all the other governors by up to a majority of two, and **must** include such number of parents of registered pupils as, when taken with the elected parent governors (see below), comprise at least a third of the governing body.
- Parent governors (elected by parents): at least one.
- Staff governors: at least two places but no more than a third of the governing body. One place is reserved for the Head teacher even if he or she chooses not to be a governor. At least one staff governor (in addition to the Head teacher) must be a teacher unless no teacher stands for election. If there are to be three or more staff governors, at least one must be a person who is not a teacher, unless no such person stands for election.
- Local authority-appointed governors: at least one but no more than one fifth.
- Community governors (appointed by the rest of the governing body): at least one tenth of the governing body.

You can adopt any model that complies with these principles. The following table shows some of the possible options for the governing body but it is not comprehensive:

Size of governing body	Elected parent governors	Trust-appointed governors <sup>10</sup>	Community governors	Staff governors	Local authority governors
11	1	6 (3)	1	2	1
12	1	7 (3)	1	2	1
13	2	7 (2)	1	2	1
14	2	8 (3)	1	2	1
15	2	8 (3)	2	2	1
16	2	9 (3)	2	2	1
17	3	9 (3)	2	2	1
18	3	10 (3)	2	2	1
19	4	10 (2)	2	2	1
20	4	11 (3)	2	2	1

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<sup>10</sup> The number in brackets is the number of Trust-appointed governors who must be parents of children at the school to ensure that at least one third of governors are parents.

## Transitional arrangements

1. In changing category and/or acquiring a Trust, a period called the “implementation period” begins when the proposals are decided and ends on the date the proposals are 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 2007 (as amended).. Other changes to the governing body must be completed within the following three months.

### Appointing and removing governors

2. The Trust can start to appoint governors from the ‘implementation date’ specified in the statutory proposals. Other changes to the governing body must be completed within the following three months

3. Current governors (in post before the decision to acquire the Trust) will continue to hold office for the period for which they were originally appointed or elected unless they are ‘surplus’. The new Instrument of Government will set out the different numbers of governors required in each category. If there are more governors than required in one or more categories, then the surplus governors can voluntarily agree to cease to hold office, or can be removed within three months of the implementation date in the following order:

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

For foundation schools without foundations with partnership governors rather than foundation governors - partnership governors **must** stand down when the new Instrument of Government is made as their category of governorship no longer exists. However, they could be appointed afresh as foundation governors if the Trust agreed.

4. During this period the governing body’s proceedings remain valid, even if there are more governors in a particular category than the new instrument of government sets out.

### Future changes to the governing body

5. As in all maintained schools, the governing body or local authority can review and amend the Instrument of Government at any time. This cannot be used to grant or remove the Trust’s ability to appoint the majority of governors.

6. To allow an existing Trust to appoint a majority of governors, schools will go through the same process as to acquire a Trust (consult stakeholders, publish proposals, invite representations, decide). There is a similar process to remove a Trust or so that it appoints a minority rather than majority of

governors. [See information about 'If something goes wrong...' in this section]

The governing bodies of Trust schools are covered by the same eligibility and procedure rules as other governing bodies – see [www.governornet.co.uk](http://www.governornet.co.uk).

This includes the conflict of interest rules, which mean that any governor with an interest in an organisation that could sell services to the school could not be involved in decisions about whether to buy them etc. Equally, Trust-appointed governors could not be involved in decisions relating to the services that the Trust might provide to the school.

In summary,

- Where there is a conflict between the interests of any person and the interests of the governing body that person should withdraw from the meeting and should not vote.
- In a situation where the principles of natural justice require a fair hearing and there is any reasonable doubt as to a person's ability to act impartially, he or she should also withdraw from the meeting and not vote.
- Where a governor or associate member has a pecuniary interest in any matter he or she should also withdraw from the meeting and not vote.
- Examples of cases where a fair hearing must be given include decisions relating to staff or pupil discipline or admission of pupils. The restrictions on persons taking part in proceedings do not stop a governing body or committee from allowing someone who can offer relevant evidence to a case in question from giving that evidence.
- If there is any dispute as to whether or not a person must withdraw from a meeting the other governors present at the meeting must decide on this.

## Parent Councils

A Parent Council is a body of parents (and potentially also other persons whose interests are aligned with those of the parents) which provides a forum for them to put forward their views to the governing body of their children's school. Parent Councils are a more accessible way to involve more parents in decisions about the school. A Parent Council can be less formal and require a lesser commitment than being a member of the governing body. It also enables more parents to make a real contribution to their child's school.

*Statutory guidance for the Parent Councils of majority governance Trust Schools is available at:*

<http://www.governornet.co.uk/publishArticle.cfm?topicArealD=3&contentId=1149&pageStart=91&sortOrder=c.publishDate>. Other schools may also find the guidance helpful.

## **Further Information on Land and Buildings**

More detailed information is available on the DCSF's School Assets Team's website <http://www.teachernet.gov.uk/schoolslandandproperty> and at <http://www.trustandfoundationschools.org.uk/> (see FAQs on land and assets under 'Resources')

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

When a community school or foundation school without a foundation acquires a Trust (i.e. becomes a Trust school – defined as a foundation school with a foundation acquired under the Education and Inspections Act 2006), the school's land and buildings will transfer to that Trust to be held on trust for the duration of its relationship with the school. The Trust does not have to pay for the land (including buildings). This means that Trust schools will be in the same situation as existing foundation schools with foundations whose foundations (or Trusts) already hold the land, and also similar to existing voluntary schools. Special arrangements can be put in place where facilities are shared with another school or provider.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

No school can borrow money without the permission of the Secretary of State. But the Trust could borrow commercially to fund investment in, for example, a sports facility on the premises, but they cannot use the assets of the school as collateral, nor can they commit the school or its authority towards repayment of the loan. In these circumstances, the borrowing would be entirely at the Trust's risk – and at no risk to the governing body of the school. While the governing body might voluntarily agree to rent the facility for a fixed amount of time, it could not be required to do so or otherwise guarantee to underwrite the Trust's borrowing costs.

In practice, a Trust will only be able to borrow if it has additional assets of its own, and lenders are satisfied with its ability to repay. If a Trust defaults or gets into other financial difficulties, the assets or income of the school are not available to it or its lender. If a Trust cannot pay its debts then the Secretary of State can direct the Trust to pass ownership of the land to the governing body.

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

Yes – if the Trust wants to dispose of land they should consult the governing body of the school. If the governing body thinks that land should be disposed of they should refer this to the Trust - in practice, as the governing body includes Trust appointed governors, the Trust's agreement should be a fairly automatic process. The Trust must then inform the local authority of their

plans to dispose of non-playing field land. Local authorities can object to proposals if they feel that they are not in the interest of the school in the long term, or would disadvantage the wider community. Local authorities will also be able to object to reinvestment proposals and to claim a share of the proceeds attributable to public investment in the land. Where local agreement cannot be reached, the matter will be referred to the Schools Adjudicator for resolution. Local authorities will not be able to force a Trust to sell any surplus land to raise money.

Trust schools will be able to benefit directly from the disposal of land but all proceeds must be used for capital investment in educational assets in either the school itself or the maintained sector (according to the Trust's Memorandum and Articles), and the Trust itself will not be able to profit from any such disposals.

There is no change to the rigorous procedure for any disposal of school playing fields, which will continue to require the consent of the Secretary of State.

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## If something goes wrong...

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

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

### Problems in the school

1. School standards: like all maintained schools, Trust schools will be subject to the Ofsted self-assessment and inspection arrangements. The local authority's and Secretary of State's intervention powers if the school is failing or underperforming apply to all maintained schools (including Trust schools). Ofsted will ask Trust schools to describe their distinctive aims and features as part of their self-evaluation (SEF). Inspectors will assess the impact of Trust-appointed governors on the school's work.
2. Keeping children safe: the governing body is responsible for establishing child protection procedures, and for health and safety within the school and on school trips. The governing body must ensure that child protection and health and safety requirements will be met if external partners come into school, host a trip etc – this applies whether or not the partner is involved in the school's Trust and/or has obtained a CRB check<sup>1</sup>.
3. Finance: the school will continue to be funded by the local authority through the governing body. Trust schools will follow the financial reporting procedures laid down by their local authority, which will be able to suspend the right to a delegated budget if there are serious problems.
4. Employment: as the employer, the governing body (not the Trust) is responsible for all staffing issues. Teachers will continue to be covered by the School Teachers' Pay and Conditions Document (STPCD), and the pay and conditions contained in the contracts of employment of existing staff will be protected by the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007. The Department cannot however offer a definitive interpretation of the law and you should obtain your own legal advice on how the transfer provisions may apply to your own particular case. The governing body can set pay and conditions for new support staff.
5. Entering into contracts: when entering into contracts, the governing bodies of maintained schools should have regard to the School Governance

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<sup>1</sup> All Trustees will be subject to Criminal Records Bureau (CRB) checks. All trustees should be CRB checked prior to the Trust School implementation date. Each individual CRB check specifies a particular role/purpose for its holder. Therefore even if your trustees have previously been CRB checked we would recommend that another check is carried out which specifies their specific role as trustee. We recommend applying early as they can take a while to process.

(Contacts) (England) Regulations 2005 (SI No. 1508). These Regulations require that when entering into a contract (in accordance with Para 3(3)(c) of Schedule 1 to the Education Act 2002 - powers of a governing body to enter into contracts) the governing body shall take account of the practices that are outlined in the Code of Practice on Workforce Matters in Public Sector Service Contracts (a copy of which was set out as a schedule to SI No 1508) as they will protect staff involved in transfers from public sector organisations to service providers and are designed to prevent a 'two-tier workforce', dividing transferees and new joiners working beside each other on the same contracts. An example is the outsourcing of catering where the staff are transferring to the new company.

### **Problems in the Trust**

6. Regulation 14 of and the Schedule to the School Governance (Procedures) (England) Regulations 2003 (SI 2003 No 1377) provide that where in relation to any matter there may be a conflict of interest, including in particular a pecuniary interest in any contract, the governor or governors in question must withdraw from the meeting and not vote on the relevant matter.

7. There are a number of safeguards to prevent and address problems in the Trust's management and conduct. Trusts will be charitable companies. As charities, Trusts are able to make a profit but cannot distribute it to their members or charity trustees; they must apply it for the objects of the Trust. The Charity Commission has a range of statutory powers. For example, it can act on complaints if there is evidence of:

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

8. The Secretary of State also has a power to remove a trustee if he is

satisfied that the trustee has either

- acted in a way that is incompatible with the aims and objects of the Trust, or
- is liable to harm the reputation of any schools that the Trust supports.

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

9. The school is not responsible for any liabilities incurred by the Trust. Members' liabilities are limited to the amount of their guarantee or the amount of their shares as set out in the Trust's memorandum of association (normally £10). As long as trustees act 'prudently, lawfully and in accordance with their governing document' then, since they act as agents of the Trust, they are unlikely to be held personally liable for its debts. [See also: Setting up a Trust]

### **Removing the Trust**

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

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

11. Removing the Trust of a failing school: the Trust relationship is automatically ended when a failing school closes<sup>2</sup>. Local authorities have a range of intervention powers in failing schools: if an Interim Executive Board is put in place then the Trust's role (other than holding land) would be temporarily put on hold. If the local authority appoints additional governors then Trust-appointed governors would be a smaller proportion of the governing body – this could mean that the Trust loses its majority. In either case, the Trust would resume its original role once the intervention powers end.

12. Removing a Trust because of dissatisfaction (or changing from a majority to a minority of Trust-governors) will broadly follow the same process as acquiring a Trust: initial decision, consultation, publish proposals, representations, final decision. For example:

- A majority of the governing body will be able to publish proposals at any time to remove the school's Trust or to move from a Trust appointing a majority of the governors to a Trust appointing a minority.

Where the Trust appoints the majority of the governing body, one-third of the governors will be able to trigger the publication of proposals, but only after the Trust has been in place for 5 years or no less than 5 years after any previous proposal to

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<sup>2</sup> The relationship also ends if a school closes for any other reason.

remove the Trust has been rejected. Unless two-thirds of the governors vote to keep the Trust, it will be removed or it will change to appoint a minority of the governors in future.

13. If the Trust is removed pursuant to the process outline above, the school will become a foundation school without a foundation. Publicly provided land will transfer to the school's governing body when the Trust is removed. Land which was originally provided by the Trust may also transfer to the governing body in accordance with any transfer agreement entered into between the governing body and the Trust, or it could remain with the Trust if it has a continuing role.

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

15. If a Trust ends the relationship for any reason then publicly provided land will revert to the governing body and the school will continue as a foundation school without a foundation. If the Trust originally provided the school's land, it must give 2 years notice<sup>3</sup>, so that another site can be found if necessary.

16. The regulations in respect of the Trust removal process - The School Organisation (Removal of Foundation, Reduction in Number of Foundation Governors and Ability of Foundation to Pay Debts) (England) Regulations 2007 (SI 2007/3475) - came into force on 21 January 2008  
[http://www.opsi.gov.uk/si/si2007/uksi\\_20073475\\_en\\_1](http://www.opsi.gov.uk/si/si2007/uksi_20073475_en_1)  
Statutory guidance on the removal of a school's Trust and a reduction in the number of governors appointed by the Trust is also available  
<http://www.dcsf.gov.uk/schoolorg/guidance.cfm?id=25>

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<sup>3</sup> The 2 years' notice of the intention to terminate a school's occupation of Trust land should be given to the governing body, copied to the LA and the Secretary of State for Children, Schools and Families. If the Trust originally provided the land but becomes insolvent, the land is protected for 2 years for the same reason.

