

**PROCEDURE FOR TRANSFER OF A VOLUNTARY SCHOOL  
TO CONTROLLED STATUS**

## BACKGROUND

1. The relevant legislation in relation to a transfer from voluntary status to controlled status is:

Article 17 and Schedule 9 of the Education and Libraries (NI) Order 1986 (“the 1986 Order”) – ***Transfer of voluntary schools***

(<http://www.legislation.gov.uk/nisi/1986/594/article/17>)

(<http://www.legislation.gov.uk/nisi/1986/594/schedule/9>); and

Article 14 of the Education and Libraries (NI) Order 1986 – ***Proposals as to primary and secondary education***

(<http://www.legislation.gov.uk/nisi/1986/594/article/14>).

See also [DE Circular No. 2017/09 - Guidance on the Publication of a Development Proposal](#)

2. Article 17 of the 1986 Order describes the process regarding the actual transfer of a voluntary school from the trustees of the school to the Department. The Department on the date of the transfer recognises the school as a controlled school and places it under the management of the Education Authority (EA) and, if appropriate, conveys any estate in land to the EA and may transfer any equipment, furniture or other movable contents to the EA. All staff of the school shall be transferred to the EA on terms and conditions no less favourable than those applicable to them prior to the transfer.
3. Schedule 9 of the 1986 Order provides that the Trustees of a voluntary school may make an Arrangement to transfer the school to the Department (and ultimately the EA) either (i) by a resolution passed in accordance with the provisions of the trust deed (or, if there are no such provisions, in the usual manner by which the Trustees pass a resolution) or (ii) by a resolution passed by a majority of not less than two-thirds of their members present at a meeting summoned for that purpose. The passing of the resolution will be the first step for the Trustees of any school wishing to be considered for transfer to controlled status.

4. Schedule 9 of the 1986 Order also states that the Department should consider and give due regard to any objections and representations by anyone regarding the proposed transfer (including from representatives or successors of any person who has contributed to the establishment of the school). This requirement will be met as part of the EA's statutory pre-publication consultation and the two-month statutory objection period under the Development Proposal (DP) process.
5. Article 17 of the 1986 Order requires that this transfer shall be on such terms as are agreed by the Trustees, the Department and the EA and shall be subject to the consent of the Department given after consultation with the EA.
6. A Development Proposal (DP) under the terms of Article 14 (1) (b) is appropriate when the EA supports a voluntary school's request to be recognised as a controlled school:–  
“14.—(1) Where the Authority proposes—  
.....  
(b) to have an existing school recognised as a controlled school, other than a controlled integrated school;  
.....  
the Authority shall submit the proposal to the Department.”
7. When the Trustees of a voluntary school resolve to seek recognition of the school as a controlled school they should complete a Transfer Proposition Paper and send this to the EA with their initial request. The EA will then consider the Transfer Proposition Paper and may request further evidence and/or supporting information. Once satisfied that sufficient information has been provided to support the preparation of a robust case for change, the EA will commence the process leading to publication of a DP. At each stage of the process detailed records should be kept of the rationale for all decisions and those who were involved in making such decisions. Verifiable evidence should be used to support all aspects of the process where applicable.

## PROCEDURE

### STAGE 1 (Decision Maker: School Trustees)

8. The Trustees of a voluntary school may wish to explore the possibility of a transfer to controlled status. Should they resolve to make an Arrangement under Article 17 of the Education and Libraries (NI) Order 1986 (“the 1986 Order”) transferring the school to the Department (and ultimately the EA), this may be done in accordance with the provisions of their trust deed (or, if there are no such provisions, in the usual manner by which the Trustees pass a resolution); or by a resolution passed by a majority of not less than two-thirds of their members present at a meeting summoned for that purpose. The Trustees should notify the EA and the Department at the earliest opportunity of their intention to have the school recognised as a controlled school.
9. Having notified the Department and the EA of their intention, the Trustees should prepare a Transfer Proposition Paper, which will include confirmation of the Trustees’ agreement to the transfer, confirmation as to whether any others use the school premises and confirmation that the land, buildings, equipment and teachers will transfer to the Department (and ultimately the EA) and under what terms (these will be the terms of the Arrangement to be made by the Trustees under Schedule 9 of the 1986 Order – see para 16 below).
10. The Transfer Proposition Paper should take account of the Department’s Sustainable Schools Policy and [Guidance on the Publication of a Development Proposal Circular 2017/09](#). The EA will develop guidance for schools on the preparation of a Transfer Proposition Paper and such other steps as may be required to secure the EA’s agreement to publish a DP to obtain recognition as a controlled school. However, as a minimum, the Transfer Proposition Paper should set out issues such as: the educational case for transfer; benefits for pupils and staff; a curriculum delivery plan for the school; the sustainability and future viability of the school, including how it will contribute to the Area Plan; projected enrolments for the next five years; SEN considerations; the considered

