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STATUTORY INSTRUMENTS

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**2007 No. 1289**

**EDUCATION, ENGLAND**

**The School Organisation (Prescribed Alterations to  
Maintained Schools) (England) Regulations 2007**

<i>Made</i>	- - - -	<i>26th April 2007</i>
<i>Laid before Parliament</i>		<i>4th May 2007</i>
<i>Coming into force</i>	- -	<i>25th May 2007</i>

In exercise of the powers conferred upon the Secretary of State by sections 18, 19, 21, 22, 23, 24, 31, 181 and 183 of the Education and Inspections Act 2006<sup>(1)</sup>, the Secretary of State for Education and Skills makes the following Regulations:

**Citation, commencement and application**

1.—(1) These Regulations may be cited as the School Organisation (Prescribed Alterations to Maintained Schools)(England) Regulations 2007 and come into force on 25th May 2007.

(2) These Regulations apply to England only.

**Interpretation**

2. In these Regulations—

“the Act” means the Education and Inspections Act 2006<sup>(2)</sup>;

“EA 2002” means the Education Act 2002<sup>(3)</sup>;

“EA 2005” means the Education Act 2005<sup>(4)</sup>;

“SSFA 1998” means the School Standards and Framework Act 1998<sup>(5)</sup>;

“the Constitution Regulations” means the School Governance (Constitution) (England) Regulations 2007<sup>(6)</sup>;

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(1) 2006 c.40. See section 32 for the definitions of “prescribed” and “regulations”.

(2) 2006 c.40.

(3) 2002 c.32.

(4) 2005 c.18.

(5) 1998 c.31.

(6) S.I 2007/957.

“the Foundation Regulations” means the School Organisation (Requirements as to Foundations)(England) Regulations 2007;(7)

“Accessibility Strategy” has the meaning given by section 28D of the Disability Discrimination Act 1995(8);

“admission number” means the number of pupils in any relevant age group that it is intended to admit or (where the context requires) have been admitted as determined by the admission authority (in accordance with section 89 and 89A of the SFFA 1998(9));

“the capacity guidance” means the Department for Education and Skills Guidance “Assessing the Net Capacity of Schools” issued in August 2002, reference number DfES/0729REV/2001(10) and references to the capacity of a school are references to the net capacity of that school determined in accordance with that guidance;

“change of category to foundation” has the meaning set out in regulation 3;

“Children and Young People’s Plan” means any plan published by the local education authority under section 17 of the Children Act 2004(11);

“date of publication” of proposals is—

- (a) the date on which the requirements of paragraphs 6, 7 and 21(4) of Schedule 1, 28 and 41(4) of Schedule 3, and 28 and 41(4) of Schedule 5 as applicable, are satisfied; and
- (b) where different requirements are satisfied on different days, the last of such days;

“Early Years Foundation Stage” means the foundation stage defined by section 81 of EA 2002, or the learning and development and welfare requirements specified by the Secretary of State by order and regulations made under section 39 of the Childcare Act 2006 when they come into force(12);

“extended services” has the same meaning given to it in the publication entitled “Extended Schools Access to Opportunities and Services for All” published by the Department for Education and Skills, dated June 2005 and with ISBN Number 1-84478-451-7;

“foundation proposals” has the meaning set out in regulation 3;

“further education college” means an institution within the further education sector (within the meaning of section 91(3) of the Further and Higher Education Act 1992(13));

“grammar school” has the same meaning as in Chapter 2 of Part 3 of SSFA 1998;

“implementation date” means the date approved or specified by the governing body, local education authority or adjudicator (as the case may be) as the date on which it is intended that the change of category to foundation or other change of category which falls to be implemented, should take place;

“indicated admission number” means the number of pupils in any relevant age group referred to as such in, and determined in accordance with, the net capacity assessment method set out in the capacity guidance;

“mainstream school” means a maintained school which is not a special school;

“NHS trust” means a body established by the Secretary of State under section 25 of the National Health Service Act 2006(14);

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(7) S.I 2007/1287.

(8) 1995 c.50. Section 28D was inserted by section 14(1) of the [Special Educational Needs and Disability Act 2001](#). (c. 10)

(9) Section 89 was amended by Schedule 4 to EA 2002, and section 89A was inserted by section 47(2) of EA 2002.

(10) ISBN 1 84185 610 X.

(11) 2004 c. 31.

(12) 2006 c.26.

(13) 1992 c.13.

(14) 2006 c.41.

“NHS foundation trust” has the same meaning as in section 30(1) of the National Health Service Act 2006;

“Primary Care Trust” means a body established or continuing under section 18 of the National Health Service Act 2006;

“representation period” means the appropriate period prescribed in these Regulations in which objections or comments must be made;

“relevant change” has the meaning set out in regulation 3;

“special educational needs” has the meaning given by section 312 of the Education Act 1996(15);

“special school” means a community special school or a foundation special school;

“sponsor governor” means a person who is nominated as a sponsor governor and is appointed as such by the governing body in accordance with Schedule 5 to the Constitution Regulations;

“sixth form education” means full-time education suitable to the requirements of pupils over compulsory school age;

“trustees of the school” means any person (other than the governing body) holding property on trust for the purposes of the school;

“14-16 education” means educational provision for 14-16 year olds;

“16-19 institution” means a maintained school which—

- (a) provides full-time education suitable to the requirements of pupils over compulsory school age, and
- (b) does not provide full-time education suitable to the requirements of pupils of compulsory school age; and

any references to section 18, 19, 20, 21 , 23 or 24 is a reference to that section of the Act.

### **Alterations to maintained schools by governing bodies: foundation proposals**

**3.—**(1) The alterations specified in paragraph (2), are to be known as foundation proposals and are—

- (a) prescribed under section 18 as alterations that may be implemented in respect of a community, foundation, voluntary aided, voluntary controlled, community special or foundation special school in pursuance of proposals published by the governing body; and
- (b) in the case of a community or community special school, are designated under section 19(3) as alterations capable of being proposed by the governing body.

(2) The prescribed alterations are—

- (a) a change of category ( a “change of category to foundation”)—
  - (i) from a community school to a foundation school;
  - (ii) from a voluntary aided school to a foundation school;
  - (iii) from a voluntary controlled school to a foundation school;
  - (iv) from a community special school to a foundation special school;
- (b) in relation to foundation and foundation special schools only, the acquisition of a foundation established otherwise than under SSFA 1998;

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(15) 1996 c.56. Section 312 was amended by section 57(1) and paragraph 23 of Schedule 7 to the Education Act 1997 (c.44); section 140(1) and (3), and paragraph 71(a) and (b) of Schedule 30 to SSFA 1998; section 149 of, and paragraphs 1 and 56 of Schedule 9 to the Learning and Skills Act 2000 (c.21), and section 6(2) and paragraphs 2 and 3 of Schedule 1 to the Act.

- (c) in relation to foundation and foundation special schools only, where the instrument of government of the school does not provide for a majority of the governing body to be foundation governors, any change in the instrument of government which results in the majority of governors being foundation governors (“a relevant change”).
- (3) Part 1 of Schedule 1 provides for the information to be included in, or provided in relation to, foundation proposals.
- (4) Part 2 of Schedule 1 provides for the publication, determination and implementation of foundation proposals.

