

## SCHEDULES

### SCHEDULE 2

Sections 7, 10, 11 and 15

#### PROPOSALS FOR ESTABLISHMENT OR DISCONTINUANCE OF SCHOOLS IN ENGLAND

##### PART 1

##### INTRODUCTORY

###### *Application of Schedule*

- 1 (1) This Schedule applies to proposals published under section 7, 10, 11 or 15.
- (2) Accordingly, in this Schedule, unless a contrary intention appears, “proposals” means proposals published under any of those sections.

###### *“The relevant authority”*

- 2 In this Schedule “the relevant authority” means—
  - (a) in the case of proposals under section 7, the local education authority who published the notice under that section, and
  - (b) in the case of proposals under section 10, 11 or 15, the local education authority who maintain the school or (in the case of a new school) who it is proposed should maintain the school.

###### *“Proposers”*

- 3 In this Schedule “proposers”, in relation to any proposals, means the persons who made the proposals, but does not include a local education authority.

###### *References to persons by whom proposals are made*

- 4 For the purposes of this Schedule—
  - (a) proposals under section 7 are to be taken to be made by the person who submitted them to the relevant authority under subsection (4)(b) of that section, or in the case of proposals published by the relevant authority under subsection (5)(b) of that section, by the relevant authority, and
  - (b) proposals under section 10, 11 or 15 are to be taken to be made by the persons who published them.

###### *Objections and comments*

- 5 Regulations may make provision—
  - (a) for the making of objections or comments in relation to the proposals within a prescribed period to the relevant authority, and

- (b) requiring the relevant authority, in any case where proposals are referred to the adjudicator, to forward to the adjudicator objections or comments made in relation to the proposals in accordance with the regulations.

## PART 2

### CONSIDERATION OF PROPOSALS BY LOCAL EDUCATION AUTHORITY OR ADJUDICATOR

#### *Proposals requiring consideration under paragraph 8*

- 6 All proposals under section 7, 10 or 11 require consideration under paragraph 8.
- 7 (1) Proposals under section 15 require consideration under paragraph 8 unless sub-paragraph (2) applies.
- (2) Proposals under section 15 fall to be dealt with under paragraph 19 (and do not require consideration under paragraph 8) if the proposals were made by the relevant authority and either—
  - (a) no objections were made in relation to the relevant proposals in accordance with regulations under paragraph 5, or
  - (b) all objections so made were withdrawn in writing within the period prescribed as that within which any objections must be made.

#### *Consideration of proposals*

- 8 (1) Proposals which require consideration under this paragraph, other than proposals to which paragraph 10 applies, must be considered in the first instance by the relevant authority.
- (2) Sub-paragraphs (3) and (4) apply in relation to the relevant authority unless the authority is required by any of paragraphs 10 to 13 and 15 to refer the proposals to the adjudicator.
- (3) In a case where the proposals were published under section 7 and two or more sets of proposals were published, the authority may—
  - (a) reject all the proposals,
  - (b) approve any of the proposals without modification, or
  - (c) approve any of the proposals with such modifications as the authority think desirable, after consulting such persons as may be prescribed.
- (4) In any other case, the authority may—
  - (a) reject the proposals,
  - (b) approve the proposals without modification, or
  - (c) approve the proposals with such modifications as the authority think desirable, after consulting such persons as may be prescribed.
- (5) Any approval given under this paragraph may be expressed to take effect only if an event specified in the approval occurs by a date so specified; and regulations may prescribe the events that may be so specified.
- (6) When deciding whether or not to give any approval under this paragraph, the relevant authority must have regard to any guidance given from time to time by the Secretary of State.

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*Consideration of proposals that are related to other proposals*

- 9 (1) The requirement to consider proposals under paragraph 8 only applies if, at the time when the proposals fall to be considered, the relevant authority are satisfied that the proposals do not relate to any proposals under section 113A of the Learning and Skills Act 2000 (c. 21) which fall to be determined by the Secretary of State but have not yet been determined by him.
- (2) Where proposals under section 7, 10, 11 or 15 appear to the relevant authority to be related to—
- (a) other proposals published under any of those sections and not yet determined, or
  - (b) proposals published under Schedule 7 to the Learning and Skills Act 2000 (c. 21) and not yet determined,
- the authority must consider the proposals together.
- (3) In deciding for the purposes of this paragraph whether proposals are related to other proposals, the relevant authority must have regard to any guidance given from time to time by the Secretary of State.