impact on alternative local provision; immediate and future accommodation and staffing needs; site issues and requirements; a register of assets and liabilities; and legal opinion on all issues linked to the Trust and the conveyance of its assets to the Department. The Trustees should liaise with the Department as appropriate on matters relating to the conveyance of assets and transfer of staff.

**(INVESTMENT & INFRASTRUCTURE, DE; EDUCATION WORKFORCE DEVELOPMENT, DE)**

11. The Trustees of the school should circulate the Transfer Proposition Paper to the Board of Governors, teaching staff and parents of children attending the school in order to seek and receive their support for the proposed transfer at this early stage. In circulating the Transfer Proposition Paper, the Trustees should also explicitly ask for any objections and/or representations regarding the proposed transfer. The Transfer Proposition Paper may then be submitted formally to the EA, together with any objections or representations received by the Trustees. The Trustees must keep and make available to the EA accurate and timely records of all aspects of this Stage of the process, including key decisions taken (and by whom) in the preparation of the Transfer Proposition Paper and subsequent consultation. A record must be kept of meetings of the Board of Governors at which the proposed transfer is discussed.

**STAGE 2 (Decision Maker: Education Authority Board)**

12. The EA considers the Transfer Proposition Paper and any accompanying objections or representations. This Paper will be forwarded to the EA Solicitors for comment, prior to being presented to the EA SMT for consideration once due diligence has been completed. Once approved by the EA SMT the Transfer Proposition Paper will be brought to the EA Education Committee for approval. If the EA considers that the Transfer Proposition Paper is not sufficiently robust then it may request further evidence and/or supporting information from the Trustees prior to seeking EA Education Committee's approval. Once the EA Board is satisfied that all requirements have been met, including the receipt of a sufficiently robust

Transfer Proposition Paper, the EA commences the DP process, in accordance with the Departmental Circular [Guidance on the Publication of a Development Proposal \(Circular Number 2017/09\)](#). **(EA; AREA PLANNING DE)**

13. The EA will be the proposer, under the terms of Article 14 (1) (b) of the 1986 Order. **(EA)** The EA may concurrently bring forward a linked DP or DPs where some other significant change in the character or size of the school is proposed alongside the transfer to controlled status; or where some other change in the school is proposed which would have a significant effect on another grant-aided school. Such linked DPs will normally be supported by a single Case for Change covering all aspects of the linked proposals.
14. The proposal must be in keeping with strategic proposals in the area in which the school is currently situated, or the area that it is proposed that it will be situated following the transfer to controlled status, as evidenced in the Area Plan and stated in the relevant Annual Action Plan for the area. **(EA)**
15. Pre-publication consultation on the proposal, by the EA, should be on the proposed transfer to controlled status, as well as any other proposed changes to the school. This pre-publication consultation should also invite objections and/or representations regarding the proposed transfer (in addition to any previously submitted with the Transfer Proposition Paper). **(EA)**
16. Objections may also be made to the Department during the two-month statutory objection period immediately following the DP's publication. The Department is required to consider and have due regard to any such objections and representations in accordance with the provisions of Schedule 9 Para 6 of the 1986 Order, in addition to the normal consideration of such matters under Article 14 of the same Order. **(DE)**
17. Concurrent with the pre-publication consultation by the EA, the Trustees should proceed with the making of the Arrangement required under Schedule 9. The

terms of the Arrangement, to be agreed by the Trustees, the Department and the EA, will require the Trustees to take the necessary steps in law for the effective conveyance to the Department of the school's estate. The Arrangement will normally provide for the absolute conveyance to the Department of the land and school buildings and for the transfer of the school's teachers to the EA. It will also provide for the transfer to the Department of the school's assets and liabilities (not exceeding the value of the estate), should the DP be approved.