#### **Other alterations to maintained schools by governing bodies**

- 4.—(1) The alterations specified in Part 1 of Schedule 2 are (in addition to foundation proposals) prescribed under section 18 as alterations that may be implemented in respect of a foundation or voluntary school in pursuance of proposals published by the governing body of the school.
- (2) The alterations specified in Part 2 of Schedule 2 are (in addition to foundation proposals)—
    - (a) prescribed under section 18 as alterations that may be implemented in respect of a community school, in pursuance of proposals published by the governing body of the school; and
    - (b) designated under section 19(3) as alterations capable of being proposed by that governing body.
  - (3) The alterations specified in Part 3 of Schedule 2 are (in addition to foundation proposals)—
    - (a) prescribed under section 18 as alterations that may be implemented in respect of a community special school or a foundation special school in pursuance of proposals published by the governing body of the school; and
    - (b) in the case of a community special school, designated under section 19(3) as alterations capable of being proposed by that governing body.
  - (4) Part 1 of Schedule 3 provides for the information to be included in, or provided in relation to, governing body proposals for alterations other than foundation proposals.
  - (5) Part 2 of Schedule 3 provides for the publication, determination and implementation of proposals for alterations other than foundation proposals.
  - (6) Part 3 of Schedule 3 applies in relation to change of category alterations, other than foundation proposals.

#### **Alterations to maintained schools by local education authorities**

- 5.—(1) The alterations specified in Part 1 of Schedule 4 are—
- (a) prescribed under section 18 as alterations that may be implemented in respect of a community school in pursuance of proposals published by the local education authority; and
  - (b) designated under section 19(2) as alterations capable of being proposed by the local education authority.
- (2) The alterations specified in Part 2 of Schedule 4 are—
- (a) prescribed under section 18 as alterations that may be implemented in respect of a community special school in pursuance of proposals published by the local education authority; and
  - (b) designated under section 19(2) as alterations capable of being proposed by the local education authority.

(3) The alterations specified in Part 3 of Schedule 4 are—

- (a) prescribed under section 18 as alterations that may be implemented in respect of a maintained nursery school in pursuance of proposals published by the local education authority; and
- (b) designated under section 19(2) as alterations capable of being proposed by the local education authority.

(4) The alterations specified in Part 4 of Schedule 4 are prescribed under section 18 as alterations that may be implemented in respect of a foundation or voluntary school in pursuance of proposals published by the local education authority(16).

(5) The alterations specified in Part 5 of Schedule 4 are prescribed under section 18 as alterations that may be implemented in respect of a foundation special school in pursuance of proposals published by the local education authority(17).

(6) Part 1 of Schedule 5 provides for the information to be included in or provided in relation to, proposals concerning alterations falling within paragraphs (1) to (5).

(7) Part 2 of Schedule 5 provides for the publication, determination and implementation of proposals concerning alterations falling within paragraphs (1) to (5).

### **Consultation prior to these Regulations**

6. If before May 25<sup>th</sup> 2007 any action was taken which (had it been taken on or after that day) would to any extent have satisfied the requirements of paragraph 5 of Part 2 of Schedule 1, paragraph 27 of Part 2 of Schedule 3 and paragraph 27 of Part 2 of Schedule 5, those requirements are to that extent to be treated as satisfied.

### **Land transfers**

7. Schedule 6 has effect in relation to the transfer of land where a school changes category.

### **Regard to guidance**

8. Any governing body, local education authority or adjudicator (where applicable) when—
- (a) consulting on proposals;
  - (b) considering or determining proposals;
  - (c) considering what are related proposals;
  - (d) making decisions on matters relating to implementation

must have regard to any guidance given from time to time by the Secretary of State.

### **Revocation**

9. The regulations specified in Schedule 7 are revoked.

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(16) These are capable of being proposed by a local education authority in accordance with section 19(2)(b).

(17) These are capable of being proposed by a local education authority in accordance with section 19(2)(c).

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26th April 2007

*Jim Knight*  
Minister of State  
Department for Education and Skills

## SCHEDULE 1

Regulation 3

### FOUNDATION PROPOSALS

#### PART 1

Information to be included in or provided in relation to foundation proposals

1. All proposals must include the following information—
  - (a) **School Details**

The name, address and category of the school for which the governing body are publishing the proposals;
  - (b) **Dates**

The proposed implementation date (“implementation date”);
  - (c) **Objections and comments**

A statement explaining the procedure for making representations, including—
    - (i) the date pursuant to paragraph 8 by which objections or comments should be sent to the governing body; and
    - (ii) the address to which objections or comments should be sent;
  - (d) **Consultation**

Evidence of the consultation before the proposals were published including—
    - (i) a list of persons who were consulted;
    - (ii) minutes of all public consultation meetings;
    - (iii) the views of the persons consulted;
    - (iv) a statement to the effect that all applicable statutory requirements in relation to the proposal to consult were complied with; and
    - (v) copies of all consultation documents and a statement on how these documents were made available;
  - (e) **Alteration description**

A statement of which one of, or combinations of, the alterations prescribed in regulation 3 comprise the proposals.
2. Where the prescribed alteration is a change of category to foundation, the proposals must contain the following information—
  - (a) the rationale for the proposals;
  - (b) a statement that the school will—
    - (i) have a foundation established otherwise than under SSFA 1998; or
    - (ii) belong to a group of schools for which a foundation body acts; or
    - (iii) be a foundation school not falling within either of sub-paragraphs (i) or (ii); and
  - (c) where it is a change of category to foundation from a voluntary aided school or voluntary controlled school, a statement that in accordance with section 20, the consent of the trustees and the persons by whom the foundation governors are appointed has been obtained.
3. Where the prescribed alteration is the acquisition of a foundation established otherwise than under SSFA 1998, the proposals must contain the following information—

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- (a) the name or proposed name of the foundation;
- (b) the rationale for acquiring the foundation and the ethos that it will bring to the school;
- (c) the details of membership of the foundation, including the names of the members;
- (d) where the majority of governors are to be foundation governors, a statement that a parent council will be established in accordance with section 23A of EA 2002(18);
- (e) the entitlement to appoint charity trustees and the number of trustees to be appointed;
- (f) the proposed constitution of the school's governing body;
- (g) details of the foundation's charitable objects;
- (h) whether the foundation already acts as a foundation for any foundation or voluntary schools;
- (i) except where the alteration consists of a voluntary aided or voluntary controlled school changing category to a foundation school and it is intended that the foundation should appoint a minority of foundation governors, a statement that the requirements set out in the Foundation Regulations will be met;
- (j) a statement and supporting evidence as to how the foundation will contribute to the advancement of education at the school and in particular how it will help to raise standards; and
- (k) a statement of how the foundation will contribute to the promotion of community cohesion and the impact the foundation will have on the diversity of school provision in the area.

4.—(1) Subject to sub-paragraph (2) where the prescribed alteration is a relevant change at a school for which a foundation already acts, the proposals must include the following information—

- (a) the name of the foundation;
- (b) the rationale for the change and how it will contribute to the advancement of education at the school and in particular how it will help to raise standards;
- (c) the details of membership of the foundation, including the names of the members;
- (d) details of the foundation's charitable objects;
- (e) a statement that the requirements set out in the Foundation Regulations will be met;
- (f) a statement that a parent council will be established in accordance with section 23A of EA 2002;
- (g) the proposed constitution of the school's governing body; and
- (h) the entitlement to appoint charity trustees and the number of trustees to be appointed.

(2) In addition where the relevant change relates to—

- (a) a foundation school which immediately before the 25<sup>th</sup> May 2007, was a foundation school having a foundations; or
- (b) a foundation school which having been a voluntary school immediately before the 25<sup>th</sup> May 2007, changed category to a foundation school on or after that date

a statement that in accordance with section 20 the consent of the trustees and the persons by whom the foundation governors are appointed has been obtained.

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(18) Section 23A was inserted by section 34 of the Act.



