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STATUTORY INSTRUMENTS

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**1999 No. 704**

**The Education (Transition to New Framework)  
(School Organisation Proposals) Regulations 1999**

**PART III**

**TRANSITIONAL PROVISIONS CONSEQUENT ON THE COMING  
INTO FORCE OF CHAPTER II OF PART II OF THE 1998 ACT  
(ESTABLISHMENT, ALTERATION OR DISCONTINUANCE OF SCHOOLS)**

**Approval of proposals published before 1st September 1999 to establish a new school**

**8.—(1)** This regulation applies where before 1st September 1999—

- (a) proposals have been published under section 35(1) or 41(1) of the 1996 Act to establish a school, to maintain a school as a county school or that a school established or proposed to be established should be maintained as a voluntary school;
- (b) notice has been served under section 339(5) of the 1996 Act of proposals such as are mentioned in section 339(1)(a) or 339(2)(a) of that Act;

but the proposals have not been determined before that date.

(2) Where this regulation applies—

- (a) sections 36 to 39 of the 1996 Act shall, where the proposals were published under section 35 of the 1996 Act, continue to apply in relation to the making of objections to such proposals, to the approval of such proposals or the determination that they should be implemented, and to the approval of particulars of school premises;
- (b) sections 42 to 44 of the 1996 Act shall, where the proposals were published under section 41(1) of the 1996 Act, continue to apply in relation to the making of objections to, and approval of, such proposals, and to the approval of school premises;
- (c) sections 340(2) to (4), (6) and (7) and 341 of the 1996 Act shall, where notice of the proposals was given under section 339(5) of the 1996 Act, continue to apply in relation to the making of objections to, and approval of, such proposals and approval of school premises.

**Order that school is to be voluntary controlled or voluntary aided**

**9.—(1)** Where, in relation to proposals to which regulation 8 applies, an application was made to the Secretary of State under section 48 of the 1996 Act before 1st September 1999, but no order was made under that section before that date, the Secretary of State may by order direct—

- (a) that the school shall be a voluntary controlled school, or
- (b) that the school shall be a voluntary aided school.

(2) Where an application was made for an order under section 48(1)(b) of the 1996 Act and the Secretary of State is satisfied that the governing body of the school will be able and willing, with

the assistance of grants under paragraph 5 of Schedule 3 to the 1998 Act, to defray the expenses that would fall to be borne by them by virtue of paragraph 3(1) or (2) of Schedule 3 to that Act as the governing body of a voluntary aided school, he shall make an order directing that the school shall be a voluntary aided school.

- (3) Where an application was made for an order under section 48(1)(b) of the 1996 Act and—
- (a) the Secretary of State is not satisfied that the governing body will be able to defray those expenses without the assistance of both—
    - (i) grant under paragraph 5 of Schedule 3 to the 1998 Act; and
    - (ii) a loan under paragraph 7 of that Schedule; and
  - (b) it appears to him that the area to be served by the school will not be also served by a community, foundation or voluntary controlled school,

he shall, before deciding whether to make such an order, consult such persons or bodies as appear to him to be representative of any religion or religious denomination which in his opinion, having regard to the circumstances of the area, is likely to be concerned.

#### **Continued application of section 63 of the 1996 Act**

**10.** Where regulation 8 applies, section 63 of the 1996 Act shall continue to apply in relation to proposals of a description referred to in that section; and in relation to any period on or after 1st September 1999 references in that section to a voluntary school shall be construed as references to a voluntary school within the meaning of the 1998 Act and references to a grant-maintained school shall be construed as references to a foundation school within the meaning of the 1998 Act.

#### **Implementation of approved proposals to establish a new school**

- 11.—**(1) Subject to paragraph (2) this regulation applies where—
- (a) proposals published under section 35(1)(a) or (b), or 41(1) of the 1996 Act, have been approved under section 37 or 43 of that Act (either before 1st September 1999 or on or after that date under those provisions as they have effect by virtue of regulation 8(2));
  - (b) proposals such as are mentioned in section 339(1)(a) or (2)(a) have been approved under section 340(4) of the 1996 Act (either before 1st September 1996 or on or after that date under those provisions as they have effect by virtue of regulation 8(2)); or
  - (c) a local education authority have determined under section 38 of the 1996 Act to implement proposals published under section 35(1)(a) or (b) of the 1996 Act (either before 1st September 1999 or on or after that date under that provision as it has effect by virtue of regulation 8(2)),

but the proposals have not been implemented before 1st September 1999.

