EXPLANATORY MEMORANDUM TO

THE EDUCATION (PUBLICATION OF PROPOSALS) (SIXTH FORM COLLEGE CORPORATIONS) (ENGLAND) REGULATIONS 2010

2010 No. 2609

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

2. Purpose of the instrument

Provisions in the Further and Higher Education Act 1992 ("FHEA") give the Secretary of State power, by order, to establish or dissolve sixth form college corporations (SFCCs). Before such an order may be made, the local authority (LA) must publish proposals in relation to the establishment or dissolution. These Regulations (which apply in relation to England) prescribe the timing, manner and content of those proposals.

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

None.

4. Legislative Context

4.1 Chapter 2 of Part 1 of FHEA makes provision about institutions within the further education sector. Prior to the Apprenticeships Skills Children and Learning Act 2009 ("ASCL") there was no legal distinction between different types of colleges. Part 6 of, and Schedule 8 to, ASCL made amendments to FHEA so that there are now two types of corporation within the further education sector: FE college corporations and SFCCs. Schedule 8 to ASCL inserted new provisions for SFCCs in England into the FHEA.

4.2 The provisions that are inserted into FHEA permit both the establishment and dissolution of SFCCs. Under sections 33C and 33N respectively, the Secretary of State may, by order, make provision for the establishment of a new SFCC, and for the dissolution of a SFCC and transfer of its assets. Sections 33C and 33N provide that before the Secretary of State may make such an order, the responsible LA (defined in section 90(1) of FHEA) must have published proposals by a prescribed time, in a prescribed manner, for a prescribed period, and containing prescribed information. These Regulations prescribe those matters.

5. Territorial Extent and Application

This instrument applies to England.

6. European Convention on Human Rights

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

7. Policy background

7.1 Sixth form colleges mainly provide for students aged 16-19 although many have diversified since they were first incorporated in the FE sector in 1993. Sixth form colleges have always maintained a distinct identity within the FE sector and since ASCL this has been reflected in their separate legal identity. Sixth form colleges have a reputation for high standards. They are often seen as a bridging phase into higher education.

7.2 Sixth form colleges are among the highest performing post-16 settings (as shown by attainment data and in Ofsted reports) and it is intended that developing the sixth form college sector will help raise standards across all 16-18 provision in areas where sixth form colleges exist. Sixth form colleges are generally popular with parents and students and it is hoped that a strong and separate sixth form college sector will add to quality, choice, diversity and learner satisfaction – all indicators of a successful post-16 system.

7.3 ASCL transferred the duties and powers of the Learning and Skills Council (LSC) in relation to sixth form colleges to LAs and the Young People's Learning Agency (YPLA). This enables SFCCs' performance to be managed by their 'home' LA. As a consequence, it was also necessary to transfer the LSC's responsibility for making proposals to the Secretary of State for Education for the incorporation or dissolution of sixth form colleges to the 'home' LA.

7.4 There are three potential reasons for the establishment of a new SFCC: a merger, where two or more corporations are dissolved and the assets, property and liabilities are transferred to a newly incorporated SFCC; a competition to fill a gap in local provision; or a wider reorganisation of school provision in the locality.

7.5 The dissolution of a SFCC may be the consequence of merger, sustained poor performance leading to LA (or potentially YPLA) intervention or decommissioning in the light of changing learner needs.

7.6 The statutory provisions provide that the process for the establishment and dissolution of an SFCC may only be instigated by the responsible LA (the 'home' LA).

7.7 For a new SFCC to be established, or an existing SFCC to be dissolved, the 'home' LA must provide the Secretary of State with a proposal which meets "prescribed" requirements, as detailed by section 33C(3) with regard to establishment and section 33N(3) with regard to dissolution. These Regulations prescribe the standards that the proposal must meet with regard to

the time and manner of the publication of the proposal, the content of the proposal and the consideration of representations about the proposal.

7.8 Where the proposal meets the prescribed requirements (as set out in these Regulations), the Secretary of State may then make an order establishing an SFCC, providing that the requirements of section 33C(4) have been met. Where a proposal concerns dissolution, the Secretary of State must consult with the SFCC in question and the YPLA before making the order for dissolution.

8. Consultation outcome

The Sixth Form Colleges Forum ("SFCF"), Association of Colleges ("AOC") and the YPLA all responded to the consultation. After subsequent discussions with AOC and YPLA regarding their response all three organisations supported the proposed Regulations.

9. Guidance

The Department does not intend to issue separate guidance in relation to this instrument. The Department will inform the SFCF, AOC and YPLA when these Regulations come in to force.

10. Impact

10.1 An Impact Assessment has not been prepared for this instrument, for the reason stated in 10.2 below.

10.2 A separate sixth form college sector will benefit local areas by raising standards and improving student outcomes. There will be few associated costs to the public sector. There will be minimal costs for LAs in performance managing sixth form colleges; as the sixth form colleges will remain independent corporations, the LA role will be comparatively light touch except in the rare instances where intervention is required. The YPLA will have a strategic role in developing an intervention strategy for sixth form colleges, the cost of which will be part of the initial establishment cost.

10.3 This instrument will have little or no impact on the private or voluntary sectors

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

This is an administrative measure which will be exercised to effect the establishment or dissolution of a sixth form college corporation and will be subject to on-going monitoring and review.

13. Contact

Mark Nightingale at the Department for Education Tel: 0114 2742464 or email: mark.nightingale@education.gsi.gov.uk can answer any queries regarding the instrument.