*Duty to refer to adjudicator certain proposals made by or involving relevant authority*

- 10 (1) The relevant authority must refer to the adjudicator, within a prescribed time—
- (a) all the proposals published under section 7 in response to a notice under that section, if they consist of or include any proposals which—
    - (i) are made by the relevant authority, or
    - (ii) relate to the establishment of a foundation school with a foundation falling within sub-paragraph (2);
  - (b) any proposals under section 10 or 11 which—
    - (i) are made by the relevant authority, or
    - (ii) relate to the establishment of a foundation school with a foundation falling within sub-paragraph (2).
- (2) A foundation falls within this sub-paragraph if it is to be established otherwise than under SSFA 1998 and any of the following applies—
- (a) the relevant authority or any person appointed by the relevant authority is to be a member of the foundation,
  - (b) any person appointed by the relevant authority is to be a charity trustee (within the meaning of the Charities Act 1993 (c. 10)) of the foundation, or
  - (c) any voting rights in the foundation are to be exercisable by the relevant authority or persons appointed by the relevant authority.
- (3) Regulations may make provision for the making by the relevant authority to the adjudicator of objections to any proposals which are required to be referred to the adjudicator under this paragraph.

*Duty to refer proposals to adjudicator in prescribed cases*

- 11 Regulations may make provision requiring the relevant authority in prescribed cases to refer to the adjudicator within a prescribed time proposals requiring consideration under paragraph 8 (or in the case of proposals under section 7 all the proposals requiring consideration under that paragraph), together with any comments made on

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the proposals (or in the case of proposals under section 7, any of the proposals) by the authority.

*Duty to refer proposals to adjudicator in pursuance of direction by Secretary of State*

- 12 (1) The Secretary of State may at any time give a direction to a local education authority requiring them to refer to the adjudicator by a specified time—
- (a) any proposals which have been published by the authority under section 7 but which, at the time when the direction is given, have not been determined by the authority, and
  - (b) all subsequent proposals published by the authority under that section until the direction is revoked,
- together with any comments made on any of the proposals by the authority.
- (2) Where a direction under sub-paragraph (1) is given to a local education authority at a time when the authority are considering proposals which consist of or include proposals published under section 7 to establish an Academy, the authority must complete any consultation required by paragraph 18 before referring the proposals to the adjudicator.
- (3) References in this paragraph to the determination of any proposals are references to—
- (a) a determination whether or not to approve the proposals under paragraph 8, or
  - (b) where by virtue of paragraph 7(2) the proposals fall to be dealt with under paragraph 19, a determination under paragraph 19 whether or not to implement the proposals.

*Duty to refer proposals to adjudicator where determination delayed*

- 13 If by the end of such period as may be prescribed the relevant authority have not determined whether to give any approval under paragraph 8(3) or (4), they must within a prescribed time refer to the adjudicator—
- (a) in the case mentioned in paragraph 8(3), all the proposals published under section 7, and
  - (b) in the case mentioned in paragraph 8(4), the proposals concerned,
- together with any comments made on the proposals by the authority.

*Reference to adjudicator at request of aggrieved person after determination under paragraph 8(4)*

- 14 (1) The relevant authority must if so requested within a prescribed time by any relevant person refer to the adjudicator within a prescribed time any proposals under section 10, 11 or 15 which the relevant authority have determined under paragraph 8(4), together with any reasons given by the authority for their determination.
- (2) The following are relevant persons for the purposes of sub-paragraph (1)—
- (a) the Diocesan Board of Education for any diocese of the Church of England any part of which is comprised in the area of the relevant authority;
  - (b) the bishop of any diocese of the Roman Catholic Church any part of which is comprised in the area of the relevant authority;

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- (c) in the case of proposals made under section 10 or 11 by a person other than the relevant authority and rejected by the authority under paragraph 8(4)(a), the proposers;
- (d) in the case of proposals published under section 15, the governing body or trustees of any foundation, voluntary or foundation special school which is the subject of the proposals;
- (e) where the proposals relate to a school or proposed school providing education for persons aged 14 years or over, the Learning and Skills Council for England.