## Model instrument of government

1. The name of the school is ...
2. The school is a [foundation school with a foundation/ a qualifying foundation school<sup>4</sup>] (i.e. a Trust school).
3. The name of the governing body is “The governing body of ...”<sup>5</sup>
4. The governing body shall consist of:
  - a. X parent governors
  - b. X LEA governor
  - c. X staff governors
  - d. X community governors
  - e. X foundation governors<sup>6</sup> (a majority/minority<sup>7</sup> of the governing body) [*if a majority*] of whom X<sup>8</sup> shall, at the time of their appointment, be eligible for election or appointment as parent governors.
  - f. [*where applicable*] X sponsor governors
5. Total number of governors: X
6. [*Where applicable*] The sponsor(s) entitled to nominate person(s) for appointment as sponsor governors under schedule 5 of the Regulations is/are ...
7. Foundation governors will be appointed by ...Trust<sup>9</sup>.
8. [*If the school has a religious character, a description of the ethos of the school*]
9. [*If the term of office of one or more categories of governor is shorter than four years*] The term of office of [X category of governor] is [*insert period between one and four years*].
10. This instrument of government comes into effect on...
11. This instrument was made by order of ... Local Education Authority on ...

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<sup>4</sup> This definition comes from the School Governance (Constitution) (England) Regulations 2007 SI No 2007/957 and means a foundation school with a foundation where the foundation appoints the majority.

<sup>5</sup> Insert the name of the school (as at paragraph 1).

<sup>6</sup> Trust-appointed governors are referred to in law as ‘foundation governors’.

<sup>7</sup> Delete as applicable

<sup>8</sup> If the Trust appoints the majority of the governors, it must appoint enough parents so that when added to the elected parents (para 4a) a third of the governing body are parents.

<sup>9</sup> Referred to in law as a ‘foundation’.

**NB A copy of the instrument must be supplied to every member of the governing body (and the head teacher if not a governor), and to the trustees of the Trust.**

### **Checklist: Stage 5 – Implementation**

Action

Date completed

#### **Before Implementation**

Trust partners need to have established the Trust as a charitable company by the implementation date (see separate section).

Send a revised Instrument of Government to the local authority so that they can 'make' the Instrument before the implementation date.

If the Trust will appoint the majority of governors, plans for a Parent Council **must** be in place.

If applicable, LA to have passed a resolution to enable support staff to remain in LGPS.

#### **After Implementation**

Complete reconstitution of the governing body within 3 months of the implementation date.

Induct Trust-appointed governors.

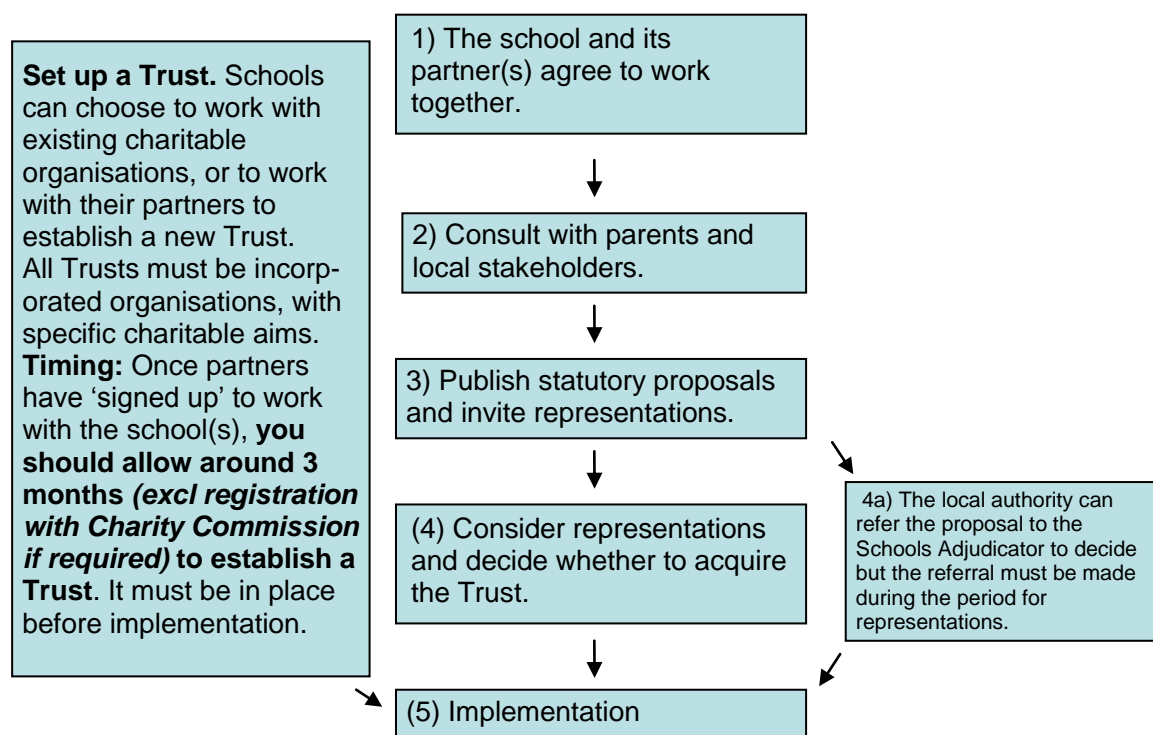
Local authority completes formal transfer of land.

Consult on proposed admissions arrangements for the next admissions cycle – must be completed by 1 March to come into force for the following academic year.

Make relevant amendments to staff contracts and to any of the school's policies and documents that refer to the local authority as employer.

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## Setting up a Trust



### The school needs to:

- 1 Agree who will be involved in the Trust and how

### Partners need to:

- 1 Establish an incorporated charity
- 2 Prepare to run the Trust

### This section of the toolkit contains:

- Establishing a Trust: options
- Establishing a Trust: requirements
- Disqualification criteria for trustees
- Running a Trust
- Model documentation to set up a Trust
- Model equality scheme

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## Trusts

Through acquiring a Trust, schools can use long-term partnerships and collaboration to take the action they need to address particular issues in their school, strengthen overall leadership and governance, broaden opportunities and increase aspirations. The beauty of Trust schools is their flexibility. Schools can choose the partners and arrangements that will help them best meet their goal to improve education, deal with problems they want to improve and raise pupil achievement. By bringing in multiple partners to a Trust, a school can be supported to look at a range of options for increasing opportunities for their pupils and local community.

### Useful definitions

Trust	For these purposes, a popular term for a “Foundation” (see below). A charitable organisation that supports one or more schools by holding land and buildings on trust and appointing governors. They must be incorporated bodies – either a charitable company (limited by shares of guarantee), a charitable incorporated organisation (once the relevant provisions of the Charities Act 2006 come into force), or a body incorporated by Royal Charter. Trusts must promote community cohesion.
Trustee	Usually a named individual (although could be a corporate body) responsible for the day-to-day management of the Trust, which is likely to include identifying and appointing governors for the school(s) the Trust supports.  Trustees are also referred to as “directors” in the context of a charitable company.  The Charity Commission strongly recommends that all charity trustees should read its publication ‘The Essential Trustee’ (CC3) available at <a href="http://www.charitycommission.gov.uk/Library/publications/pdfs/cc3text.pdf">http://www.charitycommission.gov.uk/Library/publications/pdfs/cc3text.pdf</a>
Trust members	Can be individuals or organisations. They take decisions about the organisation of the Trust, including how trustees are elected or appointed. They also hold the trustees to account, for example at a general meeting.
Foundation	A “foundation” is a body which holds land on trust for the purposes of the school, and a school “has” a foundation if such a body exists for holding land on trust for the purposes of the school (section 21 of the SSFA 1998). The foundation also appoints foundation governors to the governing body of the school.

### Legal support

1. You will need legal support to establish a Trust. Organisations wishing to establish a Trust to support a school can choose to work with any lawyer, but are also eligible to use the Office of Government Commerce framework contract:

<http://online.ogcbuyingsolutions.gov.uk/information/ConsultancyServices/Legal/>

2. If you decide to use the framework contract, you will need to read the full client guidance. In summary, you first need to sign a 'client access agreement' which gives you access to the detailed directory of support. You can use the directory to choose which firm to work with, or you could ask several to provide quotes. Once you have agreed which firm to use, you simply place an order (the client guidance contains a pro-forma).

**Partners might also find the booklet Trust Schools and Governance useful** – it gives background information about how schools are governed, as well as an overview of the role and responsibilities of a Trust. It is available from [www.trustandfoundationschools.org.uk](http://www.trustandfoundationschools.org.uk).

## **Establishing a Trust - options**

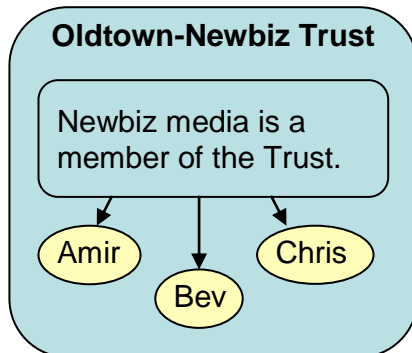
Partners will establish a charitable organisation to support the school. There is no single blueprint – this section suggests some structures for how a Trust could work. The detail would be set out in the Trust's governing documents. It includes examples of how different models could work in practice, although this is not an exhaustive or prescriptive list.

The Trust itself (and any member organisations) is shown in blue – the trustees (in yellow) are named individuals responsible for the day-to-day running of the Trust. Trustees and Trust members could also serve as Trust-appointed governors.

### **Single partner Trust**

1. One organisation establishes the Trust and appoints all the trustees. This model is straightforward and offers clarity about decisions and direction (appointing governors, providing services etc) within the Trust.

**Oldtown High School** has been working with a business partner (Newbiz media) for several years – the company sponsored the school’s business specialism. They agreed to work together on a Trust – Newbiz itself is a corporate member, and has appointed three members of staff as trustees.



The trustees will run the Trust and appoint governors for Oldtown High. They are:

- Amir: leads on other projects with the school, and knows it inside out
- Bev: head of business development and can share her expertise with the school
- Chris: works in the finance section – he’s got useful skills and wants to develop his leadership ability.

Newbiz sponsors specialist schools across the country, and could support them in becoming Trust schools in future.

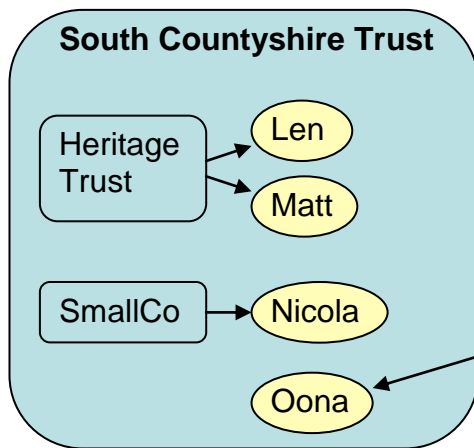
### **Several partners forming a Trust**

2. Schools and partners might decide to establish a Trust with several members (for example an FE college and local business), each of whom would appoint trustees. Benefits of this approach include:

- schools can benefit from a wider range of experience (e.g. the FE college has educational expertise, while the local business offers management skills and help to develop an entrepreneurial ethos).
- involving a well-established organisation can provide extra stability for a parent/community driven Trust.
- it helps to knit together wider relationships, for example the range of partners with an interest in raising achievement in a particular area.

**Schools in south Countyshire** work with a shared Trust to support their 14-19 provision. The Trust has two corporate members:

- the local branch of an environmental/heritage charity, which wanted to give more structure to its work with schools on careers, and projects around sustainable development, geography etc.
- a former pupil established a business (which now employs 25 people): she's keen to encourage pupils to aim high. Many of her staff have children at the schools and have useful financial skills.

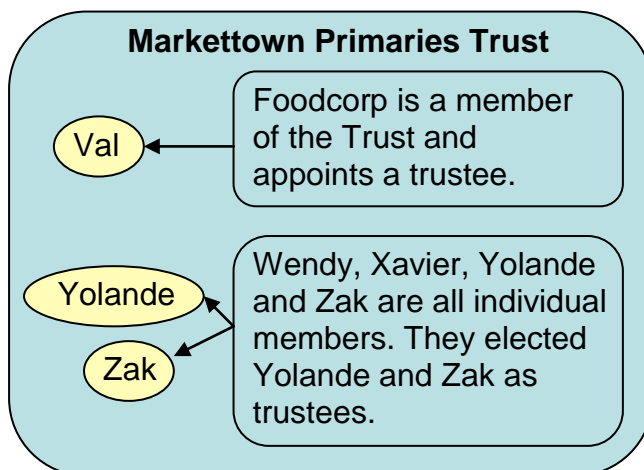


South Countyshire Vocational foundation collaborates with the schools in 14-19 work. Its governing document prevents it being a Trust member, so **the foundation appoints a named individual to act as member and trustee** instead.