## PART 2

### Publication, determination and implementation of foundation proposals

#### Consultation on proposals

5.—(1) The governing body must, before they publish any proposals, consult the following persons—

- (a) any local education authority likely to be affected by the proposals, in particular neighbouring local education authorities where there may be significant cross-border movement of pupils;
  - (b) families, teachers, and other staff at the school;
  - (c) the governing body, teachers and other staff of any other school that may be affected by the proposals;
  - (d) families at any other school that may be affected by the proposals including where appropriate parents of pupils at feeder primary schools;
  - (e) any trade unions who represent staff at the school and representatives of any trade union of any other staff at schools that may be affected by the proposals;
  - (f) if proposals involve, or are likely to affect a school which has a religious character—
    - (i) the Diocesan Board of Education for any diocese of the Church of England any part of which is comprised in the area of the local education authority;
    - (ii) the bishop of a diocese of the Roman Catholic Church any part of which is comprised in the area of the local education authority; or
    - (iii) the relevant faith group in relation to the school as appropriate;
  - (g) if the proposals affect the provision of full-time 14-19 education, the Learning and Skills Council for England;
  - (h) Members of Parliament whose constituencies include the school that is the subject of the proposals, or whose constituents are likely to be affected by the proposals;
  - (i) the local district or parish council where the school is situated;
  - (j) where proposals affect early years provision, the Early Years Development and Child Care Partnership<sup>(19)</sup>, or those who benefit from a contractual arrangement giving them the use of the premises;
  - (k) where the proposal is one that is a relevant change, the existing trustees;
  - (l) any other interested party; and
  - (m) any other persons whom the governing body thinks appropriate.
- (2) Where the proposals relate to a special school, the governing body must also consult—
- (a) the relevant Primary Care Trust for the area in which the school is situated; and
  - (b) any NHS trust or NHS foundation trust responsible for a hospital or other provision in the area in which the school is situated.

#### Manner of publication of proposals

6.—(1) The governing body must publish—

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<sup>(19)</sup> Early Years Development and Child Care Partnerships are required to be established by section 119 of SSFA which is prospectively amended so as not to apply in England by paragraph 32 of Schedule 2 to the Childcare Act 2006 (c.21).

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- (a) the information contained in paragraph 1 of Part 1, except the information relating to consultation prescribed in paragraph 1(d);
  - (b) where the proposals include the acquisition of a foundation, or a relevant change—
    - (i) the name or proposed name of the foundation;
    - (ii) whether the foundation already acts as a foundation for any foundation or voluntary school; and
    - (iii) details of the membership of the foundation, including the names of the members;
  - (c) a summary of the rationale for the alterations proposed, the particular contribution they will make, and the direction they will provide to the school; and
  - (d) details of how complete copies of the proposals can be obtained.
- (2) The governing body must publish the information in sub-paragraph (1)—
- (a) by posting it in a conspicuous place in the area served by the school and at or near the main entrance to the school or, if there is more than one main entrance, all of them; and
  - (b) by publishing it in at least one newspaper circulating in the area served by the school.
- (3) The governing body must send a complete set of the proposals to—
- (a) the local education authority within 1 week of the date of publication;
  - (b) the Secretary of State within 1 week of the date of publication; and
  - (c) anyone who requests a copy of the proposals within 1 week of the date of the request.
7. Where the proposals relate to a special school, the governing body must also send a complete set of the proposals to—
- (a) the relevant Primary Care Trust for the area in which the school is situated;
  - (b) any NHS trust or NHS foundation trust responsible for a hospital or other provision in the area in which the school is situated;
  - (c) any local education authority who maintain a statement of special needs in respect of a registered pupil at the school;
  - (d) any local education authority which might be affected by the proposals; and
  - (e) parents of children who attend the special school.

### **Objections and comments**

8.—(1) Except where sub-paragraph (2) applies, any person may send objections or comments in relation to any proposals to the governing body within 4 weeks from the date of the publication of the proposals.

(2) Where proposals have been referred to the adjudicator in accordance with paragraph 10 the governing body must forward any objections or comments they have received under sub-paragraph 1 to the adjudicator within 1 week from the end of the representation period.

### **Governing body as decision maker**

9. For the purpose of section 21(2)(f), the governing body of the school to which the proposals relate is prescribed as the person who (subject to paragraph 10) must consider and determine the proposals.

### **Referrals to adjudicator for consideration and determination**

**10.**—(1) The local education authority may<sup>(20)</sup>, subject to paragraphs 11 and 12, require the governing body to refer proposals falling within sub-paragraph (2) to the adjudicator.

(2) Proposals fall within this sub-paragraph if the proposed alteration would result in a community, foundation, or voluntary controlled school, or community or foundation special school becoming either or both of the following—

- (a) a foundation or foundation special school having a foundation established otherwise than under SSFA 1998;
- (b) a foundation or foundation special school whose instrument of government provides for the majority of governors to be foundation governors.

**11.** Where the local education authority exercise their right to require a referral to the adjudicator under paragraph 10 they must do so in writing within 4 weeks of the date of the publication of the proposals.

**12.** The local education authority may only require that the proposals specified in paragraph 10 be referred to the adjudicator if they consider that—

- (a) the governing body have failed adequately to fulfil the requirements for consultation set out in these Regulations;
- (b) the governing body have failed adequately to have regard to any guidance given by the Secretary of State relating to consultation;
- (c) the governing body have failed to have regard to the responses to the consultation; or
- (d) the local education authority consider that the proposals will have a negative impact on standards at the school.

**13.** Where the governing body is required (under paragraph 10) to refer proposals to the adjudicator, they must also send to the adjudicator within 1 week of the end of the representation period, a copy of the proposals and any objections or comments received.

### **Withdrawal of proposals**

**14.** Proposals may be withdrawn by the governing body which published the proposals provided that—

- (a) such proposals are withdrawn before any determination is made;
- (b) written notice is given to—
  - (i) the local education authority;
  - (ii) in cases where the proposals have been referred to the adjudicator, the adjudicator and the Secretary of State; and
- (c) written notice is placed at the entrance to the school, or if there is more than one entrance, all of them.

### **Consideration and determination by governing body or adjudicator**

**15.**—(1) Where any proposals are to be determined by a governing body they may—

- (a) reject the proposals;
- (b) approve the proposals without modifications; or
- (c) approve the proposals with such modifications as the governing body thinks desirable.

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<sup>(20)</sup> As required by section 23(1) of the Act.

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(2) Where proposals are approved by the governing body (whether with or without modifications), the approval may be conditional on the occurrence of an event prescribed in paragraph 19.

(3) Any determination under sub-paragraph (1) must be made within the period of 6 months from the date of publication of the proposals.

**16.—**(1) Where proposals have been referred to the adjudicator for determination pursuant to paragraph 10, the adjudicator may—

- (a) reject the proposals;
- (b) approve the proposals without modifications; or
- (c) approve the proposals with such modifications as the adjudicator thinks desirable.

(2) Where proposals are approved by the adjudicator (whether with or without modifications), the approval may be conditional on the occurrence of an event prescribed in paragraph 19.

### **Referral to the adjudicator post determination**

**17.—**(1) Sub-paragraph (2) applies to proposals which relate to—

- (a) a change of category from voluntary aided to foundation school, without the acquisition of a foundation or a relevant change in the instrument of government; or
- (b) a change of category from voluntary aided to foundation school, together with the acquisition of a foundation or a relevant change in the instrument of government (or both).

(2) For the purpose of section 21(2)(h) the prescribed persons at whose request proposals to which this paragraph applies, (after their initial determination by the governing body) must be referred to the adjudicator, are—

- (a) the local education authority;
- (b) the Diocesan Board of Education for any diocese of the Church of England any part of which is comprised in the area of the authority;
- (c) the bishop of a diocese of the Roman Catholic Church any part of which is comprised in the area of the authority; and
- (d) where proposals relate to a school providing, or proposing to provide education for pupils aged 14 or over, the Learning and Skills Council for England.