(2) This regulation does not apply where the proposed school is one falling within regulation 6 of the 1999 Regulations.

- (3) Where this regulation applies—
- (a) proposals which were approved under any of the provisions referred to in paragraph (1) (a) or (b) shall be treated for the purposes of the 1998 Act as if they were required to be, and were, approved under paragraph 3 or 8 of Schedule 6 to the 1998 Act; and
  - (b) where the local education authority have determined under section 38 of the 1996 Act to implement proposals they shall be treated for the purposes of the 1998 Act as having determined under paragraph 4 or 9 of Schedule 6 to the 1998 Act to implement the proposals;

and accordingly such proposals fall to be implemented under paragraph 5 or 10 of Schedule 6 to the 1998 Act (in accordance with regulation 12 but subject to regulations 13 and 19).

### **Implementation of proposals to establish a new school – further provisions**

#### **12. Where regulation 11 applies–**

- (a) proposals published under section 35 of the 1996 Act shall be treated for the purposes of the 1998 Act as proposals published under section 28(1)(a) of that Act to establish a new community school, and accordingly the school, when open, (or, in a case of proposals published under section 35(1)(b) of the 1996 Act, when it is open as a school maintained by the local education authority) shall be a community school and treated as established as such under section 28 of that Act;
- (b) proposals published under section 41(1) of the 1996 Act shall be treated for the purposes of the 1998 Act–
  - (i) in a case where the Secretary of State has (before 1st September 1999) made an order under section 48(1)(a) of the 1996 Act or (on or after that date) an order under regulation 9(1)(a), as proposals published under section 28(2)(a) of the 1998 Act to establish a new voluntary controlled school and accordingly the school, when open, (or, in the case of proposals published under section 42(1)(b) of the 1996 Act, when it is open as a school maintained by the local education authority) shall be a voluntary controlled school and treated as established as such under section 28 of that Act; and
  - (ii) where the Secretary of State has (before 1st September 1999) made an order under section 48(1)(b) of the 1996 Act or, (on or after that date) an order under regulation 9(1)(b), as proposals published under section 28(2)(a) of the 1998 Act to establish a new voluntary aided school, and accordingly the school, when open, (or, in the case of proposals published under section 42(1)(b) of the 1996 Act, when it is open as a school maintained by the local education authority) shall be a voluntary aided school and treated as established as such under section 28 of that Act;
- (c) proposals such as are mentioned in section 339(1)(a) or (2)(a) of the 1996 Act shall be treated for the purpose of the 1998 Act as proposals published under section 31(1)(a) of that Act to establish a new community special school and accordingly the school, when open, shall be a community special school and treated as established as such under section 31 of that Act.

### **Temporary governing bodies**

**13.** Where regulation 8 applies and a temporary governing body has been established in pursuance of an arrangement made under section 96(3) or 97(2) of the 1996 Act in anticipation of approval of proposals or the determination that they should be implemented–

- (a) that temporary governing body shall be treated for the purposes of the Education Acts as if they were a temporary governing body constituted in pursuance of arrangements made under section 44 of the 1998 Act; and
- (b) the school shall be treated for the purposes of section 44 of the 1998 Act as falling within section 44(1) of that Act, so that the said section 44 (except any provision made by or under that section relating to the making and termination of arrangements for the constitution of temporary governing bodies, and the constitution of such bodies) shall apply.

### **Approval of proposals published before 1st September 1999 to make alterations to, or discontinue, a school**

**14.—(1)** This regulation applies where before 1st September 1999–

- (a) proposals have been published under section 35(1)(c) or (d), 41(2), 167(1), 259(1), 260(2) or 267(1) of the 1996 Act; or
- (b) notice has been served under section 339(5) of the 1996 Act of proposals such as are mentioned in section 339(1)(b) or (c) or (3) of that Act,

but the proposals have not been determined before that date.