3. A less formal group might prefer a different model: they could appoint several individuals as Trust members, who between them would elect or appoint one or more of the trustees.

**Primary schools in Markettown** have been working together on a common approach to raise standards. The shared Trust underpins this collaboration and will help to develop the schools' links with the community they serve.

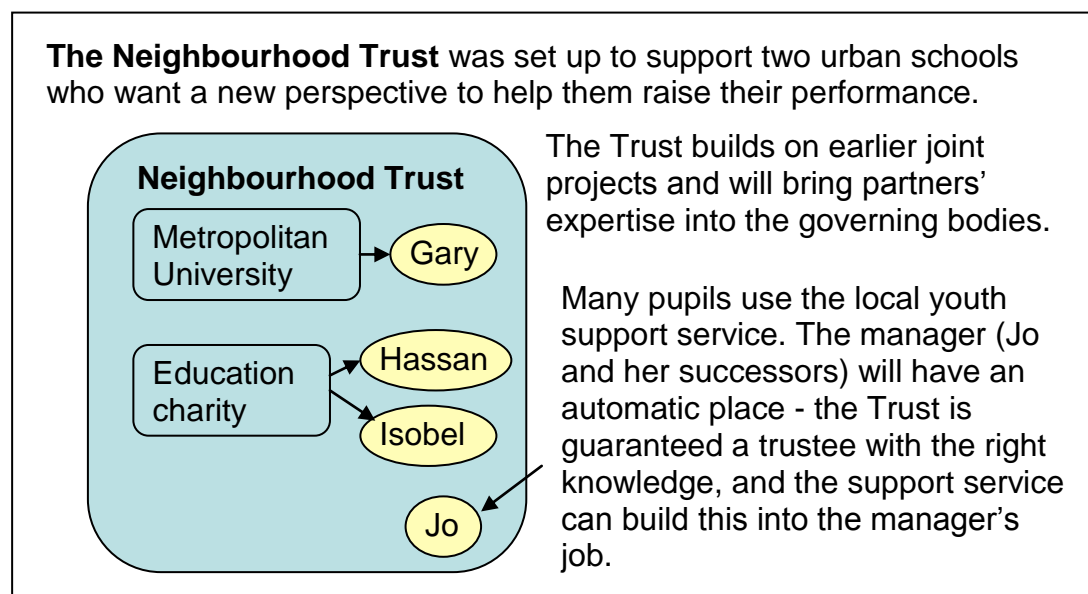
There are 2 partners: Foodcorp is a local employer, whose staff already volunteer to read with children.



Markettown Community Centre appoints people who use the centre (as a playgroup and after school club, the parenting group, residents association and for evening classes) as Trust members – they will elect trustees between themselves.

4. As well as allowing members to appoint trustees, it would also be possible to have 'ex officio' trustees appointed by virtue of their position, such as the

leader of a sports club that uses the school's facilities. This would be set out in the Trust's governing document.



### **The school's role in its Trust**

5. Some schools and partners will want to give the school a voice in decisions about the Trust and in holding trustees to account. With the exception of the Head teacher at the school in question, school staff are not allowed to be trustees<sup>1</sup> although a representative from the school (staff or a governor) could be a member of the Trust.

6. This would allow them to hold trustees to account for the governors that they appoint (e.g. how well the governors promote equal opportunities; their impact on raising standards). It would also give the school staff a voice if the Trust wanted to change its membership/structure in future.

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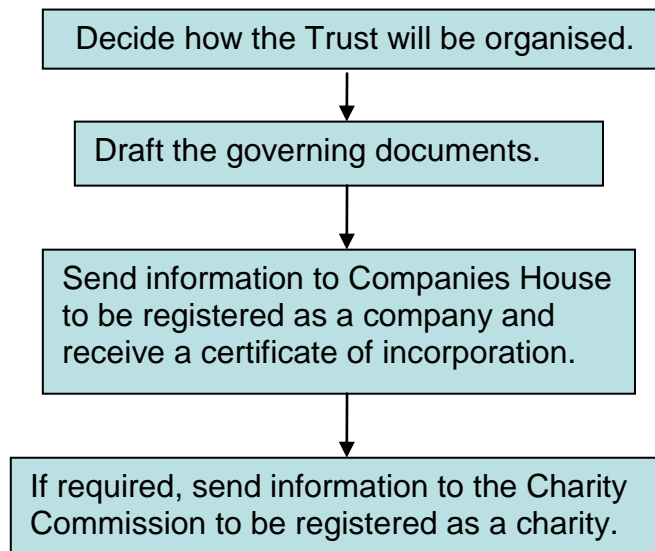
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<sup>1</sup> *The restrictions on staff members formed part of the consultation process which ended on 4 February 2007. In response, the headteacher at the school in question and members and officers of Local Authorities will no longer be disqualified from acting as a trustee of a Trust school. Local authority voting rights remain restricted to 1/5 of the total vote.*

## Establishing a Trust - requirements

This note provides practical information about establishing a Trust, once the school(s) and partners have agreed to work together and have started thinking about how to organise the Trust.

The Trust must be in place before the implementation date of the proposals. This diagram summarises the process for establishing a Trust as a charitable company<sup>2</sup>:



1. Decide how the Trust will be organised. This will depend on two main factors:
  - The aims of the school – the toolkit contains suggested models for Trusts that could help schools to focus on themes such as 14-19 opportunities or helping schools to play a fuller part in local Every Child Matters provision.
  - Who the partners are and the role they will play – the toolkit section ‘Options for establishing a Trust school’ sets out a range of structures for partners’ involvement in a Trust.
2. Certain individuals are disqualified from being involved in the Trust as trustees [see Disqualification Criteria in this section]. It includes anybody who is paid to work at the school, with the exception of the Head teacher. Trustees will also have to obtain a Criminal Records Certificate prior to the Trust School implementation date. Each individual CRB check specifies a particular role/purpose for its holder so even if your trustees have previously been CRB checked we would recommend that another check is carried out which specifies their specific role as trustee.
3. For local authorities:

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<sup>2</sup> This section of the Toolkit assumes that the Trust will be incorporated as a charitable company limited by guarantee, as is the usual vehicle for charitable companies.

- Individual local authority members and/or officials can be Trust members and trustees, strengthening the local community's voice within the Trust.
- Involving the local authority as a corporate member might be particularly appropriate if the Trust focus links to areas where the local authority already plays a coordinating role, for example local 14-19 provision, or Every Child Matters. **Local authority Trust members, or local authority-appointed Trust members, can have a maximum of 20% of the voting rights of all members of the Trust. Similarly, local authority appointed trustees may account for no more than 20% of the total number of trustees and may have no more than 20% of the voting rights of all trustees.**

4. Draft governing documents for the Trust. Once outline decisions have been taken, the partners (and their lawyer) need to draft governing documents for the Trust. These will set out your decisions about how the Trust will be organised (as above) and the rules for running the Trust's affairs. All Trusts must be:

- Charitable – Trusts cannot distribute a profit, and must use their resources to support and promote their exclusively charitable aims. One of your aims must be “the promotion of education for children at the school(s) which the Trust supports” and as part of doing so, the Trust must, by virtue of provisions in the Education and Inspections Act, promote community cohesion and, because it is a charity, it must do this in ways that are charitable. The aims must meet the public benefit requirement introduced by the Charities Act 2006. This is the legal requirement that every organisation set up for one or more charitable aims must be able to demonstrate that its aims are for the **public benefit** if it is to be recognised as a charity in England and Wales.
- Incorporated – formally established as either a company, usually limited by shares or by guarantee], or as a charitable incorporated organisation (CIO) when introduced, or as a body incorporated by Royal Charter. This means that the Trust is able to sign contracts, and, in the case of limited companies and CIOs, the liability of members may be limited or (in the case of CIOs) excluded altogether. The trustees of the Trust enter into contracts as agents for the Trust, and as agents they will normally have no personal liability for the debts of the Trust. (NB CIOs were introduced by the Charities Act 2006 so that charities can benefit from limited liability status without the burden of dual registration with the Charity Commission and Companies House. You cannot yet establish a CIO – this section will be revised with more detail when the provisions relating to CIOs have commenced.)

5. If the Trust is to be set up as a charitable company, send information to Companies House. Companies House is the agency which incorporates and dissolves limited companies. You need to send them:

- A copy of the Memorandum and Articles of Association (the Trust

governance documents)<sup>3</sup>

- Information about the first directors (trustees) and the secretary (the latter only where appointed – see Para 6 below), and the registered office.
- A declaration that the Trust complies with the Companies Act.
- An incorporation fee (currently £20).

6. Since 6 April 2008 Trusts set up as charitable companies have the option of whether or not they have a ‘company secretary’<sup>4</sup>, although they can choose for their articles of association to require them to have one. If they do have a company secretary, they could be one of the trustees acting in a voluntary capacity<sup>5</sup> and, for example, may take on responsibility for ensuring that meetings are properly organised and recorded, maintaining statutory registers (registers of trustees and members, register of trustees’ interests etc) and filing statutory forms such as annual returns. Small Trusts might choose to use the secretary’s house or the school address as their registered office. See also: ‘Running a Trust’.

7. The Companies House website has more detailed information, including standard forms for the information about trustees, secretary and registered office and the declaration. Follow the links for ‘Incorporating a Company’ from [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk).

8. Where the Trust is to be set up as a charitable company, it must be registered with Companies House before the school ‘opens’ as a Trust school but should not be registered until the Governing Body has undertaken all relevant consultation and has made the final decision to acquire the Trust.

#### Registration with the Charity Commission

9. All Trusts must be charities, and will be subject to regulation by the Charity Commission, whether or not they are required to register with it. The Commission may investigate any complaints about the way in which the Trust is run, and has a range of powers of intervention. Its website is at: <http://www.charity-commission.gov.uk/>

10. If the Trust has an annual income of less than £5,000 from all sources apart from the annual payment the school receives from the local authority, it will not be required to register with the Charity Commission. (NB Where a Trust passes the income registration threshold during its first year of operation, by passing the threshold it will become liable for compulsory registration).

11. Where Trusts are required to register, the Trust will have a legal obligation to keep their information on the Commission’s register up to date, usually by

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<sup>3</sup> A model Memorandum and Articles of Association is available at [www.trustandfoundationschools.org.uk](http://www.trustandfoundationschools.org.uk)

<sup>4</sup> Following the coming into force of further provisions of the Companies Act 2006.

<sup>5</sup> See [www.charitycommission.gov.uk/supportingcharities/ogs/index092.asp](http://www.charitycommission.gov.uk/supportingcharities/ogs/index092.asp) for the Charity Commission policy on paying trustees (small amounts) for specific or ongoing services.

completing a form the Commission will send them annually.

12. To register a Trust, you will need to obtain the Charity Commission's Registration Application Pack either from its website or by contacting Charity Commission Direct on 0845 3000 218. When applying for registration, you need to send the Commission:

- A fully completed Registration Application Form
- A declaration by the trustees that they are willing to act as trustees and are not disqualified from doing so
- Two copies of the incorporated governing document (the Memorandum and Articles of Association)
- A copy of the certificate of incorporation (from Companies House)
- Copies of financial accounts for the last 3 years (where these are available).

13. The Charity Commission will be in touch within 15 working days and will give you initial feedback about how simple your application is, and whether they need further information. The Commission aims to decide applications within an average of 87 working days (around 4 months), but will be able to decide applications using approved model documentation more quickly (if an application contains sufficient information the Commission will indicate that it is prepared to register a new charity within 15 working days).

14. It is possible for charities to register voluntarily with the Commission. However, the Charity Commission may exercise discretion in respect of voluntary registration. Please note that The [Charities Act 2006 Implementation Plan](#) [http://www.cabinetoffice.gov.uk/third\\_sector/law\\_and\\_regulation/implementation.aspx](http://www.cabinetoffice.gov.uk/third_sector/law_and_regulation/implementation.aspx) explains "While the Charity Commission is registering the large numbers of formerly excepted and exempt charities that it will have to register, the current law which enables the Charity Commission to exercise its discretion in relation to applications for voluntary registration will continue in force. Once those excepted and exempt charities that are required to register have been registered, the provision in the Act requiring the Commission to register charities that apply for voluntary registration will be commenced." This means that for the foreseeable future applications to the Charity Commission for voluntary registration are likely to be rejected. **You will only be able to register your Trust if it has an income above £5,000 per annum.** We will issue some additional information about Charity Commission registration at a later date. In the meantime if you have any queries please contact the Trust and Foundation Schools Partnership. In addition, you may also find the plain language guide to the Charities Act – "Charities Act 2006: what trustees need to know" helpful (available via the Cabinet Office link above – see 'other commitments' section of the plan).

## Disqualification criteria

Certain categories of person are disqualified from acting as charity trustees by charity law (and people can also be disqualified by company law from acting as company directors). In addition, education legislation disqualifies certain categories of people from being trustees of a Trust that acts for a Trust school.