#### *Duty to refer related proposals*

- 15 Where the relevant authority are required under any of paragraphs 10 to 14 or under Schedule 7 to the Learning and Skills Act 2000 to refer any proposals (“the relevant proposals”) to the adjudicator, the authority must also within a prescribed time refer to the adjudicator—
- (a) any other proposals under section 7, 10, 11 or 15 which relate to the area of the relevant authority and which by virtue of paragraph 9(2) fall to be considered with the relevant proposals, and
  - (b) where the relevant proposals are referred to the adjudicator by virtue of paragraph 14, any other proposals under section 10, 11 or 15 which by virtue of paragraph 9(2) were determined by the relevant authority with the relevant proposals.

#### *Withdrawal of proposals before determination*

- 16 (1) Nothing in paragraph 8(1) to (4) prevents the proposers by whom any proposals have been made from withdrawing those proposals by notice in writing—
- (a) to the relevant authority, and
  - (b) in a case where the proposals have been referred to the adjudicator, also to the adjudicator,
- at any time before the proposals are determined under paragraph 8 by the authority or by the adjudicator.
- (2) Nothing in paragraph 8(1) to (4) prevents the relevant authority from withdrawing any proposals made by the authority themselves by notice in writing to the adjudicator at any time before the proposals are determined under paragraph 8 by the adjudicator.

#### *Effect of referring proposals to adjudicator*

- 17 (1) Where any proposals are referred to the adjudicator under any provision of this Part of this Schedule—
- (a) he must consider the proposals or, in a case where the proposals have previously been determined by the relevant authority, must consider them afresh,
  - (b) the following provisions of paragraph 8 apply to him in connection with his decision on the proposals as they apply to the relevant authority—
    - (i) sub-paragraph (3) or (4) (as the case requires), and
    - (ii) sub-paragraphs (5) and (6), and
  - (c) paragraph 9 applies to him as it applies to the relevant authority.

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- (2) The revocation of a direction under paragraph 12(1) does not affect the determination by the adjudicator of any proposals referred to him before the revocation.

*Proposals to establish Academy*

- 18 (1) Regulations may provide that, where proposals published under section 7 consist of or include proposals to establish an Academy, the relevant authority must within the prescribed period consult the Secretary of State in accordance with regulations, before taking any decision under paragraph 8.
- (2) The relevant authority may not approve under paragraph 8 proposals to establish an Academy unless the Secretary of State, on being consulted under sub-paragraph (1), has indicated in accordance with regulations that, if the proposals were approved, he would be willing to commence negotiations with a view to entering into an agreement under section 482 of EA 1996 for the establishment of an Academy.
- (3) If—
- (a) the proposals have been referred to the adjudicator under paragraph 10, 11, 12, 13 or 15, or
  - (b) a direction under paragraph 12(1) is in force in relation to the relevant authority and the case does not fall within paragraph 12(2),
- the reference in sub-paragraph (1) to the authority is to be read as a reference to the adjudicator.
- (4) Sub-paragraph (2) has effect in relation to a decision of an adjudicator under paragraph 8 as it has effect in relation to a decision of the relevant authority under that paragraph.
- (5) Approval under paragraph 8 by the relevant authority or the adjudicator of proposals to establish an Academy does not oblige the Secretary of State to enter into, or seek to enter into, an agreement under section 482 of EA 1996.

