

**EXPLANATORY MEMORANDUM TO**  
**THE MORPETH SCHOOL, OAKLANDS SCHOOL AND SWANLEA SCHOOL**  
**ORDER 2011**

**2011 No. 1903**

**1.** This explanatory memorandum has been prepared by the Department for Education (DfE) and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 This Order facilitates an innovative project by Morpeth School, Oaklands School and Swanlea School (“the Schools”) to develop their 16-18 educational provision in a joint sixth form centre (the “Collegiate”). The Order relaxes the registration requirements in section 434 of the Education Act 1996 (“the 1996 Act”) on the Schools. The Order also relaxes the requirement on the schools in the Education (Information about Individual Pupils) (England) Regulations 2006 (S.I. 2006/2601) to provide specific pupil information to the local authority on request, where that information relates to pupils over compulsory school age. It also makes a consequential modification to regulation 5 of the Education (Pupil Registration) (England) Regulations 2006 (“the 2006 Regulations”).

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

3.1 None

**4. Legislative Context**

4.1 This Order is made under section 2 of the Education Act 2002 (“the 2002 Act”) as amended by the Education and Inspections Act 2006 and by the Education Act 2006 (power to facilitate innovation – more commonly known as “power to innovate”). The purpose of Chapter 1 of Part 1 of the 2002 Act is to facilitate the implementation of innovative projects which may (in the opinion of the Secretary of State) contribute to the raising of educational standards in England and Wales. Section 2 gives the Secretary of State the power, on the application of one or more qualifying bodies, to exempt particular provisions of education legislation, or to relax the requirements of, or to make modifications to such provisions in order to further such innovative projects. Orders made under section 2 have effect for the period specified in the order, which cannot initially exceed three years.

4.2 In this case, the governing bodies of the Schools applied on the 5<sup>th</sup> October 2010 for a Power to Innovate Order for the Collegiate to be treated as a separate institution for the purposes of funding, census and attainment. The Secretary of State is of the opinion that this Order facilitates the implementation of an innovative project to raise educational

standards for the reasons set out in paragraphs 7.1 – 7.2 below and makes this Order under his powers as set out in paragraphs 4.1 above.

4.3 Section 434(1) of the 1996 Act requires the proprietor of a school (which in the case of a community, foundation or voluntary school, means the governing body of the school) to keep a register of all persons who are pupils at the school. Article 3(a) of the Order relaxes this requirement in the case of the Schools, so that it applies only to pupils of compulsory school age. This will mean that the Schools will not be legally required to register pupils who attend the Collegiate who are over compulsory school age. Section 434(3)(b) sets out that the name of a pupil must not be deleted from the admissions register otherwise than on a prescribed ground. Article 3(b) of this Order relaxes this requirement so that it does not apply to pupils over compulsory school age, who can therefore lawfully be removed from the register of the Schools on other grounds, when they move from one of the Schools to the Collegiate.

4.4 Regulation 3 of the Education (Information About Individual Pupils) (England) Regulations 2006 (S.I. 2006/2601) (“the Information About Individual Pupils Regulations 2006”) requires schools to provide information about registered pupils to the local authority which maintains the school within 14 days of the receipt of a request for that information by the local authority. Article 3(c) of this Order relaxes this requirement on the Schools so that it will not apply to registered pupils over compulsory school age.

4.5 Regulation 5 of the Education (Pupil Registration) Regulations 2006 (S.I. 2006/1751) requires the proprietor of the school to maintain an admission register containing the particulars of all pupils at the school. As a result of the relaxation in Article 3(a), Article 4 modifies this requirement on the Schools so that it only applies to pupils of compulsory school age.

## **5. Territorial Extent and Application**

5.1 This instrument applies in relation 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**

- What is being done and why

7.1 The Collegiate was set up by Morpeth School, Oaklands School and Swanlea School (“the Schools”) with the aim of allowing them to work together in order to offer a wider choice of 16-18 courses suited to the individual needs of their pupils. They wish to ensure a continuity of provision for those pupils who need the highest level of personal

support. All three schools have a high proportion of pupils who speak English as an additional language is high. The proportion of pupils who have learning difficulties and/or disabilities is higher than average and the number of pupils with a statement of special educational need is also very high. The key driver behind the creation of the Collegiate was the concern that that many of these pupils were leaving the borough to find appropriate FE courses - and then failing to complete the courses, thus becoming NEET (not in education, employment or training). Pupils enter the Collegiate in year 12 and are mainly pupils over compulsory school age. The local authority also believes that having a diverse and inclusive sixth form will improve community cohesion.

7.2 The Schools do not want the Collegiate to be a separate legal entity. They choose to work together to enable them to pool funding and other resources to maximise value for money, rather than set up three separate sixth forms. Instead they want the Collegiate to be treated as a single institution for the purposes of funding, census and attainment. Each school has a separate governing body but they have a combined sub-committee (a federation board). There are however a number of technical issues which need to be overcome in order to remove administrative burdens which are preventing the Collegiate from working effectively.