(3) A request under sub-paragraph (1) must be made within 4 weeks of the initial determination by the governing body.

### **Provision for notification of decisions**

**18.—**(1) The governing body must notify the local education authority and the Secretary of State of their decision together with their reasons.

(2) In the case of any determination made by the adjudicator pursuant to paragraph 16 or 17 the adjudicator must notify the governing body, authority and the Secretary of State of his decision together with his reasons.

(3) Where any determination relates to proposals to which paragraph 17(1) applies the adjudicator must also notify the prescribed persons in paragraph 17(2) of his decision together with his reasons.

### **Conditional approval**

**19.** The following events are prescribed as specified events which (if the approval is expressed to take effect only if they occur) must occur by the date specified in the approval—

- (a) the making of any scheme relating to any charity connected with the school; and
- (b) the establishment of a foundation within the meaning of section 23A of SSFA 1998<sup>(21)</sup>.

### **Duty to implement proposals**

20. Subject to the following provisions of this Schedule, foundation proposals must be implemented by the governing body in the form in which they were approved.

### **Revocation of proposals (after approval)**

21.—(1) If the governing body are satisfied that—

- (a) implementation of the proposals would be unreasonably difficult; or
- (b) circumstances have so altered since approval was given that implementation would be inappropriate,

the governing body may determine at any time before implementation that paragraph 20 (duty to implement) is to cease to apply to the proposals.

(2) The governing body may only make a determination under sub-paragraph (1) where proposals that they should do so have been published by the governing body under sub-paragraph (3) (“revocation proposals”).

(3) Revocation proposals must contain—

- (a) a description of the original proposals as published in accordance with section 19 (3);
- (b) the date of publication of the original proposals;
- (c) a statement as to why it is proposed that, in accordance with sub-paragraph (1), paragraph 20 should not apply in relation to the original proposals; and
- (d) details of how copies of the original proposals can be obtained.

(4) Revocation proposals must be—

- (a) posted at or near the main entrance to the school or, if there is more than one entrance, all of them; and
- (b) published in at least one newspaper circulating in the area to be served by the school.

(5) Any person may object to or comment on revocation proposals, and such objections and comments must be sent to the governing body within 4 weeks of the date of publication of the proposals.

(6) The governing body must determine the revocation proposals within a period ending 2 months after the end of the representation period.

(7) If the governing body does not make a determination within the period specified in sub-paragraph (6) they must refer the proposals to the adjudicator within 1 week from the end of that period.

(8) Where the original proposals involve a change of category to a foundation school, before determining proposals under sub-paragraph (1) the governing body must consult the local education authority.

(9) Sub-paragraphs (10) to (12) apply where paragraph 17(2) applies to the proposals (voluntary aided to foundation).

(10) The governing body must notify the following persons of each decision taken under sub-paragraph (1) together with their reasons—

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(21) Section 23A was inserted by section 33(1) of the Act.

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- (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 authority;
  - (b) the bishop of a diocese of the Roman Catholic Church which is comprised in the area of the authority;
  - (c) where proposals relate to a school providing or proposing to provide education for pupils aged 14 or over, the Learning and Skills Council for England; and
  - (d) the trustees of the school (if any).
- (11) The persons at whose request revocation proposals must after their determination by the governing body be referred to the adjudicator are—
- (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 local education authority;
  - (b) the bishop of a diocese of the Roman Catholic Church any part of which is comprised in the area of the local education authority; and
  - (c) where proposals relate to a school providing or proposing to provide education for pupils aged 14 or over, the Learning and Skills Council for England.
- (12) A request under sub-paragraph (11) must be made within 4 weeks of the initial determination of the revocation proposals by the governing body.
- (13) Where a request is made under sub-paragraph (11) the governing body must submit the proposals and any objections or comments relating to the revocation proposals to the adjudicator within 1 week of receiving the request.

#### **Modification post determination**

**22.—**(1) The governing body may make modifications to the proposals at any time after determination, but before implementation, and where there has been a conditional approval, specify a later date by which the event in question must occur.

(2) Before modifying proposals for a change of category to a foundation school, the governing body must consult the local education authority.

#### **Proposals not falling to be implemented**

**23.—**(1) Where by virtue of paragraph 21, paragraph 20 (duty to implement) ceases to apply to any proposals, those proposals are to be treated for the purposes of this Schedule as if under paragraph 15 or 16 it has been determined that the proposals should be rejected.

(2) Where—

- (a) any conditional approval is given to proposals; and
- (b) the event specified in paragraph 19 does not occur by the required date

paragraph 20 ceases to apply to the proposals, and these proposals must be considered afresh by the governing body or adjudicator (as the case may be) and paragraph 15 or 16 apply accordingly.

#### **Unimplemented statutory proposals**

**24.** Where a school changes category in accordance with this Schedule and there are other proposals for prescribed alterations falling to be implemented in respect of that school which have not been implemented—

- (a) in the case of a school which has changed category from a community or community special school, the proposals must to the extent they have not been implemented, be implemented by the local education authority;

- (b) in the case of a school which has changed category from a voluntary aided school, the proposals must to the extent that they have not been implemented, be implemented by the local education authority.

### **Revision or replacement of the school's instrument of government**

**25.**—(1) The governing body and the local education authority must secure that by the end of the implementation period a new instrument of government is made for the school in accordance with the Constitution Regulations.

(2) The implementation period is the period commencing on the date a proposal is approved under paragraph 15 or 16 and ending on the implementation date.

(3) The new instrument of government is to take effect from the date of making for the purpose of reconstituting the governing body but does not affect the constitution of the governing body conducting the school pending the implementation date.

(4) For all other purposes, the new instrument of government is to take effect from the implementation date.

### **Reconstitution or replacement of the governing body**

**26.**—(1) The governing body and the local education authority must secure that as soon as reasonably practicable after the commencement of the implementation period (and in any event within a period of 3 months beginning on the implementation date) the governing body are reconstituted in accordance with the new instrument of government, and the Constitution Regulations.

(2) The current governing body must exercise their functions under the Act and these Regulations in a manner calculated to enable the authority to fulfil their duties under sub-paragraph (1).

### **Current governors continuing in office**

**27.**—(1) Sub-paragraph (2) applies to any member of a current governing body in respect of which a new instrument of government has been made under these Regulations.

(2) Subject to paragraph 28 a governor to whom this paragraph applies is to continue from the implementation date (or the making of the new instrument of government if later) as a governor of the corresponding category required by the new instrument of government (if any such category exists).

(3) A member of a current governing body who continues as a governor under sub-paragraph (2) holds office for the remainder of the term for which he is originally appointed or elected.

(4) The proceedings of the governing body are not invalidated by the school having more governors of a particular category than are provided for by the new instrument of government, pending removal of the surplus governors pursuant to paragraph 28.

### **Surplus governors**

**28.**—(1) Where—

- (a) on or after the implementation date a school has more governors of any of the categories of governors than are required as governors of the corresponding category by the new instrument of government; and
- (b) the excess is not eliminated by the required number of governors resigning

such number of that category as is required to eliminate the excess must cease to hold office in accordance with sub-paragraphs (2) and (3).

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(2) The governors who are to cease to hold office are to be determined on the basis of seniority, the governor whose current period of continuous service (whether as a governor of one or more than one category) is the shortest being the first to cease to hold office.

(3) Where it is necessary for the purposes of paragraph (2) to select one or more governors from a group of equal seniority, it must be done by drawing lots.

(4) For the purposes of this paragraph, sponsor governors nominated by a particular category of person are treated as if they constituted a separate category of governor.

(5) Any procedure set out in the new instrument of government for the removal of excess foundation governors does not apply to the reconstitution of the governing body under these Regulations.