*Determination whether to implement proposals not requiring consideration under paragraph 8*

- 19 (1) Where any proposals have been made under section 15 by the relevant authority and paragraph 7 does not require the proposals to be considered under paragraph 8, the authority must (subject to the following provisions of this paragraph) determine whether the proposals should be implemented.
- (2) Any determination under sub-paragraph (1) must be made within a prescribed period.
- (3) The requirement to make a determination under sub-paragraph (1) only applies if, at the time when the proposals fall to be considered, the relevant authority are satisfied that the proposals do not relate to any proposals under section 113A of the Learning and Skills Act 2000 (c. 21) which fall to be determined by the Secretary of State but have not yet been determined by him.
- (4) The requirement to make a determination under sub-paragraph (1) does not apply where the proposals appear to the relevant authority to be related to—
- (a) other proposals published under section 15 and not yet determined,
  - (b) proposals published under section 7, 10 or 11 and not yet determined, or

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- (c) proposals published under Schedule 7 to the Learning and Skills Act 2000 and not yet determined.
- (5) In deciding for the purposes of this paragraph whether proposals are related to other proposals, the relevant authority must have regard to any guidance given from time to time by the Secretary of State.
- (6) Where, in the case of any proposals falling within sub-paragraph (1)—
  - (a) the authority fail to make a determination under that sub-paragraph within the period mentioned in sub-paragraph (2), or
  - (b) the requirement to make such a determination does not apply by virtue of sub-paragraph (3) or (4),the proposals require consideration under paragraph 8 and, in a case falling within paragraph (a), must be referred to the adjudicator.

#### *Provision of information*

- 20 Regulations may require one or more of the following—
- (a) the proposers (if any),
  - (b) the relevant authority, and
  - (c) the adjudicator,
- to provide such information relating to the proposals to such persons, and at such times, as may be prescribed.

### **PART 3**

#### **IMPLEMENTATION OF PROPOSALS**

#### *Requirement to implement proposals*

- 21 (1) Where—
- (a) any proposals have been approved under paragraph 8, or
  - (b) the relevant authority have determined under paragraph 19 to implement any proposals,
- then (subject to the following provisions of this paragraph) the proposals must be implemented, in the form in which they were so approved or determined, in accordance with this Part of this Schedule.
- (2) The relevant authority may, at the request of the proposers who made the proposals referred to in sub-paragraph (1), or, where the proposals were made by the authority themselves, on their own initiative—
    - (a) modify the proposals after consulting such persons as may be prescribed, and
    - (b) where any approval was given in accordance with paragraph 8(5), specify a later date by which the event in question must occur.
  - (3) If, after consulting such persons as may be prescribed, the relevant authority are satisfied—
    - (a) that implementation of the proposals would be unreasonably difficult, or
    - (b) that circumstances have so altered since approval was given under paragraph 8 that implementation of the proposals would be inappropriate,

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the authority may determine that sub-paragraph (1) is to cease to apply to the proposals.

- (4) The relevant authority may only make a determination under sub-paragraph (3) where proposals that they should do so have been published, in accordance with regulations, by the authority or proposers who made the proposals referred to in sub-paragraph (1); and regulations may provide for any of the provisions of sections 7 to 12, sections 15 and 16 and Parts 1 and 2 of this Schedule to have effect in relation to any such further proposals with or without modifications.
- (5) The relevant authority must in prescribed cases refer to the adjudicator by a prescribed time any matter which would otherwise fall to be determined by the authority under this paragraph.
- (6) If by the end of such period as may be prescribed the relevant authority have failed to take any step required by this paragraph, the authority must refer the matter to the adjudicator by the prescribed time.
- (7) Where any matter is referred to the adjudicator under this paragraph—
  - (a) the relevant authority may refer to the adjudicator with the matter their comments on it,
  - (b) the adjudicator must consider the matter afresh, and
  - (c) such of the provisions of sub-paragraphs (2) to (4) above as are relevant shall apply to him in connection with his decision on that matter as they apply to the authority.

*Proposals not falling to be implemented*

- 22 (1) Where, by virtue of paragraph 21(3), paragraph 21(1) ceases to apply to any proposals, those proposals are to be treated for the purposes of this Schedule as if they had been rejected under paragraph 8.
- (2) Where—
  - (a) any approval under paragraph 8 was given in accordance with paragraph 8(5), and
  - (b) the event specified under paragraph 8(5) does not occur by the date in question (whether as specified under that provision or as specified under paragraph 21(2)(b)),
 paragraph 21(1) ceases to apply to the proposals.
- (3) Where, by virtue of sub-paragraph (2), paragraph 21(1) ceases to apply to any proposals approved by the relevant authority under paragraph 8 and not referred to the adjudicator, those proposals must be considered afresh by the authority under that paragraph.
- (4) Where, by virtue of sub-paragraph (2), paragraph 21(1) ceases to apply to any proposals approved by the adjudicator under paragraph 8, those proposals must be considered afresh by him under that paragraph (and paragraph 17 applies accordingly).