(2) Where this regulation applies—

- (a) sections 36 to 39 of the 1996 Act shall, where the proposals were published under section 35 of the 1996 Act, continue to apply in relation to the making of objections to such proposals, to the approval of such proposals, or determination that such proposals should be implemented, and to the approval of particulars of school premises;
- (b) sections 42 to 44 of the 1996 Act shall, where the proposals were published under section 41(2) of the 1996 Act, continue to apply in relation to the making of objections to, and approval of, such proposals, and to the approval of school premises;
- (c) sections 168 to 170 of the 1996 Act shall, where the proposals were published under section 167 of the 1996 Act, continue to apply in relation to the making of objections to, and the approval of such proposals or determination that such proposals should be implemented;
- (d) sections 259(6) and (7), 261 and 262 (as modified by regulation 5) of the 1996 Act shall, where the proposals were published under section 259 of the 1996 Act, continue to apply in relation to the making of objections to, and approval of such proposals, and to the approval of school premises;
- (e) section 262 of the 1996 Act (as modified by regulation 5) shall, where the proposals were published under section 260 of the 1996 Act, continue to apply, in relation to the approval of school premises;
- (f) sections 267(7) and 269 of the 1996 Act shall, where proposals were published under section 267(1) of that Act, continue to apply in relation to the making of objections to, and approval of such proposals; and
- (g) sections 340(2) to (4) and 341 of the 1996 Act shall, where proposals were published under section 339 of the 1996 Act continue to have effect in relation to the making of objections to, and approval of, such proposals, and to the approval of school premises.

#### **Continued application of section 64 of the 1996 Act**

15. Where regulation 14 applies, section 64 of the 1996 Act shall continue to apply in relation to proposals of a description referred to in that section, and in relation to any period after 1st September 1999—

- (a) references in that section to a controlled school (within the meaning of the 1996 Act) shall have effect as references to a voluntary controlled school within the meaning of the 1998 Act; and
- (b) references in that section to a voluntary school (within the meaning of the 1996 Act) shall have effect as references to a voluntary school within the meaning of the 1998 Act.

#### **Implementation of proposals to make alterations to, or discontinue, a school**

16.—(1) This regulation applies where

- (a) proposals published under section 35(1)(c) or (d), 41(2), 167(1), 259(1), 260(2), 267(1) or 268(2) of the 1996 Act have been approved under sections 37, 43, 169, 261 or 269 of the 1996 Act (either before 1st September 1999 or on or after that date under those provisions as they have effect by virtue of regulation 14(2));

- (b) proposals such as are mentioned in section 339(1)(b) or (c) or (3) of the 1996 Act have been approved under section 340(4) of the 1996 Act (either before 1st September 1999 or on or after that date under those provisions as they have effect by virtue of regulation 14(2)); or
- (c) a local education authority have determined under section 38 or 170 of the 1996 Act to implement proposals published under section 35(1)(c) or (d) or, as the case may be, section 167(1) of the 1996 Act (either before 1st September 1999 or on or after that date under those provisions as they have effect by virtue of regulation 14(2)),

but the proposals have not been implemented before 1st September 1999.

(2) Where this regulation applies—

- (a) proposals which were approved under any of the provisions referred to in paragraph (1)(a) or (b) shall be treated as if they were required to be, and were, approved under paragraph 3 or 8 of Schedule 6 to the 1998 Act; and
- (b) where a local education authority have determined under section 38 or 170 of the 1996 Act to implement proposals they shall be treated as having determined under paragraph 4 or 9 of Schedule 6 to the 1998 Act to implement the proposals,

and accordingly the proposals fall to be implemented under paragraph 5 or 10 of Schedule 6 to the 1998 Act (in accordance with regulation 17 and but subject to regulation 19).