The School Organisation (Requirements as to Foundations) (England) Regulations 2007 provide that the following categories of people may not act or continue to act as a trustee of a foundation:

1. A person who is—
  - (a) included in the list kept under section 1 of the Protection of Children Act 1999<sup>(6)</sup> (list of those considered by the Secretary of State as unsuitable to work with children);
  - (b) subject to a direction of the Secretary of State under section 142 of the Education Act 2002 <sup>(7)</sup> (or any other disqualification, prohibition or restriction which takes effect as if contained in such a direction);
  - (c) disqualified from working with children under sections 28, 29 or 29A of the Criminal Justice and Court Services Act 2000<sup>(8)</sup>;
  - (d) disqualified from registration under Part 10A of the Children Act 1989<sup>(9)</sup> for child minding or providing day care; or
  - (e) disqualified from registration under Part 3 of the Childcare Act 2006<sup>(10)</sup>.
2. A person who either during his trusteeship of the foundation, or in the period of five years ending with the date on which his trusteeship of the foundation would otherwise have taken effect, has been convicted, whether in the United Kingdom or anywhere else, of an offence, the facts of which give rise to a criminal offence under English law, and has had passed on him a sentence of imprisonment (whether suspended or not) for a period of not less than three months without the option of a fine.
3. A person who within the period of 20 years ending with the date on which his trusteeship of the foundation would otherwise have taken effect has been convicted as stated in paragraph 2 of any offence and has had passed on him a sentence of imprisonment for a period of not less than two and a half years.
4. A person who at any time has been convicted as stated in paragraph 2 of any offence and has had passed on him a sentence of imprisonment for a period of not less than five years.
5. A person who has not obtained a criminal records certificate under section 113A of the Police Act 1997<sup>(11)</sup>.

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<sup>(6)</sup> 1999 c. 14; as amended by the Care Standards Act 2000 (c.14).

<sup>(7)</sup> 2002 c. 32.

<sup>(8)</sup> 2000 c. 43; section 29A is inserted by the Criminal Justice Act 2003 (c. 44).

<sup>(9)</sup> 1989 c. 41; inserted by the Care Standards Act 2000 (c.14).

<sup>(10)</sup> 2006 c. 21.

<sup>(11)</sup> 1997 c.50; inserted by section 163(2) of the Serious Organised Crime and Police Act 2005 (c.15).

6. A person who has not attained the age of 18.
7. A person who is detained under the Mental Health Act 1983<sup>(12)</sup>.
8. A person who is paid to work at a school for which the foundation acts, except for the head teacher.

An individual subject to an IVA (Individual Voluntary Arrangement) is also precluded from being a trustee under Section 72(1) of the Charities Act 1993. Under this legislation, disqualification applies to those who:

- have been convicted of any offence involving deception or dishonesty; or
- are undischarged bankrupts; or
- have made compositions or arrangements with their creditors from which they have not been discharged; or
- have at any time been removed by the Charity Commissioners or a Court from being a trustee because of misconduct or mismanagement; or
- are disqualified from being company directors; or
- are subject to a disqualification order or disqualification undertaking.

For further details see:

<http://www.charity-commission.gov.uk/supportingcharities/trustee1.asp#Disqualified>

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<sup>(12)</sup> 1983 c.20.

## Running a Trust

Acquiring a Trust is a way for schools to raise standards through strengthening collaboration and drawing on the expertise and energy of their partners to support the school's strategic leadership. This builds on the characteristics shared by some of our highest performing schools: confident institutions with a distinctive ethos; with a strong governing body that challenges and supports the school to improve; and working closely with others in sustainable partnerships.

The following paragraphs provide practical information for Trust partners about their ongoing role in supporting the school. The Trust's key functions are to appoint governors and to hold land and buildings on trust for the school(s). It has other duties, including promoting community cohesion and the administration of the Trust itself.

### Key functions

1. Identify and appoint governors. Most governors have a 4-year term of office, and governing bodies try to stagger these terms so that they don't lose several experienced governors at the same time. Trustees will have to appoint or re-appoint governors every 4 years, or earlier if people have to resign.
2. Trust-appointed governors could be employees or members of the partner organisations or volunteers who are not linked to the partners<sup>13</sup>. Some of them will be parents if the Trust appoints the majority of the school's governing body. Trustees will need to think about:
  - how to identify potential governors who will be able to promote the ethos/approach (and will offer the right skills and experience)<sup>14</sup>
  - whether to 're-appoint' some of the existing governors in order to maintain continuity – especially if the Trust is to appoint the majority of governors.
  - whether the process challenges discrimination and promotes equality.

The 'Help Schools Help Children' toolkit contains materials which you might find useful in recruiting potential governors from within your organisation – follow the link to Governor Recruitment from [www.dcsf.gov.uk/a-z/home.html](http://www.dcsf.gov.uk/a-z/home.html).

3. If a Trust supports several schools then the trustees will appoint governors to each school – this could be the same people.

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<sup>13</sup> Trustees could also serve as Trust-appointed governors.

<sup>14</sup> You will have talked about what the school is looking for and what the Trust could offer during early discussions – see 'Issues and decisions for early discussion'.

Newtown Trust supports three schools in the same area, and has identified 7 people who the trustees think would be good governors. Some of the volunteers have time to serve on 2 governing bodies...

School A has 4 Trust-appointed governors: Aimee, Bob, Carl, Damien

School B has 4 Trust-appointed governors: Aimee, Carl Ellie, Farrah

School C has 3 Trust-appointed governors: Bob, Carl, Grace

4. Organisations which already appoint governors to schools often establish arrangements to keep in touch about progress and offer support. This could be particularly important if the Trust will support several schools, so that the Trust-appointed governors can help to share ideas and develop a common approach. Trustees might think about:

- appointing people to more than one school (as above)
- an email newsletter and/or online discussion forum
- informal sessions to help Trust-appointed governors keep in touch
- buddying and mentoring
- regular meetings of Trust-appointed governors to discuss a particular issue – for example a Trust supporting a national network of specialist schools might update them on developments, or hold a session about how they can help schools to develop the specialism.

5. Holding land and buildings on trust for the school. Day-to-day control will remain with the governing body, as will responsibility for insurance, health and safety etc. The Trust will 'hold' the land and buildings on trust, and the value of the school's land and buildings will appear on the Trust's balance sheet. The Trust is not liable for the actions or decisions of the school's governing body. If the Trust's role ends for any reason, then publicly funded land will normally revert to the school governing body (if the school continues as a Foundation school) or the local authority (if the school closes).

[See also: Further information on Land and Buildings in Stage 5: Implementation]

### **Duties**

6. Equality: Trusts will be covered by the Race Relations Act 1976, the Disability Discrimination Act 1995 and the Equality Act 2006. This means they have duties to eliminate discrimination and promote equality. Every Trust will have to promote community cohesion as part of its role to advance the education of pupils at the school(s) that it supports, and will be bound by the Race Relations Act duty to promote race equality. They will have to produce an

equality scheme. The process for doing so (and a model equality scheme) is set out in this section of the toolkit.

7. Child protection: The school governing body remains responsible for the conduct of the school, including child protection policies. These apply to all visitors to the school and to all governors, regardless of whether individuals were related to the Trust. Trusts do not need to adopt a child protection policy unless they have responsibility for children through wider activities.

8. Freedom of Information: Trusts are not currently on the list of organisations covered by the Freedom of Information Act. They may be added to the list in future, and will then have to respond to requests for information. This would apply retrospectively to all records held by the Trust. Practical guidance will be produced in advance of any change.

### Running the Trust

9. Once established as a charitable company<sup>15</sup>, Trusts are required to
- maintain a record of trustees and members
  - produce annual accounts and an annual report<sup>16</sup>

and are encouraged to hold a general meeting.

10. The Trust **must** maintain a record of trustees and members. The trustees **should** ensure that any new trustees are eligible (see disqualification criteria in this section of the toolkit). The Company Secretary (or, if the Trust has chosen not to have a Company Secretary, some other nominated person) **must** update Companies House and the Charity Commission about changes to trustees and any changes to the Memorandum and Articles. Companies House should also be informed about changes to the company secretary or registered office.

11. Trusts established as a charitable company **must** send annual returns to both the Charity Commission (if registered with it and the income of the Trust exceeds £10,000) and Companies House.

12. The Charity Commission sends an Annual Return Form to all registered charities – the level of reporting required depends on the size and income of the charity.

- Trusts with an annual income of £10,000 or less will not complete an annual return but will be asked to provide information related to the charity's entry on the Commission's Register, including trustee details. They should prepare annual accounts and an annual report but are not required to send them to the Commission.

13. Annual reports are expected to be more detailed for larger charities – for Trusts with an income of £500,000 or less the papers and minutes of the

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<sup>15</sup> This section assumes that the Trust will be a company limited by guarantee but many of these requirements will apply equally in relation to companies limited by shares.

<sup>16</sup> A charitable company that does not have to register with the Commission, and does not choose to do so, does not normally have to prepare an annual report (only on specific request)

**general meeting (see Para. 17)** would probably provide sufficient information about the Trust's objectives and activities during the year, whether it had met its aims, and its forward look for the next 1-2 years.

14. Companies House will send out a form around 2 weeks before the anniversary of incorporation – this can be 'pre-populated' with the information held (about the company directors (trustees) and secretary and registered address) so that Trusts would need to check it, make any updates and return the form with a fee (currently £30).

15. Trusts will also have to send annual accounts to Companies House. You will probably qualify as a small or medium sized company and so will be able to submit abbreviated accounts<sup>17</sup>.

16. You will also be exempt from the audit requirements if you qualify as a small company (as above) and have a gross income of no more than £500,000 and your balance sheet total is no more than £2.8 million. With income between £90,000 and £500,000 a modified form of scrutiny by a "reporting accountant" is required. Some Academies show their land as having no value because:

- the site is designated for educational purposes only and has no open market value, or,
- the land was transferred from X City Council and is subject to a covenant relating to its use and is considered to have no open market value.

Trusts will be in a similar position, but you should make sure to check the detail with your accountant. **Section 9 of the Charities Act 2006 came into force in January 2009 and is planned to be fully commenced by October 2009. Future versions of this Toolkit will give further information as it becomes available.**

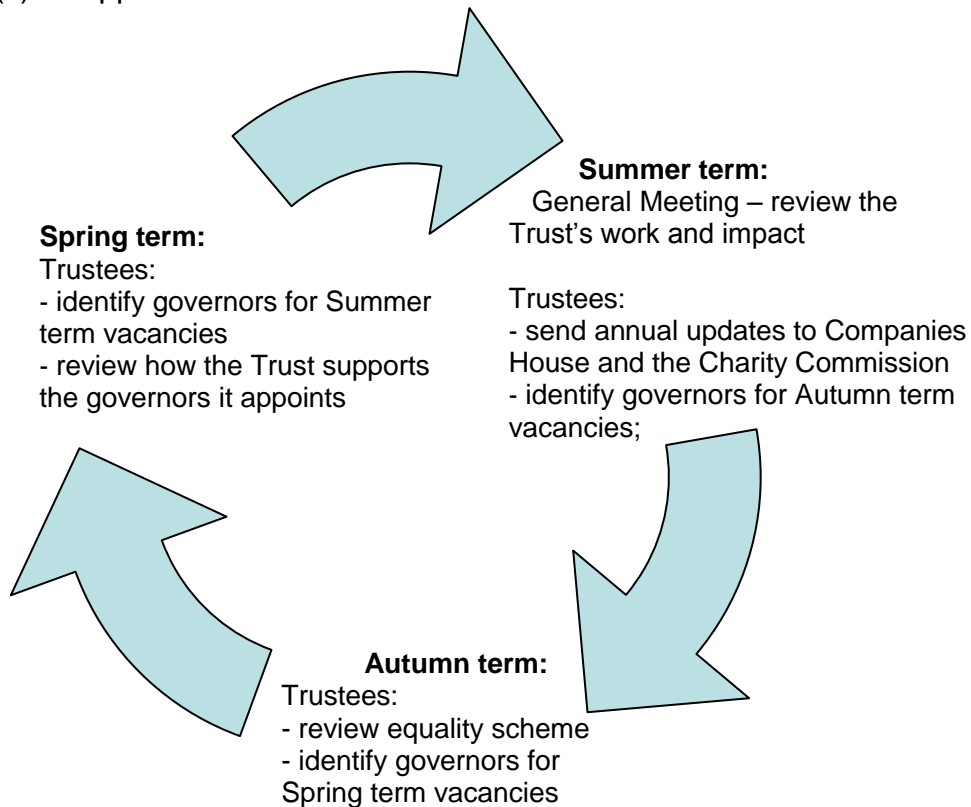
17. A general meeting is not always a statutory requirement for a company, but is good practice, and so is included in the model Memorandum and Articles. It offers a chance for the Trust to review its activities and impact on the school(s) it supports, and for members to hold trustees to account. It could be a useful stock take with the Head teacher(s), governors and other local stakeholders.

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<sup>17</sup> Small and medium sized companies can submit abbreviated accounts. The criteria from 30 January are that to be a small company you must meet at least two of three conditions: (a) annual turnover must be £5.6 million or less; (b) balance sheet total must be £2.8 million or less; (c) average number of employees must be no more than 50. Medium-sized companies must also meet at least two of three conditions: (a) annual turnover must be £22.8 million or less; (b) balance sheet total must be £11.4 million or less; (c) average number of employees must be no more than 250. When an annual report has to be sent to the Charity Commission, the full annual accounts of the company (not abbreviated accounts) must be attached to the report, together with the relevant accounts scrutiny report (if any).