*Proposals relating to community schools, community special schools or maintained nursery schools*

- 23 (1) This paragraph applies to proposals which fall to be implemented under paragraph 21 and relate to a community school, a community special school or a maintained nursery school or to a proposed such school.
- (2) The proposals must be implemented by the relevant authority.

*Proposals relating to foundation or voluntary controlled schools*

- 24 (1) This paragraph applies to proposals which fall to be implemented under paragraph 21 and relate to a foundation or voluntary controlled school or a proposed such school.
- (2) Proposals made by the relevant authority must be implemented by the authority.
- (3) Proposals made by proposers (including, in particular, such proposals so far as relating to the provision of the site for a proposed school) must be implemented by the relevant authority and by the proposers, respectively, to such extent as the proposals provide for each of them to do so.

*Proposals relating to voluntary aided school*

- 25 (1) This paragraph applies to proposals which fall to be implemented under paragraph 21 and relate to a voluntary aided school or a proposed voluntary aided school.
- (2) The proposals must be implemented—
- (a) so far as relating to the provision of any relevant premises for a proposed school, by the relevant authority,
  - (b) in the case of proposals under section 15 made by proposers, by the proposers and the relevant authority, and
  - (c) otherwise by the proposers or, in the case of proposals made by the relevant authority, by the relevant authority.
- (3) In sub-paragraph (2) “relevant premises” means—
- (a) in the case of proposals published under section 7, the site specified in the notice under that section or playing fields, and
  - (b) in any other case, playing fields.
- (4) Nothing in sub-paragraph (2) requires the relevant authority to provide any playing fields where—
- (a) a new voluntary aided school is to be established in place of one or more existing independent, foundation or voluntary schools falling to be discontinued on or before the date of implementation of the proposals, and
  - (b) those playing fields—
    - (i) were part of the premises of any of the existing schools (whether it was an independent school or a foundation or voluntary school), and
    - (ii) (if it was a foundation or voluntary school) were not provided by the authority.

*Proposals relating to foundation special schools*

- 26 (1) This paragraph applies to proposals which fall to be implemented under paragraph 21 and relate to a foundation special school or a proposed foundation special school.

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- (2) Where the proposals were made by the relevant authority, they must be implemented by the authority.
- (3) Proposals made by proposers (including, in particular, proposals so far as relating to the provision of the site for a proposed school) must be implemented by the relevant authority and by the proposers, respectively, to such extent as the proposals provide for each of them to do so.

*Proposals relating to Academy*

- 27 Where proposals published under section 7 to establish an Academy are implemented by the Secretary of State making an agreement under section 482 of EA 1996, subsection (3) of that section (requirement to consult certain LEAs about the establishment of the school) does not apply.

## PART 4

### PROVISION OF PREMISES AND OTHER ASSISTANCE IN CONNECTION WITH ESTABLISHMENT OF NEW SCHOOL

*Provision of site and buildings for proposed foundation, voluntary controlled or foundation special school*

- 28 (1) This paragraph applies where a local education authority are required—
- (a) by virtue of paragraph 24(2) or (3) to provide a site for a proposed foundation or voluntary controlled school, or
  - (b) by virtue of paragraph 26(2) or (3) to provide a site for a proposed foundation special school.
- (2) The authority must transfer their interest in the site and in any buildings on the site which are to form part of the school's premises—
- (a) to the school's trustees, to be held by them on trust for the purposes of the school, or
  - (b) if the school has no trustees, to the school's foundation body or (in the absence of such a body) to the governing body, to be held by that body for the relevant purposes.
- (3) If any doubt or dispute arises as to the persons to whom the authority are required to make the transfer, it must be made to such persons as the adjudicator thinks proper.
- (4) The authority must pay to the persons to whom the transfer is made their reasonable costs in connection with the transfer.
- (5) Where—
- (a) a transfer is made under this paragraph, and
  - (b) the transfer is made to persons who possess, or are or may become entitled to, any sum representing proceeds of the sale of other premises which have been used for the purposes of the school,
- those persons must notify the local education authority that paragraph (b) applies to them; and they or their successors must pay to the local education authority so much of that sum as, having regard to the value of the interest transferred, may be