### **Implementation of proposals to make alterations to, or to discontinue, a school – further provisions**

17. Where regulation 16 applies—

- (a) proposals published under section 35(1)(c) or (d) of the 1996 Act shall be treated for the purposes of the 1998 Act as proposals published under section 28(1)(b) of that Act;
- (b) proposals published under section 41(2) of the 1996 Act relating to an aided or special agreement school shall be treated for the purposes of the 1998 Act as proposals published under section 28(2)(b) of that Act relating to a voluntary aided school;
- (c) proposals published under section 41(2) of the 1996 Act relating to a controlled school shall be treated for the purposes of the 1998 Act as proposals published under section 28(2)(b) of that Act relating to a voluntary controlled school;
- (d) proposals published under section 167 of the 1996 Act shall be treated for the purposes of the 1998 Act as proposals published by a local education authority under section 29(1) of that Act;
- (e) proposals published under section 259 or 260 of the 1996 Act shall be treated for the purposes of the 1998 Act as published under section 28(1)(b) of the Act by a local education authority (where the relevant category of school is a community school) or under section 28(2)(b) of that Act by the governing body of the relevant category of school (in any other case) and in this sub-paragraph the “relevant category of school” is a community, foundation, voluntary aided or voluntary controlled school depending on the category to which the school in question was allocated on 1st September 1999.
- (f) proposals published under section 267 or 268 of the 1996 Act shall be treated for the purposes of the 1998 Act as proposals published under section 29(1)(a) of the Act by a local education authority (where the relevant category of school is a community school) or under section 29(2) of that Act by the governing body of the relevant category of school (in any other case) and in this sub-paragraph “relevant category” has the same meaning as in sub-paragraph (e);
- (g) proposals published under section 339(1)(b) or (c) of the 1996 Act shall be treated for the purposes of the 1998 Act as proposals published under section 31(1)(b) or (c) of that Act to make a prescribed alteration to, or discontinue, a community special school;

- (h) proposals published under section 339(3) of the 1996 Act shall be treated, for the purposes of that Act as published under section 31(2) of that Act.

### **Continued application of directions under sections 63 and 64 of the 1996 Act**

**18.** Where before 1st September 1999 any direction was given under section 63 or 64 of the 1996 Act in relation to proposals which on the appointed day fall to be implemented under paragraph 5 or 10 of Schedule 6 to the 1998 Act by virtue of—

- (a) regulation 6 of the 1999 Regulations; or
- (b) regulation 11 or 16 above,

that direction shall continue to have effect despite the repeal of sections 63 and 64 of the 1996 Act.

### **Implementation of proposals – supplementary**

**19.—(1)** This regulation applies where on or after 1st September 1999 proposals fall to be implemented under paragraph 5 or 10 of Schedule 6 to the 1998 Act (by virtue of regulation 6 of the 1999 Regulations or regulation 11 or 16 above).

(2) Where this regulation applies and a direction has been given under section 63 or 64 of the 1996 Act (whether such a direction was given before 1st September and continues to have effect under regulation 18 or was given after that date under section 63 or 64 of the 1996 Act as those sections continue to have effect by virtue of regulations 10 or 15) in relation to any proposals treated as published under section 28(2) of the 1998 Act, such proposals shall be treated for the purposes of paragraph 13(3) of Schedule 6 to the 1998 Act as having provided for the local education authority to implement them.

(3) Where this regulation applies and—

- (a) proposals are treated as published under section 28(2) of the 1998 Act but paragraph (2) does not apply, or
- (b) proposals are treated as published under section 31(2)(a) of the 1998 Act,

such proposals shall be treated, for the purposes of paragraph 13(3) or 15(3) of Schedule 6 to the 1998 Act as having provided for the promoters or, as the case may be, the governing body to implement them.

(4) Where this regulation applies, paragraph 5(2) of Schedule 6 to the 1998 Act shall have effect as if “the Secretary of State” were substituted for “the relevant committee”.

### **Transitional Exemption Orders for the purposes of the Sex Discrimination Act 1975**

**20.—(1)** Where regulation 16 applies and the proposals in question are proposals for a school to cease to be an establishment which admits pupils of one sex only, paragraph 1 of Schedule 2 to the Sex Discrimination Act 1975(1) and section 552(4) of the 1996 Act (where applicable) shall continue to apply in relation to the making by the Secretary of State of a transitional exemption order.

(2) In this regulation “transitional exemption order” has the same meaning as in section 27 of the Sex Discrimination Act 1975.