### **Transfer of staff for foundation change of category**

**29.** Where a voluntary controlled or community school changes category to a foundation school, or from a community special school to a foundation special school—

- (a) the contract of employment between a person to whom this paragraph applies and the local education authority has effect from the implementation date as if originally made between him and the governing body;
- (b) all the authority's rights, powers, duties and liabilities under or in connection with the contract of employment transfer by virtue of this paragraph to the governing body on the implementation date; and
- (c) anything done before that date by, or in relation to, the authority in respect of that contract or the employee, is deemed from that date to have been done by or in relation to the governing body.

**30.—(1)** Subject to sub-paragraph (2), paragraph 29 applies to any person who immediately before the implementation date is employed by the authority to work solely at the school who is the subject of the proposals.

(2) Paragraph 29 does not apply to any person whose contract of employment terminates on the day immediately preceding the implementation date or to any person employed by the authority to work at the school solely in connection with the provision of meals.

**31.** Any person who before the implementation date has been appointed by the authority to work at the school as from the implementation date or a date thereafter is to be treated for the purpose of paragraph 29 as if he had been employed by the authority immediately before the implementation date to do such work at the school as he would have been required to do on or after that date under his contract of employment with the authority.

**32.** Paragraphs 29 to 31 are without prejudice to any right of an employee to terminate his contract if a substantial change is made to his detriment in his working conditions, but no such right must arise by reason only of the change in employer effected by these Regulations.



## SCHEDULE 2

Regulation 4

### ALTERATIONS OTHER THAN FOUNDATION PROPOSALS WHICH MAY BE PUBLISHED BY A GOVERNING BODY

#### PART 1

Prescribed alterations proposed by the governing  
body of a foundation or voluntary school.

##### **Enlargement to premises**

1.—(1) An enlargement of the premises of the school which would increase the capacity of the school by—

- (a) more than 30 pupils; and
- (b) by 25% or 200 pupils (whichever is the lesser).

(2) Subject to sub-paragraph (3), in this paragraph “an enlargement” of the premises of a school includes—

- (a) the proposed enlargement; and
- (b) any enlargements made in the 5 years preceding the date when the new enlargement will be made, excluding any temporary enlargements where it is anticipated the enlargement will be in place for less than 3 years; and
- (c) the making permanent of any temporary enlargement.

(3) Where there have been any enlargements for which proposals have been published and approved under section 28 of SSFA 1998 or section 19 of the Act (“approved proposal”), “enlargement of the premises” includes—

- (a) the proposed enlargements; and
- (b) any enlargements made in the period since the last approved proposal (excluding any temporary enlargements where it is anticipated the enlargement will be in place for less than the 3 years); and
- (c) the making permanent of any temporary enlargements.

##### **Increase in number of pupils**

2.—(1) Subject to sub-paragraphs (2) to (4), an increase in the number of pupils in any relevant age group by 27 or more.

(2) No increase arises for the purpose of sub-paragraph (1) unless the school’s admission number, taking into account the additional pupils, would exceed its highest admission number during the 3 school years immediately preceding the year in which it is intended that the increase will take effect.

(3) This paragraph does not apply in relation to any relevant age group comprising pupils the majority of whom are over compulsory school age.

(4) This paragraph does not apply to temporary increases which it is anticipated will be in place for no more than a year.

##### **Alteration of upper age limit**

3. The alteration of the upper age limit by a year or more, except—

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- (a) an alteration which consists of providing or ceasing to provide education for pupils over compulsory school age who are repeating a course of education completed before they reach compulsory school age;
- (b) an alteration resulting from persons being provided with education falling within section 80(1) of SSFA 1998; or
- (c) where the alteration is a temporary one which will be in place for no more than 2 years.

In this paragraph “the upper age limit” in relation to a school means the highest age of pupils for whom education is normally provided at the school.

#### **Alteration of lower age limit**

4.—(1) The alteration of the lower age limit such that when taken with all previous such alterations (if any) taking place since the appropriate date the lower age limit is at least a year higher or lower than the lower age limit on the appropriate date.

(2) In this paragraph—

“the lower age limit” in relation to the school means the lowest age of pupils for whom education is normally provided at the school; and

“the appropriate date” means whichever is the latest of the following dates—

- (a) the date falling 5 years before the date on which the governing body form the intention to make the alteration in question;
- (b) the date on which the school was established;
- (c) where any previous proposals for a change in the lower age limit have been approved, the date (or latest date) on which the last of any such proposals were implemented

(3) This paragraph does not apply where the alteration of the lower age limit is a temporary one which will be in place for no more than 2 years.

#### **Special educational needs**

5. In relation to provision for special educational needs—

- (a) the establishment of a provision that is recognised by the local education authority as reserved for children with special educational needs;
- (b) a change in the type or types of special educational provision that is recognized by the authority as reserved for children with special educational needs; or
- (c) discontinuance of provision which is recognised by the authority as reserved for children with special educational needs.

#### **Admissions arrangements**

6. The revision of admission arrangements of a grammar school as is mentioned in section 109(1) of SSFA 1998.

#### **Sex of pupils**

7.—(1) An alteration to a school to provide that—

- (a) a school which was an establishment which admitted pupils of one sex only becomes an establishment which admits pupils of both sexes; or
- (b) a school which was an establishment which admitted pupils of both sexes becomes an establishment which admits pupils of one sex only.

(2) For the purpose of this paragraph a school is to be treated as an establishment which admits pupils of one sex only if the admission of pupils of the other sex—

- (a) is limited to pupils over compulsory school age; and
- (b) does not exceed 25% of the number of pupils in the age group in question normally at the school.

### **Boarding**

8.—(1) The introduction or ending of boarding provision.

(2) The alteration of boarding provision such that the number of pupils for whom boarding provision is made is increased or decreased by 50 pupils or 50% (whichever is the greater).

### **Transfer to new site**

9. The transfer of a school to a new site except where the main entrance of the school on the proposed new site would be within 2 miles of the main entrance of the school on its current site (unless the school is transferring to a site within the area of another local education authority).

### **Discontinuance of use of site**

10. The discontinuance of provision at any site of a school which occupies more than one site, if the main entrance at any of the school's remaining sites is 1 mile or more from the main entrance of the site use of which is to be discontinued.

### **Changes of category**

11. A change of category—

- (a) from a voluntary controlled school to a voluntary aided school;
- (b) from a voluntary aided school to a voluntary controlled school;
- (c) from a foundation school to a voluntary controlled school; or
- (d) from a foundation school to a voluntary aided school.

## **PART 2**

Prescribed alterations proposed by the governing body of a community school.

### **Enlargement to premises**

12.—(1) An enlargement of the premises of the school which would increase the capacity of the school by—

- (a) more than 30 pupils; and
- (b) by 25% or 200 pupils (whichever is the lesser).

(2) Subject to sub-paragraph (3) in this paragraph—

“an enlargement” of the premises of a school includes—

- (a) the proposed enlargement; and
- (b) any enlargements made in the 5 years preceding the date when the new enlargement will be made, excluding any temporary enlargements where it is anticipated the enlargement will be in place for less than 3 years; and

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(c) the making permanent of any temporary enlargement.

(3) Where there have been any enlargements for which proposals have been published and approved under section 28 of SSFA 1998 or section 19 of the Act (“approved proposal”), “enlargement of the premises” includes—

(a) the proposed enlargements; and

(b) any enlargements made in the period since the last approved proposal (excluding any temporary enlargements where it is anticipated the enlargement will be in place for less than 3 years); and

(c) the making permanent of any temporary enlargements.

### **Increase in number of pupils**

**13.**—(1) Subject to sub-paragraphs (2) to (4), an increase in the number of pupils in any relevant age group by 27 or more.