**EA; INVESTMENT and INFRASTRUCTURE DE; and EDUCATION  
WORKFORCE DEVELOPMENT DE**

18. The DP is published and submitted to the Department by the EA, supported by a robust Case for Change. This is the formal Case for Change as described at Section 6 of [Circular 2017/09](#) and should not be confused with the Transfer Proposition Paper submitted to the EA by the Trustees.
19. The Case for Change should include details of the Trustees' resolution (paras 8-9 above) and, as specified in the Guidance, an assessment of the school's viability in terms of the six criteria and indicators described in the Sustainable Schools Policy, i.e. quality of education; enrolments (including any anticipated growth); its financial position; leadership and management; accessibility; and links with the community. The Case for Change must also include details of any capital works that are required and a view from the EA on the future viability of the school.
20. The Case for Change must also include reference to any legal advice received by the EA in relation to the transfer of the school; due diligence on the position of every member of staff who is to transfer and a draft transfer scheme; an assessment by the EA on the current position regarding the school's buildings, assets, contractual commitments and liabilities (this should include, but is not limited to: litigation; insurance; environment; health and safety; computer systems and data; and current commercial agreements); and an Implementation

Plan and proposed date for transfer<sup>1</sup>. **(EA; EDUCATION WORKFORCE DEVELOPMENT DE; and INVESTMENT and INFRASTRUCTURE DE)**

21. The Implementation Plan should outline all actions required to deliver the proposal if approved; and propose a date for transfer which allows time for all requisite actions to be completed in advance. The Plan will include details of the Arrangement made by the Trustees under Schedule 9; and the EA's proposals for managing the impact on the school of any changes proposed in a linked DP or DPs.
  
22. A business case, including an appraisal of options, may be completed at the same time as any DP if capital works are required. The DP must be considered and approved by the Minister prior to any consideration of the business case. **(EA; EDUCATION WORKFORCE DEVELOPMENT DE; and INVESTMENT & INFRASTRUCTURE DE)**

### **STAGE 3 – Decision Maker – DE Minister**

23. On receipt of the DP, the Department will list details of the proposal on its website and commence a two month statutory objection period in line with [\*Guidance on the Publication of a Development Proposal \(DE Circular 2017/09\)\*](#). At the end of the two month statutory period the Department compiles and assesses all the relevant information in relation to the DP before making a recommendation to the Minister. The recommendation takes account of:
  - the EA's case for change;
  - objections received within the two month objection period;
  - other views including those of support received within the two month objection period;

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<sup>1</sup> When the Case for Change is published following the DP process, this information may be subject to full or partial redaction.



- the professional advice of the Education and Training Inspectorate for the Department of Education;
  - legal advice received from the Departmental Solicitor's Office on the Arrangement made under Schedule 9; and
  - any other information considered pertinent to the proposal.
24. Before making a recommendation, advice will be sought from the relevant Policy Teams in the Department, e.g. advice from Education Workforce Development Directorate on the proposed staff transfer and due diligence; and advice from the relevant directorate on any other issues arising from the individual school's circumstances. The Department will also seek advice from the Departmental Solicitor's Office on the transfer of the school to the Department in accordance with the terms of the Arrangement made under Schedule 9 (including assurance that the Trustees have taken or will take the necessary steps in law for the effective conveyance to the Department of the school's estate). **(INVESTMENT and INFRASTRUCTURE DE; EDUCATION WORKFORCE DEVELOPMENT DE; ETI; and AREA PLANNING DE)**
25. The Minister's approval will be based on the educational arguments set out in the Case for Change and on the proposal's contribution to the Area Plan. The Minister will consider the information and the Department's recommendation and make the decision in the context of the Department's statutory duties, stated priorities and policies. The Department endeavours to complete this process and notify the proposer of the Minister's decision in a timely manner. The Minister's decision concludes the process. There is no mechanism for appeal.

