

**Building Schools for the Future and the impact of the new Education and Inspections Act 2006**  
**Questions to DfES October 2006, and answers received December 2006.**

Local authorities and the 4ps provided and collated the following questions regarding BSF and the Education and Inspections Bill (now Act). Responses from DfES are shown in blue.

1. **Development of the 'Strategy for Change'** - The delivery of BSF is dependent on a local authority being able to obtain stakeholder buy-in to a Strategy for Change.

a). Will not the ability to deliver this across a city be undermined by the ability of schools to seek foundation status?

b). Does the power the Bill will give foundation schools to expand without reference to the local authority not jeopardise the local authority's prediction of pupil numbers prior to capital commitments?

a) The ability of schools to seek foundation status will not change the basic nature of the BSF process. Local authorities will need to consult and work with all the schools in their area whilst developing their Strategies for Change. Foundation schools, with or without trusts, and voluntary schools already constitute a majority of the secondary schools in some areas, and in many other areas there will already be a significant proportion of schools which own their own assets and employ their own staff at secondary level. Such authorities are already progressing their BSF projects. The White Paper sets out a modernised role for local authorities as the commissioners rather than providers of education in their areas, and this is underpinned by measures in the Education Act 2006 giving local authorities powers to propose changes to all categories of schools.

b) The governing bodies of all categories of schools, including community schools, are already free to publish proposals to expand. Proposals are currently decided by the local School Organisation Committee. Under the 2006 Act, proposals will be decided by the local authority in the first instance, and can be referred to the Schools Adjudicator.

2. **Curriculum Planning** - It is intended that every child will have access to a relevant, personalised curriculum, potentially through collaborative arrangements between local schools in a strategic partnership with the local authority. Will not the ability of foundation schools to either work independently within a locality or work collaboratively with schools across authorities limit opportunities for this delivery?

Foundation and trust schools have a legislative requirement shared with all maintained schools to deliver the national curriculum and status does not alter this. Local authorities in their new role should of course encourage collaboration between all types of schools, and encourage the provision of personalised learning. Cooperation of schools towards this goal should not be determined by status.

3. **Community Schools** - Some community schools entering the BSF programme may be expected to sign a Governors' agreement to commit annual budget contributions to the local authority to pay for facilities management and lifecycle costs. How does the proposed legislation permitting change of status from community to foundation schools deal with this arrangement?

The governing body of a school that changes status remains the same body corporate as that of the "predecessor" school and remains bound by any contractual obligations or benefits it has entered into. Legislation has not been needed on this point.

4. **Attractiveness of BSF to the private sector** - The proposed legislation does not include whether the LEP's exclusivity applies to schools pursuing foundation status in the future. The private sector is likely to include in their bid pricing the risk of a reduction in the number of schools within the exclusivity arrangement, due to a potential loss of future revenues. What will be done to prevent such an escalation in pricing?

BSF projects in development which will be delivered through LEPs already include foundation and voluntary schools. The point below covers where BSF is delivered through a PFI contract.

#### 5. Trust Schools & PFI contracts -

- a) If a school were to opt for foundation status, would the local authority not have to retain liabilities for the contract because the Trust school would be unlikely to have sufficient financial strength to satisfy the private sector funders?
- b) As DfES is not fully funding BSF, what incentive is there for elected members to invest considerable sums of locally-raised funding in schools which, if they become Trust schools, would be handed over to third parties outside their influence?

a) as a PFI contract is made between a local authority and the private sector provider, the "financial strength" or status of schools within the contract is irrelevant.

b) Land at trustee schools is not "handed over" to the trustees. All land owned by trustees is held for the benefit and purposes of the school. There are already considerable numbers of schools which own their own land and many authorities already work with a majority of secondary schools which do. The Education & Inspections Act has detailed provisions for the protection of public investment in school land which is owned by trustees, building on the provisions of Schedule 22 of the School Standards and Framework Act of 1998. The new role of authorities to be commissioners of education in their area includes that they include the needs of schools of all categories when planning expenditure, to achieve the greatest impact on pupil achievement. Again, there is the point that there are already many schools in the voluntary and foundation sectors which are included fairly in local asset management planning and prioritisation of investment.