(2) No increase arises for the purposes of sub-paragraph (1) unless the school’s admission number, taking into account the additional pupils, will exceed its highest admission number during the 3 school years immediately preceding the year in which it is intended that the increase will take effect.

(3) This paragraph does not apply in relation to any relevant age group comprising pupils the majority of whom are over compulsory school age.

(4) This paragraph does not apply to temporary increases which it is anticipated will be in place for no more than a year.

### **Alteration of upper age limit**

**14.**—(1) The alteration of the upper age limit so as to provide sixth form education, other than such an alteration resulting from persons being provided with education falling within section 80(1) of SSFA 1998.

(2) In this paragraph “the upper age limit” in relation to a school means the highest age of pupils for whom education is normally provided at the school.

### **Admission arrangements**

**15.** The revision of admission arrangements of a grammar school as mentioned in section 109(1) of SSFA 1998.

### **Changes of category**

**16.** A change of category—

(a) from a community school to a voluntary controlled school;

(b) from a community school to a voluntary aided school.

## PART 3

### Prescribed alterations proposed by the governing body of a foundation special or community special school

#### **Special education needs**

17. A change in the type of special educational needs for which the school is organised to make provision.

#### **Transfer to new site**

18. The transfer of a school to a new site except where the main entrance of the school on the proposed new site would be within 2 miles of the main entrance of the school on its current site (unless the school is transferring to a new site within the area of another local education authority).

#### **Increase in number of pupils**

19.—(1) Except where the school is established in a hospital, any increase in the number of pupils for whom the school is organised to make provision which, when taken together with all such previous increases in the number of pupils would increase the number of such pupils by 10% or the relevant number of pupils (whichever is the lesser) as compared with—

- (a) the number of such pupils on the appropriate date; or
- (b) if, at any time after that date the number of such pupils was lower than on that date, the lowest number at any such time.

(2) In this paragraph—

the “appropriate date” means whichever is the latest of the following dates—

- (a) the date falling 5 years before the date on which the governing body publish proposals to increase the number of pupils for which the school is organised to make provision;
- (b) the date when the school was established;
- (c) where any proposals for the making of a prescribed alteration to the school consisting of an increase in the number of pupils have been approved under paragraph 3 or 4 of Schedule 6 or paragraph 8 or 9 of Schedule 7 to SSFA 1998, or under these Regulations, the date (or latest date) on which the last of any such proposals were implemented;

the “relevant number of pupils” is 5 where the school only makes boarding provision and 20 in any other case.

#### **Decrease in numbers**

20. Except where the school is established in a hospital, any decrease in the number of pupils for whom the school is organised to make provision.

#### **Boarding**

21.—(1) The introduction or ending of boarding provision.

(2) Where the school makes provision for day pupils and boarding pupils, the alteration of boarding provision such that the number of pupils for whom boarding provision is made is increased or decreased by 5 pupils or more.

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### **Alteration of upper or lower age limits**

22. The alteration of the upper or lower age limits of the school (that is to say the highest and the lowest ages of pupils for whom education is normally provided at the school).

### **Sex of pupils**

23.—(1) An alteration to a school to provide that—

- (a) a school which was an establishment which admitted pupils of one sex only becomes an establishment which admits pupils of both sexes; or
- (b) a school which was an establishment which admitted pupils of both sexes becomes an establishment which admits pupils of one sex only.

(2) For the purpose of this paragraph a school is to be treated as an establishment which admits pupils of one sex only if the admission of pupils of the other sex—

- (a) is limited to pupils over compulsory school age; and
- (b) does not exceed 25% of the number of pupils in the age group normally at the school.

## SCHEDULE 3

Regulation 4

### GOVERNING BODY PROPOSALS FOR ALTERATIONS OTHER THAN FOUNDATION PROPOSALS

## PART 1

Information to be included in or provided in relation to proposals

### **School and governing body's details**

1. The name, address and category of the school for which the governing body are publishing the proposals.

### **Implementation and any proposed stages for implementation**

2. The date on which the proposals are planned to be implemented, and if they are to be implemented in stages, a description of what is planned for each stage, the number of stages intended and the dates of each stage.

### **Objections and comments**

3. A statement explaining the procedure for making representations, including—

- (a) the date prescribed in accordance with paragraph 29 of this Schedule by which objections or comments should be sent to the local authority; and
- (b) the address of the local education authority to which objections or comments should be sent.

### **Alteration description**

4. A description of the proposed alteration and in the case of special school proposals, a description of the current special needs provision.

### **School capacity**

5.—(1) Where the alteration is an alteration falling within any of paragraphs 1 to 4, 8 and 9, 12 to 14 and 18 to 21 of Schedule 2 the proposal must also include—

- (a) details of the current capacity of the school and, where the proposals will alter the capacity of the school, the proposed capacity of the school after the alteration;
- (b) details of the number of pupils to be admitted to the school in each relevant age group in the first school year in which the proposals will have been implemented;
- (c) where it is intended that proposals should be implemented in stages, the number of pupils to be admitted to the school in the first school year in which each stage will have been implemented; and
- (d) where the number of pupils in any relevant age group is lower than the indicated admission number for that relevant age group, a statement to this effect and details of the indicated admission number in question.

(2) Where the alteration is an alteration falling within any of paragraphs 1, 2, 9, 12, 13, and 18 to 21 of Schedule 2 a statement of the number of pupils at the school at the time of the publication of the proposals.

### **Implementation**

6. Where the proposals relate to a foundation or voluntary controlled school a statement as to whether the proposals are to be implemented by the local education authority or by the governing body, and, if the proposals are to be implemented by both, a statement as to the extent to which they are to be implemented by each body.

### **Additional Site**

7.—(1) A statement as to whether any new or additional site will be required if proposals are implemented and if so the location of the site if the school is to occupy a split site.

(2) Where proposals relate to a foundation or voluntary school a statement as to who will provide any additional site required, together with details of the tenure (freehold or leasehold) on which the site of the school will be held, and if the site is to be held on a lease, details of the proposed lease.

### **Changes in boarding arrangements**

8.—(1) Where the proposals are for the introduction or removal of boarding provision, or the alteration of existing boarding provision such as is mentioned in paragraph 8 or 21 of Schedule 2—

- (a) the number of pupils for whom it is intended that boarding provision will be made if the proposals are approved;
- (b) the arrangements for safeguarding the welfare of the children at the school;
- (c) the current number of pupils for whom boarding provision can be made and a description of the boarding provision; and
- (d) except where the proposals are to introduce boarding provision, a description of the existing boarding provision.

(2) Where the proposals are for the removal of boarding provision or an alteration to reduce boarding provision such as is mentioned in paragraph 8 or 21 of Schedule 2—

- (a) the number of pupils for whom boarding provision will be removed if the proposals are approved; and

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- (b) a statement as to the use to which the former boarding accommodation will be put if the proposals are approved.

### **Transfer to new site**

- 9. Where the proposals are to transfer a school to a new site the following information—
  - (a) the location of the proposed site (including details of whether the school is to occupy a single or split site), and including where appropriate the postal address;
  - (b) the distance between the proposed and current site;
  - (c) the reason for the choice of the proposed site;
  - (d) the accessibility of the proposed site or sites;
  - (e) the proposed arrangements for transport of pupils to the school on its new site; and
  - (f) a statement about other sustainable transport alternatives where pupils are not using transport provided, and how car use in the school area will be discouraged.

### **Objectives**

- 10. The objectives of the proposals.

### **Consultation**

- 11. Evidence of the consultation before the proposals were published including—
  - (a) a list of persons who were consulted;
  - (b) minutes of all public consultation meetings;
  - (c) the views of the persons consulted;
  - (d) a statement to the effect that all applicable statutory requirements in relation to the proposals to consult were complied with; and
  - (e) copies of all consultation documents and a statement on how these documents were made available.

