EXPLANATORY MEMORANDUM TO

THE EDUCATION (CHANGE OF CATEGORY OF MAINTAINED SCHOOLS) (AMENDMENT) (No 2) (ENGLAND) REGULATIONS 2006

2006 No. 1507

1. This explanatory memorandum has been prepared by the Department for Education and Skills and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the House of Lords Merits Committee.

2. Description

2.1 These regulations amend the Education (Change of Category of Maintained Schools) (England) Regulations 2000 ("the principal regulations"). They provide for the governing bodies of community and voluntary controlled primary schools to publish and determine proposals to change category to foundation according to a streamlined procedure.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None

4. Legislative Background

4.1 These regulations are intended to give effect to a commitment in the Schools White Paper *Higher Standards, Better Schools for All* to extend the streamlined route for community and voluntary controlled secondary schools to change category to foundation to primary schools. They amend the existing principal regulations- made under the School Standards and Framework Act 1998 which make provision for the publication and consideration of change of category proposals.

5. Extent

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The policy background is set out in the Schools White Paper *Higher Standards, Better Schools for All* published in October 2005. Chapter 2 states that: We have already created a fast- track so that the governing body of a secondary school, after consulting its parents, can become a self-governing foundation school by a simple majority vote . We will now extend this fast-track to primary schools

7.2 The Department consulted local authorities and other stakeholders on proposals to enable the governing bodies of community and voluntary controlled primary schools to determine their own proposals to change category. A summary of responses is available on the DfES website.

7.3 The effect of these Regulations is to enable the governing body of a community or voluntary controlled primary school to publish and decide their own proposals to change category to foundation. They must consult before publishing proposals. Objections to, and comments on, the proposals must be sent to the governing body within four weeks of publication of the proposals. Following the four week period of representation the governing body must meet formally to decide whether to implement the proposals, taking into account any objections and comments. The decision must be made by a majority vote of the governing body within 6 months from the date of publication of the proposals

7.4The governing body must inform the local authority and the Secretary of State that the school is changing category to foundation.

7.5 The Department consulted local authorities and other stakeholders on these arrangements in autumn 2005. The responses were similar to those received on the earlier consultation on the fast- track route for secondary schools. Responses from schools were strongly supportive. They argued that primary schools should be treated in the same way as secondary schools. Other respondents, particularly local authorities and School Organisation Committees were opposed to the proposal. They considered that they reduced democratic accountability; and that an increase in the number of foundation schools would undermine local authorities' strategic planning role, including their ability to manage the education estate. In the Department's view a change in the category of a school is not always so significant a change that it requires a local decision maker. The experience of local authorities which already have large proportions of autonomous (foundation or voluntary aided) schools suggests that there is no reason why an increase in the number of foundation schools should prevent them from carrying out their strategic functions.

7.6 Details of the consultation exercise, and a summary of responses, are available on the DfES website at http://www.dfes.gov.uk/consultations.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact of the instrument on the public sector falls on schools and local authorities. The effect of the instrument is to enable the governing bodies of community and voluntary controlled primary schools to publish and decide proposals to change category to foundation.

8.3 Where a community or voluntary controlled school changes category to foundation, contracts of employment must be transferred from the local authority to the governing body. Land held by the local authority for the purposes of the school must be vested in the school's trustees (where they exist) or in the school's governing body. Provision for the transfer of contracts of employment and land is made in schedules to the principal regulations.

9. Contact

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