7.3 Pupils may undertake their learning across all three schools. Each school is required to provide information for the School Census (as required under the Information About Individual Pupils Regulations 2006) to the Secretary of State about all pupils registered at the school, which will include pupils who attend the Collegiate. The Collegiate have requested that they be permitted to submit a single census return for its pupils. This would be administratively less burdensome and will provide a more accurate picture of the actual situation. A single census will also simplify the funding arrangements for the Collegiate.

7.4 In order to facilitate the functioning of the Collegiate, the Order removes the legal requirement on the Schools to register pupils over compulsory school age who attend the Schools, i.e. pupils who attend the Collegiate. By removing the legal requirement to register all pupils over compulsory school age, this will also remove the legal requirement on the Schools to provide individual pupil information for those pupils, as required under the Information About Individual Pupils Regulations 2006. The Head of the Collegiate has agreed to enter into a Memorandum of Understanding (MoU) which will set out the DfE expectations in relation to how the pupils will be registered at the Collegiate in the future. The Collegiate will be expected to keep a separate admissions and attendance register for all the pupils who attend the Collegiate, and to ensure it has robust safeguarding procedures. The MoU will also set out the DfE expectations regarding the provision of a single census return by the Collegiate for all pupils who attend the Collegiate.

7.5 The Order also relaxes the legal requirement to provide information about individual registered pupils to the local authority on the receipt of a request, where such a request relates to pupils over compulsory school age. This is to ensure that the schools are not required to provide information about registered pupils who attend the Collegiate to

the local authority, where these pupils were entered on the register of one of the Schools before the Order came into force.

7.6 The Order will facilitate the lawful operation of the Collegiate and assist in achieving its aim by offering a wider choice of 16-18 courses suited to the individual needs of their pupils who attend the three schools and thus ensuring a continuity of provision for those pupils who need the highest level of personal support.

7.7 The next census return to the Department needs to be provided by the Schools on 6 October 2011. In order to ensure that the Order is in place before then, the Department is taking the exceptional step of laying this Order during the Summer recess.

## **8. Consultation outcome**

8.1 Section 4(2) of the EA 2002 places a legal obligation on applicants for a PtI Order to consult with the local authority and with other appropriate persons on their proposal. Prior to the inception of the Collegiate the governing bodies of all three schools undertook formal consultation over a period of four months. The London Borough of Tower Hamlets and its chief executive were consulted, as well as the parents, pupils and all staff of all three schools. All the groups and individuals consulted were provided with information about the proposal and given the opportunity to make their views known. There were no voiced objections to the proposal from all the people consulted. The local authority and its chief executive gave their full support.

8.2 Over 1000 Morpeth School parents/carers were sent letters inviting them to comment on the proposal and/or attend a public meeting. There were no letters submitted against the proposal. Approximately 25 parents attended the public meeting all of whom were in favour of the proposals. Both Oaklands and Swanlea schools undertook a similar exercise with over 1600 parents and carers between them invited to attend consultation evenings. Around 28 parents attended these sessions. These parents in particular commented that the sixth form would provide greater employment opportunities for students, especially where leading to vocational qualifications as significant employment opportunities exist in nearby Canary Wharf. Parents of students with Special Educational Needs from Swanlea School in particular were 'overjoyed' that there would be provision for their children to continue with Foundation level learning in the local area. All 350 staff members from the three schools were all in favour - with no objections to the proposal for the Power to Innovate order. Consultation also took place with Tower Hamlets' Education Improvement Partnership Board for 14-19, local representatives, the Learning and Skills Council London East (now Young Peoples Learning Agency (YPLA)). Of the surrounding authorities, the London Borough of Hackney and the London Borough of Newham were also consulted and supportive of the proposal for the sixth form.

## **9. Guidance**

9.1 Guidance is provided to applicants who seek a power to innovate order under Part 1. The Guidance sets out the requirements for project review and analysis, evaluation, and plans for reverting to existing practice at the end of the project if necessary. However, no guidance is deemed to be required in respect of the Order itself since the Order is being made on the request of the bodies to which the Order applies.

## **10. Impact**

10.1 No impact on business, charities or voluntary bodies is foreseen.

10.2 No impact on the public sector is foreseen.

10.3 A full Impact Assessment has not been prepared for this instrument as the intention is to assess this instrument, as all PTI instruments, at the point that they are to be renewed. However, we do not believe that there will be any overtly negative impacts from this proposal based upon the information provided by the proposers.

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

12.1 Power to innovate projects are monitored by the DfE to assess their impact on educational standards. Applications must include the measures to be used to monitor the effect of projects and must include a broad description of the evaluation strategy. A final evaluation report is required to be submitted by the schools to the DfE when the project ends, and where the projects outcomes show a positive impact on standards, the DfE will consider whether it would be desirable from a policy perspective to change education law. The DfE publishes an annual report on the Power to Innovate Orders made each academic year.

12.2 The educational attainment of the pupils who attend the Collegiate will be monitored by the DfE to ensure standards are maintained and by the YPLA to ensure continued fitness for funding. The Collegiate will be asked to provide an evaluation and review of the proposal at an agreed schedule.

## **13. Contact**

13.1 Julia Armstrong at the Department for Education Tel: 020 7340 8100 or email: [Julia.armstrong@education.gsi.gov.uk](mailto:Julia.armstrong@education.gsi.gov.uk) can answer any queries regarding the instrument.