### **Project costs**

12. A statement of the estimated total capital cost of the proposals and the breakdown of the costs that are to be met by the governing body, the local education authority, and any other party.

13. A copy of confirmation from the Secretary of State, local education authority and the Learning and Skills Council for England (as the case may be) that funds will be made available (including costs to cover any necessary site purchase).

### **Age range**

- 14. Where the proposals relate to a change in age range, the current age range for the school.

### **Early years provision**

15. Where the proposals are to alter the lower age limit of a mainstream school so that it provides for pupils aged between 2 and 5—

- (a) details of the early years provision including the number of full-time and part-time pupils, the number and length of sessions in each week, and the services for disabled children that will be offered;



- (b) how the school will integrate the early years provision with childcare services and how the proposals are consistent with the integration of early years provision for childcare;
- (c) evidence of parental demand for additional provision of early years provision;
- (d) assessment of capacity, quality and sustainability of provision in schools and in establishments other than schools who deliver the Early Years Foundation Stage within 3 miles of the school; and
- (e) reasons why such schools and establishments who have spare capacity, cannot make provision for any forecast increase in the number of such provision.

### **Changes to sixth form provision**

**16.** Where the proposals are to alter the upper age limit of the school so that the school provides sixth form education or additional sixth form education, a statement of how the proposals will—

- (a) improve the educational or training achievements;
- (b) increase participation in education or training; and
- (c) expand the range of educational or training opportunities

for 16-19 year olds in the area.

**17.** Where the proposals are to alter the upper age limit of the school so that the school ceases to provide sixth form education, a statement of the effect on the supply of 16-19 places in the area.

### **Special educational needs**

**18.** Where the proposals are to establish or change the type of provision for special educational needs—

- (a) a description of the types of learning difficulties in respect of which education will be provided;
- (b) any additional specialist features that will be provided;
- (c) the proposed numbers of pupils for which the provision is to be made;
- (d) details of how the provision will be funded;
- (e) a statement as to whether the education will be provided for children with special educational needs who are not registered pupils at the school to which the proposals relate;
- (f) a statement as to whether the expenses of the provision will be met from the school's delegated budget;
- (g) the location of the provision if it is not to be established on the existing site of the school; and
- (h) where the provision will replace existing educational provision for children with special educational needs, a statement as to how the governing body believes that the new provision is likely to lead to improvement in the standard, quality and range of the educational provision for such children.

**19.** Where the proposals are to discontinue provision for special educational needs—

- (a) details of alternative provision for pupils for whom the provision is currently made;
- (b) details of the number of pupils for whom provision is made that is recognised by the local education authority as reserved for children with special educational needs during each of the 4 school years preceding the current school year;

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- (c) details of provision made outside the area of the local education authority for pupils whose needs will not be able to be met in the area of the authority as a result of the discontinuance of the provision; and
- (d) a statement as to how the governing body believes the proposals are likely to lead to improvement in the standard, quality and range of the educational provision for such children.

**20.** Where the proposals will lead to alternative provision for children with special educational needs, as a result of the establishment, alteration or discontinuance of existing provision, the specific educational benefits that will flow from the proposals in terms of—

- (a) improved access to education and associated services including the curriculum, wider school activities, facilities and equipment with reference to the local education authority's Accessibility Strategy;
- (b) improved access to specialist staff, both educational and other professionals, including any external support and outreach services;
- (c) improved access to suitable accommodation; and
- (d) improved supply of suitable places.

### **Sex of pupils**

**21.** Where the proposals are to make an alteration to provide that a school which was an establishment which admitted pupils of one sex only becomes an establishment which admits pupils of both sexes—

- (a) details of the likely effect which the alteration will have on the balance of the provision of single-sex education in the area;
- (b) evidence of local demand for single-sex education; and
- (c) details of any transitional period which the body making the proposals wishes specified in a transitional exemption order (within the meaning of section 27 of the Sex Discrimination Act 1975<sup>(22)</sup>).

**22.** Where the proposals are to make an alteration to a school to provide that a school which was an establishment which admitted pupils of both sexes becomes an establishment which admits pupils of one sex only—

- (a) details of the likely effect which the alteration will have on the balance of the provision of single-sex education in the area; and
- (b) evidence of local demand for single-sex education.

### **Extended services**

**23.** If the proposed alterations affect the provision of the school's extended services, details of the current extended services the school is offering and details of any proposed change as a result of the alterations.

### **Need or demand for additional places**

**24.** If the proposals involve adding places—

- (a) a statement and supporting evidence of the need or demand for the particular places in the area;

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(22) 1975 c.65. Section 27 is amended by paragraph 3 of Schedule 3 to the Act.

- (b) where the school has a religious character, a statement and supporting evidence of the demand in the area for education in accordance with the tenets of the religion or religious denomination; and
  - (c) where the school adheres to a particular philosophy, evidence of the demand for education in accordance with the philosophy in question and any associated change to the admission arrangements for the school.
25. If the proposals involve removing places—
- (a) a statement and supporting evidence of the reasons for the removal, including an assessment of the impact on parental choice; and
  - (b) a statement on the local capacity to accommodate displaced pupils.

#### **Additional information in the case of special schools**

26. Where the proposals relate to a special school the following information must also be provided—

- (a) information as to the numbers, age range, sex and special educational needs of the pupils (distinguishing boarding and day pupils) for whom provision is made at the school;
- (b) information on the predicted rise or fall (as the case may be) in the number of children with particular types of special educational needs requiring specific types of special educational provision;
- (c) a statement about the alternative provision for pupils who may be displaced as a result of the alterations;
- (d) where the proposals would result in the school being organised to make provision for pupils with a different type or types of special educational needs, with the result that the provision which would be made for pupils currently at the school would be inappropriate to their needs, details of the other schools which such pupils may attend including any interim arrangements and transport arrangements to such schools;
- (e) where the proposals relate to a foundation special school, a statement as to whether the proposals are to be implemented by the local education authority, or by the governing body, and if the proposals are to be implemented by both, a statement as to the extent to which they are to be implemented by each body.

## **PART 2**

### **Publication, determination and implementation of proposals**

#### **Consultation on proposals**

27.—(1) The governing body must, before they publish any proposals, consult the following persons—

- (a) any local education authority likely to be affected by the proposals, in particular neighbouring local education authorities where there may be significant cross-border movement of pupils;
- (b) families, teachers and other staff at the school;
- (c) the governing body, teachers and other staff of any other school that may be affected by the proposals;
- (d) families at any other school that may be affected by the proposals including where appropriate parents of pupils at feeder primary schools;

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- (e) any trade unions who represent staff at the school and representatives of any trade unions of any other staff at schools that may be affected by the proposals;
  - (f) the trustees of the school (if any);
  - (g) if proposals involve, or are likely to affect a school which has a religious character—
    - (i) the Diocesan Board of Education for any diocese of the Church of England any part of which is comprised in the area of the authority;
    - (ii) the bishop of a diocese of the Roman Catholic Church any part of which is comprised in the area of the authority; or
    - (iii) the relevant faith group in relation to the school as appropriate;
  - (h) if the proposals affect the provision of full-time 14-19 education, the Learning and Skills Council for England;
  - (i) Members of Parliament whose constituencies include the school that is the subject of the proposals or whose constituents are likely to be affected by the proposals;
  - (j) the local district or parish council where the school is situated;
  - (k) where proposals affect early years provision, the Early Years Development and Child Care Partnership<sup>(23)</sup>, or those who benefit from a contractual arrangement giving them the use of the premises;
  - (l) any other interested party; and
  - (m) any other persons whom the governing body thinks appropriate.
- (2) Where the proposals relate to a special school, the governing body must also consult—
- (a) the relevant Primary Care Trust for the area in which the school is situated; and
  - (b) any NHS trust or NHS foundation trust responsible for a hospital or other provision in the area in which the school is situated.

