

EXPLANATORY MEMORANDUM TO
THE ST MARY'S COLLEGE, MIDDLESBROUGH (DISSOLUTION) ORDER 2011

2011 No. 1038

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

2.1 The instrument dissolves the corporation established to conduct St Mary's College, Middlesbrough as of 31st July 2011.

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

3.1 None.

4. Legislative Context

4.1 Chapter 2 of Part 1 of the Further and Higher Education Act 1992 ("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: Further Education college corporations and sixth form college corporations ("SFCCs"). Schedule 8 to ASCL inserted new provisions in relation to SFCCs in England into FHEA.

4.2 The provisions that are inserted into FHEA give the Secretary of State the power to dissolve SFCCs. Under section 33N the Secretary of State may, by order, make provision for the dissolution of a SFCC and the transfer of its property, rights, liabilities and staff. Section 33N provides that before the Secretary of State may make such an order, the responsible local authority (defined in section 90(1) of FHEA) must have published a proposal by a prescribed time, in a prescribed manner, for a prescribed period, and containing prescribed information.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

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

7. Policy background

7.1 For an existing SFCC to be dissolved, the 'home' local authority must provide the Secretary of State with a proposal which meets "prescribed" requirements, as detailed by section 33N(3) with regard to dissolution. The Education (Publication of Proposals) (Sixth Form College Corporations (England) Regulations 2010, SI 2010/2609 prescribe the standards that the proposal must meet with regard to the time and manner of the publication of the proposal and the content of the proposal. Section 33N(3)(c) also requires the authority to consider any representations made to them about the proposal.

7.2 Where the proposal meets the prescribed requirements the Secretary of State may then make an order dissolving the SFCC, once he has consulted with the SFCC in question and with the Young People's Learning Agency ("YPLA").

7.3 St Mary's College, Middlesbrough has a history of underperformance over the last two years, resulting in the issuing of formal Notice to Improve. Although the college has met the conditions of the Notice for their A level provision, Ofsted have still noted the low and declining success rate. The financial health of St Mary's College has rapidly deteriorated (on 1st April 2010 it was forecast to be insolvent by February 2011). This has been compounded by a very poor inspection at the end of May 2010 and a significant fall in learner numbers from 635 (against a target of 726) aged 16-18 in 2006/07 to 498 learners in 2009/10.

7.4 In March 2009 the Principal at St Mary's College wrote to Middlesbrough Borough Council informing the Council that dissolution was the preferred option for the college and the Council has since been working with the college, the YPLA and Department for Education officials to initiate the process for dissolution. There is local agreement that the college corporation should dissolve and that Trinity Catholic College, Middlesbrough (an 11-16 school) should expand to include a sixth form thereby ensuring an option for students in the area to continue to experience a post-16 education within a Catholic ethos. Both St Mary's College and Trinity School are within the local discrete catholic offer (Diocese of Middlesbrough). Together with other key stakeholders (parents, learners, as well as YPLA and the local authority), the Catholic Trust underpinning St Mary's Colleges views this solution as not only the most cost effective, but also the best way to retain discrete catholic provision for the Borough

7.5 The decision whether to permit the alteration of Trinity Catholic College is for the local authority to decide under the provisions of the Education and Inspections Act 2006, and there is no role for the Secretary of State in this.

8. Consultation outcome

8.1 Middlesbrough Borough Council has followed the required statutory process, including the publication of a formal notice for the proposed dissolution of St Mary's College corporation. Three responses were received, none of which raised objections to

the proposal. At the same time the Council published a statutory notice for the expansion of Trinity Catholic College following formal consultation by the local authority.

8.2 The YPLA is a statutory consultee on the proposal and directly funds the provision. The corporation is also a statutory consultee. Following consultation by the Secretary of State, both the YPLA and the college corporation indicated that they support the LA proposal – this was confirmed by letters from the Chief Executive of the YPLA to the Secretary of State for Education dated 10th and 25th March 2011; and by letter from the Chair of the college corporation to the Secretary of State for Education dated 28th March 2011.

8.3 There is also local agreement in favour of the dissolution between the local authority and the Marist Fathers, the Catholic Trust that underpins the college. The Marist Fathers have agreed to the site usage being transferred from the St Mary's College to Trinity Catholic College. The Diocese of Middlesbrough is also supportive of the dissolution. All stakeholders, local and national, agree that St Mary's College corporation should be dissolved and that provision should pass to Trinity Catholic College.

9. Guidance

9.1 There is no relevant guidance.

10. Impact

10.1 An Impact Assessment has not been prepared for this instrument as there is no impact on business, charities or voluntary bodies or on the public sector.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 This is an administrative measure which will be exercised only once to effect the dissolution of the corporation established to conduct St Mary's College Middlesbrough so is not subject to monitoring and review.

13. Contact

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