## Suggested timetable

18. This diagram presents a suggested timetable for how the Trust's work could be carried out. The timing of annual reports depends on when a Trust was incorporated – this model assumes the Trust was originally incorporated during the summer term (for example in May), and that its activities are limited to holding land and buildings on trust and appointing governors for the school(s) it supports.



19. In this example, the work could probably be done with termly meetings for 1-2 hours and a 2 hour general meeting.

## Trusts with wider activities

20. The Trust's long-term commitment provides a stable underpinning for a range of other work. Trusts (and their member organisations) can continue to work with the schools they support, including offering access to facilities and expertise, work-experience, or supporting events and projects at the school.

21. The Power to Innovate is a way for schools and local authorities to challenge existing legislation they believe is holding back innovative approaches to raising standards. In addition to individual governing bodies, a Trust is able to submit a single application form on behalf of all the schools it supports, and if approved each school would be able to decide whether to make use of the freedom. In practice, the proposal could be developed by one or more of the schools supported by the Trust. By submitting an application on behalf of all the schools the Trust would make it easier to spread the approach. More information is available at:

<http://www.teachernet.gov.uk/management/pti/>

22. Trusts which support several schools might decide to develop and offer services to their schools – this could include finance, administration, purchasing and other routine tasks. The benefits would be to reduce the administrative burden on school leadership teams, and economies of scale could mean a better deal on procurement, and could allow the Trust to employ people with specialist skills, helping to raise standards of management.

23. Providing services would involve more work for trustees, but would not require extra financial input – schools could ‘buy into’ the services. You will need legal advice on what services the Trust can provide (as a charity) and whether you need to establish a subsidiary organisation. Any income would have to be used for the Trust’s charitable purposes, including the advancement of the education of pupils at the school(s) it supports.

24. Of course, schools will not necessarily choose to buy services from a Trust: all school governing bodies have a duty to secure value for money and are encouraged to follow the principles of best value: challenge, compare, consult and compete. Large contracts may need to be tendered at a European level.

25. Trust-appointed governors would have a conflict of interests if the Trust (or a partner involved in the Trust) were to sell goods or services to the school. There are already rules so that these governors would withdraw from the discussion and not vote on the question [Stage 5: Implementation ]

### **Further information**

The Charity Commission publishes a range of straightforward leaflets which include guidance on registering as a charity; the roles and responsibilities of trustees; trading and producing an annual report (see [www.charitycommission.gov.uk](http://www.charitycommission.gov.uk) and follow the link to “publications and guidance”).

Detailed information about requirements to submit accounts to Companies House is available from [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk) – follow the link for “information and guidance on filing your accounts”.

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## Trustee liability

Very few trustees who have acted honestly suffer financial loss as a result of their trusteeship. There are risks, but they should be kept in proportion.

This summary of the liabilities of a charity trustee is closely based on material from the National Council for Voluntary Organisations (NCVO). It also explains what this means in the context of Trust schools and confirms that members' financial liability is limited in the event that the Trust becomes insolvent or is wound up.

1. If trustees act prudently, lawfully and in accordance with their governing document, then they will not incur any personal liability for breach of trust or duty. The courts and the Charity Commission also have the power to relieve trustees from liability where they have acted honestly and reasonably.
2. It is unlikely that trustees will be held personally liable, if they always:
  - Act reasonably
  - Comply with their governing document
  - Take appropriate professional advice where they don't know enough to make a decision
  - Take appropriate professional advice where they are required to by law.

### Incorporation

3. All Trusts will be incorporated organisations – this means they are legal entities in their own right. Agreements and contracts can be taken out in the name of the organisation (for example, the limited company) rather than the name of individual trustees. The trustees of a charitable company do not normally have personal financial responsibility for the company's debts and other liabilities..

4. However, they may incur liability in the following circumstances:
  - Wrongful trading under the Insolvency Act 1986: continuing to trade when you know, or ought to have known, that there was no reasonable prospect of avoiding insolvent liquidation<sup>39</sup>
  - Fraudulent trading: actual dishonesty in the running of the charity, such as incurring a debt where the trustees know there is little prospect of ever repaying it
  - Acting as a company director when disqualified

However, incorporation does not affect the duties which Trustees owe to the company. Trustees of a charitable company can still be personally liable for:

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<sup>39</sup> Note that charitable companies can only trade in the course of carrying out any primary purpose of the charity.

- Breach of their fiduciary and statutory duties as company directors, for example:
  - Using the charitable company's assets to procure a benefit for the trustees
  - Making a loan to a trustee

### Governance

5. Every maintained school (including Trust schools) has a governing body which is responsible and accountable for all major decisions about the school and its future. Governors have a legal responsibility to conduct the school with a view to promoting high standards of educational achievement.

6. Governing bodies are corporate bodies. As such, a governing body acts as a single legal person with an identity separate from its members. Responsibility for the actions and decisions of a governing body rests with the whole body rather than with individuals. Governors do not incur any personal liability in respect of anything done in good faith in exercising their power to spend the school's budget share, or delegating power to the Head teacher<sup>40</sup>. An example of an act not done in good faith is fraud.

7. Any liabilities (such as debt) incurred by the Trust will not transfer to the school, and the Trust cannot use the school's land or budget as security for any loan.

8. Any deficit occurring in the delegated budget of a Trust school is the responsibility of the governing body. The Trust would not be liable.

9. If the Trust is a company limited by guarantee, the financial liability of members of the Trust is limited to the sum they guarantee when they join the company. Members of the Trust guarantee to pay a nominal sum (such as £10) if it becomes insolvent or is wound up.

### **See also**

The National Council for Voluntary Organisations: [www.ncvo-vol.org.uk](http://www.ncvo-vol.org.uk) and **Annex E** of this toolkit which includes some frequently asked questions regarding trustee liability. The Charity Commission also provides guidance on trustee liability in its publication "Charities and Insurance" (CC49) [www.charitycommission.gov.uk](http://www.charitycommission.gov.uk)

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<sup>40</sup> Section 50(7) of the Standards and Framework Act 1998

## Equality duties for Trusts

Trusts will have the following statutory duties: Race Equality Duty; Disability Duty and Gender Equality Duty. This section provides information about what the duties mean in practice, including a framework 'equality scheme'.

### **What are the statutory duties, and why are Trusts covered?**

Trusts are treated as 'public authorities' for certain purposes, and as such, are covered by the general and specific duties under both the Race Relations Act (RRA), the Disability Discrimination Act (DDA) and the Equality Act (amends the Sex Discrimination Act 1975). This means that Trusts must:

Race Relations Act: '...have due regard to the need to:

- eliminate unlawful discrimination, and
- promote equality of opportunity and good relations between persons of different racial groups.'

Disability Discrimination Act: '...have due regard to do the following:

- promote equality of opportunity between disabled people and other people
- eliminate discrimination that is unlawful under the Disability Discrimination Act
- eliminate harassment of disabled people that is related to their disability
- promote positive attitudes towards disabled people
- encourage participation by disabled people in public life
- take steps to meet disabled people's needs, even if this requires more favourable treatment.' (There is also a need to consult and involve disabled people)

Equality Act (amends the Sex Discrimination Act): '....have due regard to the need to:

- eliminate unlawful discrimination and harassment, and
- promote equality of opportunity between men and women.'

The specific duties are designed to help organisations meet the general duty – like other public authorities, Trusts will be required to produce a Race Equality Scheme, a Disability Equality Scheme and a Gender Equality Scheme. This does not have to involve excessive bureaucracy, and you can produce a combined scheme to cover both Race Equality and Disability Equality and Gender Equality - a Single Equality Scheme (SES). A SES must show how it meets the different requirements of the separate duties. (As an example, here is the link to the Department's SES:

[www.dcsf.gov.uk/publications/des](http://www.dcsf.gov.uk/publications/des). This link also includes a link to Equality Impact Assessments - Workbook, which is a useful information source for equality issues and wider). A framework scheme is attached to the end of this section.

## **What do Trusts need to do?**

Trusts (like other public authorities covered by the duties) will be expected to consider the implications for equality for everything they do. 'Due regard' means giving weight to the need to promote equality in proportion to its relevance. For example, the governors that a Trust appoints are more relevant to the duty than the decision about where and when trustees will meet because the governors will have more impact on more people.

### 1. Identify which functions and policies are relevant

All Trusts appoint governors to support the school, and hold land and buildings on trust for the school. Some Trusts might choose to offer other support to the schools they work with – for example employing staff to provide payroll or other 'backroom' services or working with the school on specific projects.

The governing body remains responsible for the conduct of the school (for example pupil attainment, staff recruitment, extracurricular activities) and for day to day management of the school buildings, land and other assets. So the governors (not the Trust) are responsible for making sure that the school meets the equality duties.

### 2. Prioritise the functions and policies – which have the most impact?

For many Trusts, the priority list is likely to be:

- High impact: appoint governors
- Lower impact: hold land and buildings, conduct the Trust.

This is not a definitive priority list. For example, a school might work with a Trust involving a community or parent group with the aim of strengthening the school's links to its local community and making sure that it reflects their priorities and vision. In this case the Trust would probably give more priority to its own structures, for example:

- High impact: appoint governors
- Medium impact: recruit members and trustees from the community
- Lower impact: hold land and buildings, other conduct of the Trust.

### 3. Assess whether these functions and policies fulfil the duty

The framework 'equality scheme' below includes some questions which will help Trusts to assess whether they fulfil the duty. The Commission for Equality and Human Rights (see 'Further information') produces a range of guidance to help organisations think critically about what they do – see the link below.

### 4. Action plan for any necessary changes

Most organisations (including Trusts) will find that there are areas of their activity which could and should be improved. This is central to promoting equality, but is not meant to impose an impossible burden – changes should be prioritised and proportional to the impact of the function or policy and the assessment of how well they currently fulfil the duty.

### **Further information**

On 1 October 2007 the Commission for Equality and Human Rights (CEHR) came into being, bringing together the work of the three existing Commissions - the Commission for Racial Equality, the Disability Rights Commission and the Equal Opportunities Commission - in this new body. The Commission produces guidance on duties under the Acts and implementation of the duties e.g. The 'Framework for a Race Equality Policy' is tailored for schools and might be of general interest (<http://www.cehr.org.uk>). (The website also includes a variety of archived guidance around the Gender Equality Duty – see EOC archive)

## **Framework Equality Scheme**

### **Context and introduction**

Summarise the role and activities of the Trust – what does it do that could impact on Race Equality and/or Disability Equality? It might help to include a short statement highlighting the equality aspects of the Trust's aim, values and/or vision.

For example:

*“The XYZ Trust exists to support ABC school by holding its land on Trust and appointing governors for the school. We are proud of our diversity, and committed to helping every child to realise their potential.”*

### **Equality assessment and consultation**

Set out how you assess the likely impact of your activities/policies and monitor the Trust's 'equality performance'.

For example:

*“We use this equality scheme to consider how well our key activities tackle discrimination and promote equality. We will consult the school's governors, parents, learners and other stakeholders for their views at the same time (and in the same way) as ABC school consults on its Race Equality Plan. At the same time we will consult the Trust's member organisations.*

*We monitor the ethnic background and any disabilities of the potential governors we identify and those we appoint, and of the Trustees. There is a relatively slow turn-over of trustees and governors and so we will look for any patterns and develop an action plan every time we review the equality scheme.”*

### **Updates**

Record when the scheme was produced and when it will next be reviewed and updated (at least every 3 years).

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## Equality assessments and action plan<sup>1</sup>

Function/policy	Impact	Current position	Next steps
Appoint governors to support the school	High	<p>Possible questions include: How do you identify potential governors? Are you engaging the widest possible pool of applicants? How do you make people aware of this opportunity?</p> <ul style="list-style-type: none"> <li>• How do you make sure that the way you choose who to appoint follows good equal opportunities practice?</li> <li>• How do you make sure that all Trust-appointed governors will fulfil the duties?</li> <li>• How do you monitor who volunteers and is appointed?</li> </ul>	
Hold the school's land and buildings on trust	Low	<p>The Trust has no direct impact over the maintenance or use of the school's land and buildings. Responsibility (including for ensuring accessibility) rests with the governing body.</p>	
Conduct the Trust		<p>Possible questions include:</p> <ul style="list-style-type: none"> <li>• How do you identify potential members and/or trustees? Are you engaging the widest possible pool of people? How do you make people aware of this opportunity?</li> <li>• How do you make sure that the Trust meetings (and information about the Trust) are fully accessible? Are they physically accessible to disabled people? Would people from all communities be able to feel comfortable?</li> </ul>	
[Some Trusts] Employ staff		<p>Possible questions include:</p> <ul style="list-style-type: none"> <li>• Do you have a written equality policy and action plan?</li> </ul>	

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<sup>1</sup> A combined equality scheme should still refer explicitly to both Race Equality and Disability Equality.

- Do you have a policy for dealing with harassment or complaints?
- How do you prevent discrimination and promote equality when recruiting and promoting staff?
- How do you prevent discrimination and promote equality when dealing with the school(s)?
- How do you train staff to eliminate discrimination and promote equality?

Specific advice for employers is available from the Commission for Equality and Human Rights.

[Some Trusts] Procure goods/services on behalf of the school(s).