#### 6. School competition rules –

- a) Competition for new schools is likely to extend the school organisation process from around 7 months to 14 months minimum. Will this not have a negative impact on timeframes and financial profiling?
- b) Recent advice suggests that provisions in the Education and Inspections Bill could be enacted as soon as spring 2007. What will happen to school competitions already underway when the new requirements are put in place? Will local authorities have to publish a second statutory notice summarising the details of all proposals before spring 2007 in order for them to continue with the current regulations?
- c) Will exemption be given to the application of school competition regulations if it will significantly delay a local authority's capability to keep to agreed deadlines for their BSF project?
- d) There is a lack of clarity regarding amalgamations of existing schools to form a new school. Subject to the new competition regulations, will not local authorities be inclined to pursue closures rather than amalgamations, resulting in an increase in applications for Trust status by threatened schools?

a) We do not believe the competition provisions for new schools will extend the process by 7 months as you suggest. The process involves 5 stages: Consultation; "Invitation to Bid" Notice; "Summary of Bids" Notice; Representation Period; Decision. The "Invitation to Bid" stage is the only addition to the previous process. This stage allows four months for interested parties to submit bids and the Local Authority must publish the notice summarising the bids received, and any the LA wishes to make, within 3 weeks.

We believe the process will take between 10 and 14 months depending upon the statutory period of consultation before the first notice is published and also, in cases where proposals are decided by the LA, if there is an appeal to the schools adjudicator by the local RC or CE diocese or the LSC.

b) We are aiming to bring the school organisation provisions, contained within the Education and Inspections Act 2006, into force early in May. We have made it clear in our consultation letter that we will include detailed transitional provisions in the regulations that will have the effect that any proposals published, but not decided, at that time will

be decided under the new decision making arrangements. Any proposals that have been decided, but subsequently require modification, revocation etc, will also be subject to the new provisions.

For competitions the same principles will apply. If an LA has published a second notice summarising bids received under existing regulations, they will not have to re-publish – the LA will be able to decide the competition unless the notice includes proposals by the LA, in which case the competition must be decided by the schools adjudicator.

c) There will not be automatic exemption for any particular type of case. All applications for consent to publish without a competition will be decided strictly on their merits. We have said during debates in parliament that we will consider sympathetically any applications that form part of a BSF scheme in an early wave, where delay would impact on timing and cash flow, and it would not be practicable for the LA to take corrective measures in time. However the requirement for competition has been known for some time now and we would expect authorities to include competition in their planning.

d) School amalgamations can be effected in different ways, by closing both schools and opening a new replacement school, or by closing one school and enlarging and/or changing the age range of the school that is remaining open. The decision on which route to follow is likely to depend upon a number of factors and it will be for the LA to determine which option is most appropriate. If a school is proposed for closure and becomes a Trust school, the LA will still be able to publish and decide proposals for the school's closure, but the school's governing body will be able to appeal to the adjudicator and have the proposals re-considered

**7. SEN provision** – Has any guidance been produced regarding the ability of Special Schools to become Trust schools?

We have not produced separate guidance for special schools becoming trust schools, but the general guidance on trust status which is available is relevant for special schools. Detailed information on Trust schools can be found through [http://findoutmore.dfes.gov.uk/2006/11/trust\\_schools\\_u.html](http://findoutmore.dfes.gov.uk/2006/11/trust_schools_u.html).

**8. Land transfer** – Under the new Act, any Trust or Foundation schools would have land transferred to them from the local authority. Will guidance be produced regarding how much land should be transferable to ensure that some areas are retained for community benefit?

Guidance on the provisions of the E&I Act relating to the disposal and transfer of land for the schools adjudicator, local authorities and schools will be made available which will include provisions for the transfer of land where a school changes category. This has already been shared widely in draft, including with representatives of the Local Government Association on the Schools Capital Strategy Consultative Group. Whilst the presumption is that all land will transfer which is used by the school when it considers proposals, it includes guidance on excluding land from transfer where there is joint or shared use. Where there is not local agreement on what land transfers, the schools adjudicator will determine