#### **STAGE 4 – Decision Maker – EA**

26. The Minister's approval of the DP also constitutes the formal consent of the Department to the transfer of the school. The Article 17 transfer is then completed in accordance with the Implementation Plan set out in the Case for

Change and the Arrangement made by the Trustees under Schedule 9 of the 1986 Order and agreed by the Trustees, the Department and the EA.

27. As provided for by the Arrangement made under Schedule 9, the land, buildings and equipment will transfer from the Trustees to the Department on the agreed date. On that date the school will become a controlled school; the Department will place it under the management of the EA; and its teachers will transfer to the employment of the EA. The Trustees will be absolutely freed and discharged from all responsibility in connection with the school, whether under any deed of trust or otherwise. **(INVESTMENT and INFRASTRUCTURE DE)**

28. The Board of Governors of the school will be constituted in accordance with Schedule 4 of the 1986 Order, rather than Schedule 5 of the same Order, in the case of the transfer of a voluntary (other maintained) school, or Schedule 6 or 7 in the case of the transfer of a voluntary grammar school. Annex A shows the difference between the membership of a voluntary (other maintained) school's Board of Governors and a controlled school's board of governors as an example. **(EDUCATION AUTHORITY DELIVERY DE)**

**Differences between the membership of a voluntary (other maintained) school's Board of Governors and that of a controlled school**

1. The legislation regarding the membership of the Board of Governors of a maintained school is contained in Article 11 (2) (<http://www.legislation.gov.uk/nisi/1986/594/article/11>) and Schedule 5 (<http://www.legislation.gov.uk/nisi/1986/594/schedule/5>) of the Education and Libraries (NI) Order 1986. The equivalent legislation in regard to a controlled school is contained in Article 10 (3) (<http://www.legislation.gov.uk/nisi/1986/594/article/10>) and Schedule 6 (<http://www.legislation.gov.uk/nisi/1986/594/schedule/6>) of the same Order.
2. The Boards in both types of School can be either 9, 16 or 24 members. For ease of reference 9 member Boards are considered for this explanation. 16 or 24 Boards would have exactly the same make up on a proportionate basis.
3. A voluntary (other maintained) school has 4 members nominated by the Trustees of the School. At least one of these members (at the time of his/her nomination) must be the parent of a registered pupil of the School. 2 members will be nominated by the EA. 1 member will be nominated by DE. 1 member will be elected by the parents of registered pupils at the School and finally 1 will be a teacher at the School (not the Principal or vice-principal).
4. A controlled school has 4 members nominated by the transferors **and** superseded managers of the school. 2 members will be elected from the parents of registered pupils at the school. 2 members will be appointed by the EA and one will be elected from the teaching staff at the school (not the Principal or vice-principal).
5. Transferors are defined in the interpretation in the Order (Article 2) thus:  
"transferors" means—

any trustees or other persons by whom a school has been transferred to a former education authority under the [1923 c. 21 (N.I.)] Education Act (Northern Ireland) 1923, to a former local education authority under the [1947 c. 3 (N.I.)] Education Act (Northern Ireland) 1947 or to the Department under the 1972 Order or this Order and includes trustees appointed in place of such trustees and the representatives or successors of such persons; **or**

**the Department, where a school is placed under the management of a board under Article 17(6).**

Therefore, in the case of a voluntary (other maintained) school transferring to controlled status, the transferor members would be appointed by the Department.

6. Superseded Managers are defined in the interpretation in Schedule 4 of the Order thus:

“superseded managers” means the persons who were formerly trustees or managers of any schools which have been superseded by controlled schools or, if those persons were recognised by the Department as such trustees or managers by virtue of any office, then, their successors in such office;

Therefore in the case of a voluntary (other maintained) school transferring to a controlled school the transferor members would be appointed by the former Trustees of the voluntary (other maintained) school.

7. In practical terms this means that a voluntary (other maintained) School may transfer to controlled status and retain exactly the same Board of Governors. The 4 Trustee members could continue, except that they would now be nominated by the Department and the former Trustees; the 2 current parent members could continue; the 2 Governors appointed by the EA could continue; and the 2 teaching members could continue.