Possible questions include:

- How do you take account of race and disability equality in your arrangements for procuring and delivering services?
- How do you monitor whether contractors or service providers tackle discrimination and promote equality?

## Checklist: Set up a charitable Trust

Action

Date completed

Decide how the Trust will be organised, agreeing which partners will be involved and what role they will play.

Consider legal advice available through Office of Government Commerce framework contract.

Draft governing documents for the Trust (Memorandum and Articles of Association).

Identify a registered office (and a 'company secretary' if you so wish).

Send information to Companies House – using standard forms available from Companies House website. **The Trust must be incorporated before the implementation date.\***

On receipt of the certificate of incorporation from Companies House, and where appropriate, send information to the Charity Commission. \*

\* The Trust does not need to be formally registered with Companies House or the Charity Commission (if appropriate) until the governing body has undertaken all relevant consultation and has made the final decision to acquire the Trust.

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## Further information – Frequently Asked Questions

This set of questions contains short answers to most of the queries that will be raised by governors, staff, parents and other local stakeholders. They are designed to help you to answer specific questions – either as paragraphs to use in a letter, or as briefing for a Q&A session.

This section of the toolkit also contains a glossary and list of useful contacts for more information.

### The basics

#### 1. Does the school have to become a Trust school?

No. This is a voluntary decision for the current governing body, after consulting with parents and other local stakeholders (see stage 2) and publishing formal proposals. However, if a school is underperforming, becoming a Trust school, a National Challenge Trust (NCT) or a National Challenge (NC) Federation are options that the local authority may need to consider.

NCTs and NC Federations involve changes to the school's leadership. NCTs bring in a strong education partner as a member of the Trust to provide strategic leadership; NC Federations allow a strong school to take over the governance of a weaker school. Such structural intervention will be integral to, and will underpin, the strategies agreed for raising standards and for wider school improvement.

#### 2. Will it change what children and young people learn?

The school chooses which partners can help to support its vision and priorities – it could choose a Trust with expertise in a particular area in order to give pupils more opportunities and to raise standards.

Like all maintained schools, Trust schools will teach the National Curriculum and will still be inspected by Ofsted.

#### 3. What would change if our school became a Trust school?

It depends on whether the school is currently a community, foundation or voluntary school:

Community schools: The school would change category to become a foundation school and acquire a Trust. This means that the school will take on two new areas of responsibility:

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

The governing body would also continue to have day to day control of the school's land and buildings (which the Trust would hold on trust for the school).

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

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

*N.B. A few foundation schools already have a foundation – the Act introduces safeguards around forming and acquiring Trusts, and schools can choose to allow their Trust to appoint a minority or majority of the governors.*

Voluntary aided (VA) or voluntary controlled (VC) schools: voluntary aided and voluntary controlled schools will usually already have a foundation which appoints some members of the governing body and holds land on trust for the school. Since a central function of the foundation in relation to the school is to hold the land and buildings, a school may only have one foundation of this kind, and another foundation cannot easily be substituted for this. Voluntary schools with existing foundations cannot therefore formally join a group of other schools in a different, shared Trust.

Should a VC school wish to become a Trust School on its own (i.e. it does not want a shared Trust) it may be able to do so without the foundation being reconstituted. It has always been the intention that a VC school should be able change category to foundation without its foundation having to be reconstituted, provided the school continues to have a minority of foundation governors. This is covered at section 23A(3) of the School Standards and Framework Act (as inserted by section 33 of the 2006 Act) where the requirements as to foundations do not apply to such schools. This means that VC schools could change category to foundation with relative ease (if the founding documents of the existing foundation allowed them to do this), thereby becoming their own admission authorities and employers. A VC school simply changing category to foundation would not therefore have to state in its proposals that it was acquiring a foundation - unless it wished its foundation to appoint a majority of its governors. In that case, it would need to seek the consent of its existing trustees before publishing proposals and its foundation would need to be reconstituted to meet the requirements as to

foundations in the 2006 Act.

It is legally possible for both VA and VC schools to become Trust schools under the 2006 Act, but depending on the intended constitution of the Trust and the constitution of the existing foundation, the foundation might need to be reconstituted in order to meet the requirements for Trusts in the Act. In particular, while all existing foundations are in law already charities, they may not be incorporated charities of one of the types prescribed in the requirements as to foundations regulations.

If a school is interested in the possibility of moving to a different Trust, it needs to be aware that under the 2006 Act it may only do so with the agreement of the existing foundation. This also applies if it wants to become a Trust school with its existing foundation. In addition, the school needs to be aware that the existing foundation would normally continue in ownership of the land, so unless the existing foundation agreed to transfer this to any new Trust, or the school had access to an alternative site, it would not be practically possible for the school to continue without the existing foundation.

Furthermore, the provisions in the EIA that allow a Trust school to remove its Trust in certain circumstances do **not** apply to a school with a pre-existing foundation that becomes a Trust school under the Education and Inspections Act and accompanying regulations.

As a Trust school, the governing body would be responsible for setting admissions arrangements, and would employ the school's staff. It would also have day to day control of the school's land and buildings.

Voluntary controlled schools which have a religious character ('faith' schools) would retain this as a Trust school, and would have the same freedoms around admissions, staffing and the RE curriculum as foundation schools with a religious character. No school can acquire, lose or change its religious character by becoming a Trust school. However, it should be noted that VA schools have more control over the appointment of staff of the religion of the school than other categories of school, and that this would be lost if a school were to change from being VA to being a foundation or Trust school. In addition, foundation schools would normally teach the locally agreed syllabus for RE, whereas a VA school would normally teach RE in accordance with the tenets of the faith.

#### **4. How is a Trust school different from a maintained school?**

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

#### **5. Isn't this the same as the old Grant Maintained schools?**

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

## **Flexibilities: admissions, staffing, buildings**

### **6. Will this give us more freedom from the local authority?**

Trust schools manage their own land and buildings, employ their own staff and set their own admissions arrangements – this is more freedom for community (and VC) schools which become Trust schools and is the same as VA schools currently enjoy. Trust schools may also choose to have the foundation appoint a majority of the school governors, as is the case in VA schools.

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

- it will still be funded by the local authority on the same basis as other schools;
- it will have to act in accordance with the Admissions Code, will be entitled to be represented on the local admissions forum and will take part in co-ordinated admissions arrangements;
- the local authority will be able to intervene in a Trust school as in any other school if it is failing or underperforming; and
- the local authority will be able to publish proposals to close the school and to make certain changes to the school. **Acquiring a Trust will not offer schools any protection or exemption from proposals to close the school.**

### **7. What will happen to admissions?**

The school will set its own admissions arrangements. It will operate within the same legal framework as all other maintained schools, which means it will act in accordance with the School Admissions Code and will not be allowed to introduce selection by ability. Existing admissions arrangements, and any acceptances, under the current admissions round, must be honoured by the governing body.

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

Trust schools - along with all other maintained schools - have statutory duties in relation to the education of children with SEN, which include having regard to the SEN Code of Practice. There is no difference in the assessment and statementing process for foundation-special and community-special schools. Any maintained school is under a statutory duty to admit children whose statements name the school under section 324 5 (b) of the Education Act 1996 which reads "if the name of a maintained school or maintained nursery school is specified in the statement, the governing body of the school shall admit the child to the school."

### **8. What does Trust status mean for staff?**

Staff will be employed by the governing body. In the case of a foundation or voluntary aided school this will not represent any change. For community and voluntary controlled schools, when the school acquires Trust status, staff

would transfer under the provisions of the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007, SI 2007 No 1289 (Paragraphs 29 to 32 of Schedule 1) which protects their existing conditions of service. The view of the Department is that the TUPE Regulations 2006 will not apply as this is not a relevant transfer for the purposes of TUPE. However, governing bodies must take account of the Cabinet Office statement of practice, "Staff Transfers in the Public Sector". This ensures that the principles of TUPE are followed so that those involved are treated no less favourably than had the TUPE Regulations applied. Existing and new teaching staff will continue to work under the terms of the School Teachers' Pay and Conditions Document (STPCD). The school will set the terms and conditions for new support staff. If you wanted to minimise the work you could continue to follow the local authority's terms.

You should obtain your own legal advice on how the transfer provisions may apply to your own particular case. You may also wish to refer to the 'Staff Transfers in the Public Sector' statement of practice which can be accessed at [http://beta.civilservice.gov.uk/Assets/stafftransfers2\\_tcm6-2428.pdf](http://beta.civilservice.gov.uk/Assets/stafftransfers2_tcm6-2428.pdf) for more general advice.

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

#### **9. How much more work is involved?**

This section draws on the FASNA *Fast-track to Foundation* pack. Schools which already have these freedoms find that they benefit from the additional freedom and control. FASNA can offer practical advice and support on the change to Foundation status. Further information can be found at [www.fasna.org.uk](http://www.fasna.org.uk).

Admissions Schools would need to formulate, consult on and agree an admissions policy to a statutory timetable. An appeal panel would also need to be set up and its members trained. If you wanted to reduce the work, you could set your oversubscription criteria and then ask the local authority to manage the process.

Staffing Community (and voluntary controlled) schools would need to review contracts and policies to remove references to the local authority as an employer – this could be done over a period of time. You should ensure the school has access to good quality personnel advice – either via the local authority or an independent provider.

Finance There may be some additional work to open bank accounts etc if the school has not already done this. Foundation schools have found that the additional control and financial awareness of staff and governors more than compensates for the initial re-organisation.

Premises The amount of work depends on what the school wants to take on. It is often possible to progress building work more quickly, efficiently and at a more competitive price.

## **Wider partnerships**

### **10. How do Trusts fit with specialist status?**

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

A specialist school could equally choose to work with different partners and draw on a different set of ideas and experience.

### **11. How do Trusts fit with federation?**

Schools can federate without a Trust, and equally a Trust can support several schools with no federation. However, federations may find it helpful to have a Trust which can reinforce the long-term agreement between schools. [see also 'Joint governance structures' in Stage 1 of this toolkit]

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

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

## **Money and land issues**

### **13. How will the school be funded?**

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

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

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

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

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

will be referred to the schools adjudicator for resolution. Local authorities will not be able to force a Trust to sell any surplus land to raise money.

Trust schools will be able to benefit directly from the disposal of land but all proceeds must be used for capital investment in educational assets in either the school itself or the maintained sector (according to the Trust's Memorandum and Articles), and the Trust itself will not be able to profit from any such disposals.

There is no change to the rigorous procedure for any disposal of school playing fields, which will continue to require the consent of the Secretary of State.

**16. Will the Trust partners make a profit out of the school?**

No. The school budget will continue to go directly to the governing body, not to the Trust. Trusts must be constituted as not-for-profit charities – any income must be used to support their charitable aims, which must focus on the advancement of education and community cohesion in ways that are charitable.

Trust-appointed governors would have a conflict of interests if the Trust (or a partner involved in the Trust) were to sell goods or services to the school. There are already rules so that these governors would withdraw from the discussion and not vote on the decision.

**17. Does Trust status convey any benefits in respect of rates?**

The school itself will not make a financial saving. Rates are one of the formula factors that are delegated to schools through the Individual Schools Budget (ISB) - at an amount equal to the national non-domestic rate (NNDR) payable by each school. This is a formula factor like any other the school receives, but from the school's point of view the amount is equal to its rates payment and there is no loss or gain to the school. All schools in the LA will be treated equally in this respect.

As the Trust which holds the land and buildings is a charity, it is eligible for reduced rates. Any difference however reverts to the Schools Budget and forms part of the pot of funding available to ALL schools in the LA. The LA, in consultation with their schools forum, decide how to distribute the Schools Budget.

**18. Does becoming a Trust School change the VAT position of the school?**

No. Although foundation and voluntary schools have charitable status and community schools do not, in practice this will make little difference in most circumstances. **VAT is not reclaimable by the governing bodies or trusts of schools.** The ability to reclaim VAT is based around who is liable for expenditure. Since most **recurrent funding** at all maintained schools, including trust and foundation schools, is provided by the LA, this means that the LA will continue to reclaim VAT on recurrent expenditure. Even where the

school acts as the purchasing agent, it formally spends on behalf of the LEA, and VAT is reclaimed by the LA (and the school will need to provide returns to the LA for this purpose).

**Capital funding** at all schools other than VA schools is also provided by the LA, and will be reclaimed by the LA. (VAT is not reclaimable on capital expenditure at VA schools).

If funding from sources other than the LA were expended on capital work by the governing bodies and trusts of foundation and voluntary schools, it might be zero-rated for VAT where it is for new buildings, and at least 90% of the use of the new building would be for charitable purposes over the whole of the next 10 years.

Advice on particular claims will be given by HMRC, to whom returns are made, and DCSF's general views should not be taken to be definitive in any particular case.

Advice on specific cases is available from:

Policy Advisor  
CT 7 VAT Supply of Services and Public Bodies  
HM Revenue & Customs 3C/10  
100 Parliament Street  
London  
SW1A 2BQ"

## **Becoming a Trust school – decisions and process**

### **19. Why should our governing body dissolve itself?**

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

But also, acquiring a Trust does not mean a complete change of governors. Trusts will look to appoint good and strong governors – and continuity may be a factor, especially if the Trust is to appoint the majority of governors. The make-up of the governing body will still include elected parent and staff governors, and others appointed by the local authority and co-opted from the community, although there are likely to be fewer of each.