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determined to be just, either by agreement between them and the authority or, in default of agreement, by the adjudicator.

- (6) In sub-paragraph (5)(b) the reference to proceeds of the sale of other premises includes a reference to—
- (a) consideration for the creation or disposition of any kind of interest in other premises, including rent, and
  - (b) interest which has accrued in respect of any such consideration;
- and for the purposes of any agreed determination under sub-paragraph (5) regard must be had to any guidance given from time to time by the Secretary of State.
- (7) Any sum paid under sub-paragraph (5) is to be treated for the purposes of section 14 of the Schools Sites Act 1841 (which relates to the sale or exchange of land held on trust for the purposes of a school) as a sum applied in the purchase of a site for the school.
- (8) A determination may be made under sub-paragraph (5) in respect of any property subject to a trust which has arisen under section 1 of the Reverter of Sites Act 1987 (c. 15) (right of reverter replaced by trust for sale) if, and only if—
- (a) the determination is made by the adjudicator, and
  - (b) he is satisfied that steps have been taken to protect the interests of the beneficiaries under the trust.
- (9) Sub-paragraph (5) is to apply for the purpose of compensating the authority notified under that sub-paragraph only in relation to such part of the sum mentioned in sub-paragraph (5)(b) (if any) as remains after the application of paragraphs A1 to A16 or 1 to 3 of Schedule 22 to SSFA 1998 to that sum.
- (10) In this paragraph—
- “the relevant purposes” means—
    - (a) in relation to a transfer to a school’s foundation body, the purposes of the schools comprising the group for which that body acts, and
    - (b) in relation to a transfer to a school’s governing body, the purposes of the school;
  - “site” does not include playing fields but otherwise includes any site which is to form part of the premises of the school in question.

*Grants in respect of certain expenditure relating to proposed voluntary aided school*

- 29 (1) This paragraph applies where any proposers are required by virtue of paragraph 25(2) to implement proposals involving the establishment of a new voluntary aided school.
- (2) Paragraph 5 of Schedule 3 to SSFA 1998 applies in relation to the new school as it applies in relation to an existing voluntary aided school.
- (3) In the application of that paragraph in relation to a new voluntary aided school—
- (a) the references to the governing body, in relation to any time before the governing body are constituted, are to be read as references to the proposers;
  - (b) where requirements are imposed in relation to grant paid by virtue of this paragraph to the proposers, the requirements must be complied with by the governing body, when they are constituted, as well as by the proposers.

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*Assistance for proposers of proposed voluntary aided school*

- 30 A local education authority may give to persons required by virtue of paragraph 25(2) to implement proposals involving the establishment of a voluntary aided school such assistance as the authority think fit in relation to the carrying out by those persons of any obligation arising by virtue of that provision.

*Duty to transfer interest in premises provided under paragraph 30*

- 31 (1) Where assistance under paragraph 30 consists of the provision of any premises for use for the purposes of a school, the local education authority must transfer their interest in the premises—
- (a) to the trustees of the school to be held on trust for the purposes of the school, or
  - (b) if the school has no trustees, to the school’s foundation body, to be held by that body for the relevant purposes.
- (2) If any doubt or dispute arises as to the persons to whom the authority are required to make the transfer it must be made to such persons as the adjudicator thinks proper.
- (3) The authority must pay to the persons to whom the transfer is made their reasonable costs in connection with the transfer.
- (4) In this paragraph “the relevant purposes” means, in relation to a transfer to a school’s foundation body, the purposes of the schools comprising the group for which that body acts.