

CHILDREN, SCHOOLS AND FAMILIES ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Children and Schools

Powers of governing bodies

Section 4: Power to provide community facilities etc

33. Governing bodies of maintained schools have a power in section 27 of the Education Act 2002 (“the EA 2002”) to provide any community facilities or services which further any charitable purpose for the benefit of their pupils, families of pupils and the wider community. However, governing bodies are prevented by section 50(4) of the School Standards and Framework Act 1998 (“the SSFA 1998”) from using their delegated budgets for the provision of community facilities or services.
34. **Section 4** amends section 27 so as to require governing bodies in England to give consideration at least once in every school year to whether or not to use the power to provide these facilities, and how they might use it. The section also amends section 50 of the SSFA 1998 to allow governing bodies in England to spend their delegated budgets on the provision of those community facilities or services, subject to any specific restrictions set out in regulations.
35. *Subsection (4)* amends section 51A of the SSFA 1998 so that it no longer applies in relation to England. Section 51A enables a local authority to recover from a governing body any amounts spent by the authority as a result of a third party claim against the authority in relation to activities undertaken by a governing body pursuant to section 27 of the EA 2002. These amounts cannot be recovered directly from the governing body due to the restriction in section 50 of the SSFA 1998 on the governing body using its delegated budget for these activities but this will not be the case for schools in England after the coming into force of this section.

Sections 5 to 7- Powers of governing bodies

36. **Sections 5 to 7** extend and define powers of governing bodies of maintained schools in England so that certain designated governing bodies can be involved in the establishment of new maintained schools and Academies, and all governing bodies are able to have further involvement in existing maintained schools and Academies.
37. Governing bodies already have certain specific powers, set out in Schedule 1 to the EA 2002, in relation to the conduct of their own school and the provision of advice and assistance to other maintained schools and local authorities. They have other powers, set out elsewhere in legislation. For example, they can provide facilities and services to their own pupils and their families, and the wider community in the furtherance of any charitable purpose under section 27 of the EA 2002.

Section 5: Power to form company to establish Academy, etc

38. **Section 5** provides governing bodies in England with a power to form an “Academy Trust”. An Academy trust is a company which can enter into an agreement with the Secretary of State under which the company will establish and maintain an Academy. The section also provides governing bodies with a power to carry out necessary activities in connection with such agreements. The Secretary of State will establish a procedure for designating particular governing bodies and will only enter into such an agreement with a company formed by a designated governing body. The section also allows any governing body of a maintained school in England to be a member of an existing Academy Trust.

Section 6: Powers to assist etc proprietor of Academy and be a member of a foundation

39. **Section 6** allows all governing bodies of maintained schools in England to provide advice and assistance to the proprietors of Academies (in the same way that they can already provide advice and assistance to the governing bodies of other maintained schools). The section also allows all governing bodies of maintained schools and maintained nursery schools in England to be members of the foundations of other maintained schools.

Section 7: Power to propose new schools

40. **Section 7** allows only governing bodies in England that are designated by the Secretary of State, or by a person authorised by the Secretary of State, to publish proposals under section 7 (in a school competition) or section 11(2) of the Education and Inspections Act 2006 (“the EIA 2006”) to establish new foundation, voluntary or foundation special schools.