### **20. Do parents have a say about Trust schools?**

Parents will be consulted about the proposed Trust and will be able to express their views about who the school is working with and what the school and Trust want to do together.

As with all maintained schools' existing arrangements, one third of the governors will be parents. Depending how many governors are appointed by

the Trust, there may be fewer *elected* parent governors. If the Trust appoints a majority of the governors then the school will need to establish a Parent Council with an advisory role, and parents will be consulted about how the Council should be organised.

## **21. How do we decide whether the Trust should appoint a minority or majority of the governors?**

Minority (at least 2 Trust-appointed governors): This would bring in external expertise and energy. External partners would be involved in the school's governance but no group would have overall control of the governing body. Schools will be able to change the arrangement (after consulting parents and other stakeholders) if they later wanted the Trust to appoint a majority.

Majority (up to a majority of 2): This would bring in strengthened external expertise and energy and would give the Trust effective control of the governing body. This will not be right for every school, but the experience of voluntary aided schools and Academies show that this can be very effective in developing an ethos and a clear strategic direction for the school. There is a process to change this (or remove the Trust itself) if something goes wrong.

## **22. What if something goes wrong?**

Acquiring a Trust is intended to be a permanent relationship. But there is a process to remove the Trust if the school fails, or if there is real dissatisfaction at the Trust's performance. The school would become a foundation school, and publicly-funded land and buildings held by the Trust would automatically transfer to the school's governing body.

The Charity Commission will be able to intervene if a Trust is mismanaged or there is misconduct by the trustees.

## **When a Trust exists**

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

A school that acquired a Trust under the provisions of the Education and Inspections Act 2006 must follow a statutory process, including the publication of proposals, in order to remove that Trust. [See the section If Something Goes Wrong section in Stage 5 of this Toolkit: Implementation] However, the 2006 provisions do not apply in the case of a school with a pre-existing Trust/Foundation that becomes a Trust school, or a VC school (by definition with a minority foundation) which changes category to become a majority Trust school.

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

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

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

No.

**4. Does the governing body have to be reconfigured if Trust membership changes?**

When a school determines proposals in favour of acquiring a Trust, it will have to draw up a new instrument of government in accordance with the published proposals and send this to the local authority, which will formally 'make' it. [See the section on Trust School Governing Bodies in Stage 5 of this Toolkit: Implementation].

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

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

**5. Can the Trust change its objectives without reference to the governing body?**

Possibly – it will depend on the Trust's Memorandum and Articles of Association. However, the objectives must by law always include "the advancement of the education of the pupils at the school or schools for which it acts as a foundation". Any proposed change to the objectives will require the written consent of the Charity Commission before it is made (see the Charity Commission publication *Changing your Charity's Governing Document* (CC36), available at [www.charitycommission.gov.uk/publications/cc36.asp#36](http://www.charitycommission.gov.uk/publications/cc36.asp#36))

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

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

There are restrictions on the number of each category of governor and the maximum size of the governing body [see the tables in the section on Trust School Governing Bodies in Stage 5 of this Toolkit: Implementation].

### **7. Can the Trust add new members after the governing body has approved the Trust acquisition? What safeguards are there?**

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

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

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

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

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## Glossary

Charitable objects	Objects describe and identify the purpose for the which the charity has been set up. They do not necessarily say what the organisation will do on a daily basis.
Director	Charitable companies may refer to directors (instead of trustees). See <i>Trustee</i> .
Due diligence	Schools will want to check that their partners are suitable. Due diligence involves identifying and investigating potential issues so that you can take an informed decision.
FASNA	<i>Foundation and Aided Schools National Association</i> FASNA has particular expertise on the issues around Foundation status and can advise and support schools. <a href="http://www.fasna.org.uk">www.fasna.org.uk</a>
Federation	A governance structure whereby one or more schools share a single governing body under section 24 of the Education Act 2002. Alternatively, schools might chose to have statutory collaborative governance arrangements involving a joint committee(s) to the governing bodies of one or more schools under section 26 of the Education Act 2002, or operate through looser arrangements that they also choose to call a 'federation or soft federation'. Regardless of the model, all schools retain their separate identity, continue to receive individual budget shares, have separate Ofsted inspections and report on performance individually.
Foundation	A charitable organisation that supports one or more schools by holding land on trust and appointing governors. Voluntary controlled and voluntary aided schools already have foundations, as do some foundation schools. These foundations are often known as a "Trusts", especially in the case of Trust schools.
Foundation school	A local authority maintained school where the governing body sets admissions arrangements, employs the staff, and owns the land. Trust schools have the same freedoms, and are defined for the purposes of this document as a foundation school with a foundation acquired under the provisions of the Education and Inspections Act 2006.
Implementation date	The date from which the school will become a Trust school. This will be set out in your statutory proposals.
Local authority maintained school	Schools which are funded by the local authority: community schools, foundation schools, Trust schools, voluntary controlled schools, and voluntary aided schools. All maintained schools teach the National Curriculum, act in accordance with the School Admissions Code and employ teachers in line with the School Teachers' Pay and Conditions Document.
Memorandum and Articles of	The 'governing document' for a Trust, which sets out its purposes and

Association.	how it will be run.
Parent Council	A forum for parents to put forward their views to the school's governing body. Trust schools must establish a Parent Council if the Trust appoints the majority of the governing body. All schools have a duty to have regard to parents' views, and a parent council or forum could be a good way to do so.
Prescribed alteration	Changes to schools which require a statutory process (consultation, statutory proposals, a period for representations and then a decision). Changing category or acquiring a Trust is a prescribed alteration.
Representations	Comments or objections on the statutory proposals to become a Trust school.
Schools Adjudicator	Schools Adjudicators were appointed under Section 25 of the School Standards and Framework Act 1998. They are independent of the DCSF. Adjudicators look afresh at all cases referred to them, considering each case on its merits and taking account of the reasons for disagreement at local level in the light of the legislation and the relevant guidance. Adjudicators' decisions are binding on all parties involved. They can only be challenged through judicial review. In certain circumstances, a local authority is able to refer to the adjudicator a governing body's proposals to acquire a Trust.
School Admission Code	Local authorities, admissions forums, governing bodies, appeal panels and adjudicators are required to act 'in accordance' with the Schools Admissions Code – to comply with the mandatory provisions and follow the guidance.
SEF	<i>Self Evaluation Form</i> Schools' self-assessment of their performance. Trust schools will include comments about the impact of their Trust. The SEF forms the basis of Ofsted inspections.
SME	<i>Small and medium sized enterprise</i>
SSAT	<i>Specialist Schools and Academies Trust</i>
Statutory guidance	Statutory guidance is referred to expressly in statute (primary legislation or regulations), often in terms that 'X shall have regard to guidance issued by the Secretary of State' in performing a given function. There is an obligation to have regard to this guidance, as if challenged, the relevant body would be required to demonstrate in court or tribunal why it had not been followed or taken into account.
Statutory proposals	Formal proposals to become a Trust school (or carry out any other prescribed alteration). The information that must be included is set out in regulations.
STPCD	<i>School Teachers' Pay and Conditions Document</i> Sets out the terms and conditions of employment for all teachers in maintained schools. The document is regularly updated – see <a href="http://www.teachernet.org.uk">www.teachernet.org.uk</a>
Trust	Another name for the foundation of a foundation school with a foundation.

	A charitable organisation that supports one or more schools by holding land on trust and appointing governors. They must be incorporated organisations – either a charitable company or (once the relevant provisions of the Charities Act 2006 come into force) a charitable incorporated organisation.
Trustee	Usually a named individual (although can be a corporate body) responsible for the day-to-day management of the Trust, which is likely to include identifying and appointing governors for the school(s) the Trust supports.  The Charity Commission strongly recommends that all charity trustees should read its publication ‘The Essential Trustee’ (CC3) available at <a href="http://www.charitycommission.gov.uk/Library/publications/pdfs/cc3text.pdf">http://www.charitycommission.gov.uk/Library/publications/pdfs/cc3text.pdf</a> .
Trust members	Can be individuals or organisations. They take decisions about the organisation of the Trust, including how trustees are elected or appointed. They also hold the trustees to account, for example at an AGM.
TFSP	<i>Trust and Foundation Schools Partnership – a consortium of SSAT, YST and FASNA</i>
TUPE	<i>Transfer of Undertakings (Protection of Employment) Regulations</i>
YST	<i>Youth Sport Trust</i>

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## Where to go for more information

**Trust and Foundation Schools Partnership (TFSP)** – a consortium of the Specialist Schools and Academies Trust (SSAT), the Youth Sport Trust (YST) and the Foundation and Aided Schools National Association (FASNA)

For further information see the TFSP's dedicated Trust schools website: [www.trustandfoundationschools.org.uk](http://www.trustandfoundationschools.org.uk), contact . or telephone the TFSP's enquiry line 020 7802 0967, or email [contact@trustandfoundationschools.org.uk](mailto:contact@trustandfoundationschools.org.uk). If you are a Pathfinder you will also have a named contact point in Trust Schools and Partnerships Division at the Department for Children, Schools and Families (DCSF) who can offer a range of support.

If your school is a specialist Sports College, the Youth Sport Trust (YST) can provide specific advice (see below) The TFSP can also help establish links with prospective Trust partners.

### Youth Sport Trust (YST)

For those schools with a sports specialism, please instead contact the Youth Sport Trust on 01509 226645 or visit [www.youthsporttrust.org](http://www.youthsporttrust.org).

### The process for changing category

- The DCSF School Organisation website: [www.dcsf.gov.uk/schoolorg](http://www.dcsf.gov.uk/schoolorg)
- FASNA (Foundation and Aided Schools National Association) has expertise on the issues around Foundation status: [www.fasna.org.uk](http://www.fasna.org.uk)
- BERR advice on TUPE provisions [www.berr.gov.uk/whatwedo/employment/trade-union-rights/tupe/page16289.html](http://www.berr.gov.uk/whatwedo/employment/trade-union-rights/tupe/page16289.html)
- 'Staff Transfers in the Public Sector' statement of practice: [http://beta.civilservice.gov.uk/Assets/stafftransfers2\\_tcm6-2428.pdf](http://beta.civilservice.gov.uk/Assets/stafftransfers2_tcm6-2428.pdf)
- Schools Adjudicator [www.schoolsadjudicator.gov.uk](http://www.schoolsadjudicator.gov.uk)

### Options for Trust schools

- 14-19 website: [www.dcsf.gov.uk/14-19](http://www.dcsf.gov.uk/14-19)
- Collaboration and federation: [www.standards.dcsf.gov.uk/federations](http://www.standards.dcsf.gov.uk/federations) .
- Every Child Matters [www.everychildmatters.gov.uk](http://www.everychildmatters.gov.uk)

### School Governance

The DCSF website for school governors is [www.governornet.co.uk](http://www.governornet.co.uk)

Governor recruitment materials might help partner organisations to recruit volunteers from among their staff/members.

- Help Schools Help Children: [www.governornet.co.uk/recruitment](http://www.governornet.co.uk/recruitment)
- School Governors One Stop Shop: [www.sgoss.org.uk](http://www.sgoss.org.uk)

### Setting up a Trust

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

Legal and accounting support for Trusts

Trusts are eligible to use the cross-government framework contract:

<http://online.ogcbuyingsolutions.gov.uk>

Equality duties for Trusts

On 1 October 2007 the Commission for Equality and Human Rights (CEHR) came into being; bringing together the work of the three existing Commissions (i.e. Commission for Racial Equality, Disability Rights Commission and the Equal Opportunities Commission) - see <http://www.cehr.org.uk>

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### Top Ten Tips from the Trust School Pathfinders

1.	<p><b>Establish a steering group /working group</b> to oversee the process. Be clear who is leading the process and employ basic project management principles to keep all stages on track.</p>
2.	<p><b>Appoint a project manager or equivalent*</b> who is part of, or will report regularly to, the school management and governance chain and consider dedicated administrative support. (On a positive note, a number of Headteachers reported that this process requires a lot of different skills to those required for being a Head teacher so this role can present development opportunities)</p>
3.	<p><b>Nominate a lead person for partner liaison*:</b></p> <ul style="list-style-type: none"> <li>• Ensure they have sufficient time to invest in building partnerships and credibility and to gain an understanding of partners' wider strategic issues;</li> <li>• Needs to be someone who can engage others and has the ability to 'sell' the vision and to keep partners on board through the process (but this shouldn't mean others assuming a 'hands-off' role or disassociating from this stage of the process);</li> <li>• There is a need for a significant injection of effort in the early stages (e.g. to secure partnerships, achieve a shared vision etc) and it is important to keep the momentum going as a perceived lack of progress can mean partners loose focus and/or interest.</li> </ul>
4.	<p><b>Engage local authority (LA) early (and local/district/ parish councillors as appropriate) and</b></p> <ul style="list-style-type: none"> <li>• Inform DCS at outset (even if they delegate their interest subsequently);</li> <li>• Try to secure a named contact who can facilitate the various actions in which it is crucial that the LA engage (e.g. land issues, resolution on staffing issues etc);</li> <li>• Make sure they're clear on what you're trying to achieve/what they need to do and don't rely on others to cascade information (make sure you have a tried and trusted communications mechanism);</li> <li>• Don't 'sign them up' and then forget about them until later in the process;</li> <li>• Involve LA representatives in the planning process (and keep sending information/extending invites throughout the whole process even if responses are not always forthcoming).</li> </ul>

\* [We are aware that creating adequate capacity may be an issue for some schools in moving forward with their plans. Existing partnership relationships between schools may enable them to collaborate to shift and/or pool resources (e.g.. HR, Administration) to free up some capacity for staff to take on these roles.]

