EXPLANATORY MEMORANDUM TO

THE SCHOOL ORGANISATION (FOUNDATION SPECIAL SCHOOLS) (APPLICATION OF PROVISIONS RELATING TO FOUNDATIONS) (ENGLAND) REGULATIONS 2007

2007 No. 1329

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 Joint Committee on Statutory Instruments.

2. Description

2.1 Section 21 of the School Standards and Framework Act 1998 ("the Act") specifies the kinds of foundation and voluntary schools and the different types of foundation. Currently, foundation special schools are not able to have a foundation. These regulations are made under sections 21(9) and 138 of the Act to enable foundation special schools to have foundations.

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

3.1 None

4. Legislative Background

4.1 Section 21 of the School Standards and Framework Act 1998 ("the Act") defines the different kinds of foundation and voluntary school, and the different kinds of foundation which may exist for the purposes of education legislation.

4.2 Section 21(3)(a) defines "foundation" in relation to foundation and voluntary schools, as (i) any body of persons (whether incorporated or not but excluding the governing body) which holds land on trust for the purposes of the school, or (ii) a foundation body. A foundation body (as defined in section 21(4)) is a particular type of foundation established under the Act.

4.3 Section 21(3)(b) sets out the situations in which a school "has" a foundation; and section 21(3)(c) defines references to land or other property held on trust, or by trustees, for the purposes of the school.

4.4 These Regulations apply section 21(3) to foundation special schools, excluding the references to “foundation bodies”, to enable foundation special schools to have foundations.

5. Extent

5.1 This instrument applies to England.

6. European Convention on Human Rights

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

7. Policy background

7.1 The Education and Inspections Act 2006 introduced provisions whereby maintained schools could become “trust schools”. Each trust school will be a foundation school supported by a charitable foundation or Trust acquired under the provisions of the Education and Inspections Act 2006, which will appoint governors to the school's governing body. They will be funded in exactly the same way as other local authority maintained schools. A trust school will employ its own staff, and manage its own land and assets.

7.2 There are currently no foundation special schools with a foundation and there are no regulations in place for foundation special schools to have a foundation. These Regulations make provision for foundation special schools to have a foundation.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument since it will not impose any significant cost or increase in workload to schools or local authorities.

9. Contact

9.1 Clinton Roche at the Department of Education and Skills Tel: 0207 273 4914 or e-mail: clinton.roche@dfes.gsi.gov.uk can answer any queries regarding the instrument.