## ANNEX D cont.

5.	<p><b>Hold dedicated events</b> or similar for all Headteachers and Governors early on in the process to give status to what you're trying to achieve and ownership of the vision (joint events ideally if more than one school is involved to achieve consistent messages). Also:</p> <ul style="list-style-type: none"><li>• Bring Governors and potential partners/trustees together early on;</li><li>• Actively encourage Governors to attend Trust school events (e.g. the Trust and Foundation Schools Partnership (TFSP) - a consortium of the SSAT, YST and FASNA deliver events of behalf of the DCSF);</li><li>• Check levels of understanding to ensure all have a consistent message;</li><li>• Ensure Governors have a satisfactory understanding of the statutory requirements.</li></ul>
6.	<p><b>Hold dedicated Governors' meetings</b> (with a tailored, keynote presentation early on) to discuss Trust school plans and to ensure all Governors not directly involved in taking forward the plans are kept "in the loop" throughout the whole process. Minute-taking of meetings should include a record of all how the Governing Body takes on board responses to the consultation and reaches its key decisions.</p>
7.	<p><b>Get aims and a <u>shared</u> vision agreed early and accepted by the partners</b> as this will drive the rest of process. Advice from Pathfinder schools includes:</p> <ul style="list-style-type: none"><li>• Start with the end in mind rather than the process i.e. how does it will move the school(s) forward; raise standards; benefits for pupils, governance, community etc.;</li><li>• Be clear what the Trust will add – clarity of purpose;</li><li>• Constantly reinforce positive messages regarding collaboration in a formal Trust;</li><li>• Be secure on selling the vision and personalise why you're doing it - aim for simple, clear intentions which can be shared with staff, partners and the wider community as you need to 'win hearts and minds';</li><li>• Engage potential partners at an early stage so that you may address partners' concerns and partners can reassure governors and others of their intentions. Also helps develop relationships and builds understanding of the Trust process;</li><li>• Be clear at the outset about the potential benefits for partners - consider what you can offer as well as what you are seeking from them/level of commitment (e.g. trustee, Trust appointed governor) and explore implications/what it means in practice for them;</li></ul>

<p>8.</p>	<p><b>Keep key stakeholders engaged throughout the process – not just in the early stages or at key points;</b> for example, involve partners in:</p> <ul style="list-style-type: none"> <li>• Presentations to parents and the wider community;</li> <li>• Developing and reviewing draft documentation;</li> <li>• Planning meetings;</li> <li>• Development and delivery of a communications strategy (e.g. expertise from partners' PR Departments).</li> </ul>
<p>9.</p>	<p><b>Agree a communications strategy:</b></p> <ul style="list-style-type: none"> <li>• Have someone in charge;</li> <li>• Keep staff fully informed throughout the process;</li> <li>• Keep partners' PR Departments 'in the loop', especially concerning key dates and advance notice of announcements;</li> <li>• Consider producing a glossy, promotional flyer to make the vision more accessible (perhaps with graphics to show relationship between GB/Trust etc);</li> <li>• Don't assume others will cascade information;</li> <li>• Make good use of the school(s)' website(s) to communicate;</li> <li>• Consider using case study material from the Pathfinders to 'bring it alive';</li> <li>• Agree some user-friendly 'lines to take' or have a frequently asked questions and answer sheet covering key issues which can be shared with governors and key staff (as feedback suggests that it is not uncommon for Headteachers and governors to be stopped in the street and asked to explain why the school is seeking Trust school status!)</li> </ul>
<p>10.</p>	<p><b>CONSULT, CONSULT, CONSULT</b> - take time getting it right at the beginning as this will smooth subsequent stages (and inadequate consultation could be grounds for referral to the Schools Adjudicator):</p> <ul style="list-style-type: none"> <li>• Aim to build in more than the six weeks minimum for your consultation;</li> <li>• 'Bottom line' - consult everyone you can think of who may have an interest, including immediate neighbours;</li> <li>• Explore accessibility and arrange open days/weeks and/or drop-in sessions e.g. schools which linked to parents' evenings or similar got a better response (and if more than one school involved, consider a joint event);</li> <li>• Don't forget the parents of pupils in your feeder primaries - consider holding specific meetings for them and/or a user-friendly fact sheet (this may also be advantageous where smaller schools are involved);</li> <li>• Start working on the consultation documents early and get up to speed on statutory requirements and potential challenges/challengers (rather than waiting for them to happen at the consultation stage);</li> </ul>

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|  | <ul style="list-style-type: none"><li>• Make full use of exemplar documentation from the Pathfinders in the toolkit and available via the Trust school website;</li><li>• Get commitment from partners at the highest level in writing before going out to consultation</li></ul> |
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## Frequently Asked Questions from Potential Trust Partners regarding Governance and Legalities

1. Are all Trusts charities?

Yes – all Trusts must be charities and will be subject to regulation by the Charity Commission.

2. What does it mean to be limited by shares or guarantee?

A Company Limited by Guarantee means that an organisation becomes incorporated as a legal entity in its own right. This means agreements and contracts can be taken out in the name of the company rather than the name of individual trustee(s).

- Private company limited by shares - members' liability is limited to the amount unpaid on shares they hold.
- Private company limited by guarantee - members' liability is limited to the amount they guarantee when they join the company. Members of a Trust agree to pay a nominal sum (such as £5 or £10) to the company's assets if it becomes insolvent or is wound up.

3. Who do trusts register with Companies House, the Charity Commission or both?

For Trusts set up as charitable companies (rather than as a body incorporated by Royal Charter), Companies House is the agency which incorporates and dissolves limited companies. The Charity Commission is the regulator for charities and may investigate any complaints about the way in which the Trust is run, and has a range of powers of intervention. This will apply to all Trusts, whether or not they are required to register with the Charity Commission.

If the Trust has no property other than the premises of the school, it will not be required to register with the Charity Commission. (For these purposes property includes any income from donations, investments, or the sale of goods and services.) If the Trust has any other property, it will become subject to the Charity Commission's standard regime for determining whether a charity must register, and if the Trust has an annual income of more than £5,000, it must register with the Charity Commission. It is possible for charities to register voluntarily with the Commission but for the foreseeable future the Commission is unlikely to accept applications where annual income is below £5k due to demands arising from the new Act.

[NB Charitable incorporated organisations (CIOs) were introduced by the Charities Act 2006 so that charities can benefit from limited liability status without the burden of dual registration with the Charity Commission and Companies House. The provisions relating to CIOs are expected to commence later in 2009 and in the case of CIOs the liability of members may be excluded altogether.]

4. Who regulates the trusts/foundations of Trust Schools, the Companies Act or the Charities Act?  
[i.e. which body is responsible legally for ensuring that the trust of Trust schools is registered with the appropriate legislation e.g. the Companies Act or Charities Act]

The Trust partners and members are responsible for setting up the Trust. The trustees are responsible for the Trust once it's established. The Trust will be regulated by both the Charity Commission and Companies House.

The Charity Commission is the regulator for charities (see above). Companies House is the agency which:

- incorporates and dissolves limited companies;
- examines and stores company information delivered under the Companies Act and related legislation; and
- makes this information available to the public.

Companies House can take action for breaches of the Companies Act and is able to levy penalties; for example, all companies who file their accounts late get penalised.

5. When a company nominates a trustee is it the individual or the company that is liable?

Very few trustees who have acted honestly suffer financial loss as a result of their trusteeship. If trustees act prudently, lawfully and in accordance with their governing document, then they will not incur any personal liability for breach of trust or duty. The courts and the Charity Commission also have the power to relieve trustees from liability where they have acted honestly and reasonably.

As all Trusts of Trust schools will be body corporates they are legal entities in their own right and agreements and contracts will be entered into in the name of the organisation rather than the name of the individual trustees. Therefore, trustees of a Trust school Trust enter into contracts on behalf of the Trust and as agents they will normally have no personal liability status for the debts of the Trust. However, they may incur liability in the following circumstances:

- Wrongful trading under the Insolvency Act 1986: continuing to trade when you know, or ought to have known, that there was no reasonable prospect of avoiding insolvent

liquidation<sup>42</sup>

- Fraudulent trading: actual dishonesty in the running of the charity, such as incurring a debt where the trustees know there is little prospect of ever repaying it
- Acting as a company director when disqualified

However, incorporation does not affect the duties which trustees owe to the company. Trustees of a charitable company can still be personally liable for:

- Breach of their fiduciary and statutory duties as company directors, for example:
  - Using the charitable company's assets to procure a benefit for the trustees
  - Making a loan to a trustee

[The members of a company limited by guarantee will be liable if the company becomes insolvent only up to the amount of their guarantee (i.e. £10 in our model documents).]

- 6.** If the trustee is an employee and they leave is it up to the company (by which we assume this to mean the member or trust partner) or the Trust to find a replacement?

Trust members take decisions about the organisation of the Trust, including how trustees are elected or appointed (although if it is a single partner Trust one organisation will appoint all the trustees). The Trust must maintain a record of trustees and members and where applicable should update Companies House and the Charity Commission about changes to trustees/ directors.

- 7.** If a school closes, what are the legal implications for a company as follows:-

- it is the only partner
- there are other schools still in the trust

Trust schools are legally foundation schools with a foundation. When a foundation or voluntary school is discontinued and closes there is a requirement in Schedule 22 of the 1998 School Standards and Framework Act for the governing body or trustees of the school to apply to the Secretary of State to determine what happens to any land which has been provided or enhanced at public expense. If the school land was previously provided by the local authority then the Secretary of State may order that the land is returned to them or to the governing body of a new school. If the Trust wanted to retain the land for other purposes, then the Secretary of State may agree

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<sup>42</sup> Note that charitable companies can only trade in the course of carrying out any primary purpose of the charity.

to this subject to the Trust paying such compensation to the local authority as he determines.

If the school land was originally provided by the Trust at its own expense then it can do what it likes with the land. However, if the trustees' land has been enhanced in value at public expense then the local authority is able to claim a share of any sale proceeds relevant to the level of public investment.

If there is a shared Trust and the other schools wish to continue the relationship, then the Trust will continue. The trustees will need to consider whether any amendments are needed to the Trust's constitutional documents

[NB A school can't be removed from a shared Trust by the other schools in that Trust]

- 8.** Does a Trust School hold the freehold or leasehold for the land and buildings?

This will depend on the tenure of the land transferred to the Trust (most school premises are freehold but there will be leasehold as well).

- 9.** If a business decides to withdraw what happens to the Trust – documentation and operation?

Where there is more than one Trust Member:

A change in the membership of the Trust should have no immediate impact on the governing body, but might eventually lead to the appointment of new trustees. The Trust must maintain a record of trustees and members and should update Companies House and (if the Trust is registered with it) the Charity Commission about changes to members [see also information below on the appointment of new Members].

The governing body and local authority can review the instrument of government at any time, and provided they have the agreement of the foundation governors and the trustees of the foundation, they can make any necessary changes to the instrument of government. [None would be needed for a change in the membership of the Trust. See regulation 30 of the School Governance (Constitution) (England) Regulations 2007 for details about what is required in the GBs instrument of government.]

Sole Trust Member

If the Trust member ends the relationship for any reason then the publicly funded land will revert to the GB & the school will continue as a foundation school without a foundation. If the Trust originally

provided the school's land, it must give 2 years' notice so that another site can be found if necessary (if the Trust provided land but becomes insolvent the land is protected for 3 years for the same reason).

[What happens if a Trust makes a capital investment and then walks away from the school?](#)

Whilst there is no expectation that Trusts will invest in school premises, some Trusts may wish to do so. The School Organisation (Removal of Foundation, Reduction in Number of Foundation Governors and Ability of Foundation to Pay Debts) (England) Regulations 2007 accordingly provide for Trusts to seek compensation for this capital if the Trust is subsequently removed. In such instances the Adjudicator will be empowered to determine a just amount of compensation where agreement cannot be reached.

[Can the Trust add new members after the governing body has approved the Trust acquisition?](#)

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

Once a Trust has been established new individuals or organisations may apply to be members. We advise those involved to take legal advice when drawing up the constitutional documents of the Trust to ensure that the Memorandum and Articles of Association meet their requirements and include safeguards. However, the model Memorandum and Articles of Association produced by the Department includes the following safeguards in relation to the addition of new members and these are recommended as good practice:.

Firstly, [new members must be approved](#) by either the existing Directors of the Trust (the trustees) or by the existing members of the Trust as set out in the Memorandum and Articles – in either case it requires a majority to vote in favour. The Directors or Members would have to satisfy themselves that the proposed new Member was interested in promoting the charitable objects of the Trust. In discharging these objects they have to have regard to the obligation to promote community cohesion.

Secondly, [membership of the Trust is not transferable](#), so any individual or organisation wishing to become a member of the Trust would have to be approved – it is not possible to become a member and then pass that membership to a different organisation or individual.

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