### **Manner of publication of proposals**

- 28.**—(1) The governing body must publish—
- (a) the information contained in paragraphs 1 to 7(1), 8(1)(a) and (b), 9(a) and 19(a) of this Schedule;
  - (b) details of how complete copies of the proposals can be obtained.
- (2) The governing body must publish the information in sub-paragraph (1)—
- (a) by posting it in a conspicuous place in the area served by the school and at or near the main entrance to the school or, if there is more than one main entrance, all of them; and
  - (b) publishing it in at least one newspaper circulating in the area served by the school.
- (3) The governing body must send a complete set of the proposals to—
- (a) the relevant local education authority within 1 week of the date of publication;
  - (b) the Secretary of State within 1 week of the date of publication; and
  - (c) anyone who requests a copy of the proposals within 1 week of the request.
- (4) Where the proposals relate to a special school, the governing body must also send a complete set of the proposals to—
- (a) the relevant Primary Care Trust for the area in which the school is situated;

<sup>(23)</sup> Early Years Development and Child Care Partnerships are required to be established by section 119 of SSFA 1998 which is prospectively amended so as not to apply in England by paragraph 32 of Schedule 2 to the [Childcare Act 2006\(c.21\)](#)

- (b) any NHS trust or NHS foundation trust responsible for a hospital or other provision in the area in which the school is situated;
- (c) any local education authority which maintains a statement of special needs in respect of a registered pupil at the school;
- (d) any local education authority which might be affected by the proposal; and
- (e) parents of children who attend the special school.

### **Objections and comments**

**29.**—(1) Except where sub-paragraph (2) applies, any person may send objections or comments in relation to any proposals to the local education authority within 6 weeks from the date of publication of the proposals.

(2) Where the proposal is for an excepted expansion any objections or comments must be sent to the authority within 4 weeks from the date of the publication of the proposals.

(3) For the purpose of this Schedule an excepted expansion means, in respect of primary schools and secondary schools except grammar schools, a prescribed alteration falling within paragraphs—

- (a) 1, 2 and 3 (but in respect of paragraph 3 only where the alteration of the upper age limit is being made so as to provide sixth form education) of Part 1 to Schedule 2;
- (b) 12, 13 and 14 (but in respect of paragraph 14 only where the alteration of the upper age limit is being made so as to provide sixth form education) of Part 2 to Schedule 2;
- (c) 19 and 22 (but in respect of paragraph 22 only where the alteration of the upper age limit is being made so as to provide sixth form education) of Part 3 to Schedule 2.

(4) The representation period means the period starting on the date of publication of the proposals and ending 6 or 4 weeks later, as appropriate.

### **Local education authority as decision maker**

**30.**—(1) For the purpose of section 21(2)(f) the local education authority is prescribed as the person who (subject to the remaining provisions of this Schedule) must consider and determine the proposals.

(2) Where paragraph 36 applies, (transfer to a different local education authority area) the local education authority referred to in sub-paragraph (1) is the local education authority described in paragraph 36 as Local Education Authority A.

### **Consideration and determination of proposals by the local education authority or adjudicator**

**31.**—(1) In determining proposals to which this Schedule applies the local education 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.

(2) Before approving any proposals with modifications the authority must consult the governing body (unless the modifications are proposed by the governing body).

(3) Where proposals are approved by the authority (whether with or without modifications) the approval may be conditional on the occurrence of an event prescribed in paragraph 38.

(4) Any determination under sub-paragraph (1) must be made within the period of 2 months from the end of the representation period.

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(5) Where the authority does not make a determination within the period prescribed by sub-paragraph (4), the proposals must be referred to the adjudicator.

**32.**—(1) Where any proposals have been referred to the adjudicator pursuant to paragraphs 31(5) or 34, the adjudicator may—

- (a) reject the proposals;
- (b) approve the proposals without modifications; or
- (c) approve the proposals with such modifications as the adjudicator thinks desirable.

(2) Before approving any proposals with modifications, the adjudicator must consult the relevant governing body and the local education authority (unless they proposed the modification).

(3) Where the proposals are approved by the adjudicator (whether with or without modifications) the approval may be conditional on the occurrence of an event prescribed in paragraph 38.

### **Referral to adjudicator post determination**

**33.**—(1) For the purpose of section 21(2)(h), the prescribed persons at whose request proposals must, after their initial determination by the local education authority, be referred to the adjudicator are—

- (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 authority;
- (b) the bishop of a diocese of the Roman Catholic Church any part of which is comprised in the area of the authority;
- (c) where proposals relate to a school providing, or proposing to provide education for pupils aged 14 or over, the Learning and Skills Council for England;
- (d) where proposals relate to a community school, and the proposal is an excepted expansion (as defined in paragraph 29) the governing body.

(2) A request under sub-paragraph (1) must be made within 4 weeks of the initial determination of the proposal by the authority.

(3) Where a request is made under sub-paragraph (1) the authority must submit the proposals and any objections or comments made in relation to the proposals to the adjudicator within 1 week of receiving the request.

### **Provision for notification of decisions**

**34.**—(1) The local education authority must notify the following persons of each decision under paragraph 31, together with their reasons—

- (a) the governing body;
- (b) the trustees of the school (if any);
- (c) the Secretary of State;
- (d) where proposals include provision for 14-16 education or sixth form education, the Learning and Skills Council for England;
- (e) the Diocesan Board of Education for any diocese of the Church of England any part of which is comprised in the area of the authority;
- (f) the bishop of any diocese of the Roman Catholic Church any part of which is comprised in the area of the authority;
- (g) where the proposals relate to a special school—
  - (i) the relevant Primary Care Trust for the area in which the school is situated, and

- (ii) any NHS trust or NHS foundation trust responsible for a hospital or other provision in the area in which the school is situated;
  - (h) subject to sub-paragraph (3), each objector to the proposals; and
  - (i) the adjudicator.
- (2) In the case of any determination made by the adjudicator pursuant to paragraph 31(5) or 33, the adjudicator must notify the local education authority and the persons in sub-paragraphs (a) to (h) of sub-paragraph (1) of each decision, together with his reasons.
- (3) Where objections to a proposal take the form of a petition (that is to say a document containing the text of one objection signed by more than one objector) the authority or adjudicator (as the case may be) may comply with sub-paragraph (1)(h) by—
- (a) notifying the person (if any) who appears to them to have arranged for the petition to be sent to the authority; or
  - (b) if there is no such person, notifying the objector whose name appears first on the petition.

### **Related proposals**

- 35.**—(1) Where proposals appear to be related to other proposals the local education authority or adjudicator, as the case may be, must consider the related proposals together.
- (2) Where the authority are required under paragraph 31(5) or 33 to refer any proposals to the adjudicator, the authority must also within 1 week refer to the adjudicator any other proposals which appear to them to be related.

### **Determination of proposals where the school is transferring to a different local education authority**

- 36.**—(1) This paragraph applies to the determination of any proposals for the transfer of the school to a new site falling within paragraph 9 or 18 of Schedule 2, where the new site is in an area other than that of the local education authority who maintain the school.
- (2) The local education authority who maintain the school (“Local Education Authority A”) must send a copy of the proposals, together with all objections and comments received, to the local education authority for the area where it is proposed that the school will be situated (“Local Education Authority B”).
- (3) Local Education Authority A must send the documents required under sub-paragraph (2) within 1 week from the end of the representation period.
- (4) Before determining the proposals in accordance with paragraph 30, Local Education Authority A must first seek the recommendation of Local Education Authority B on how the proposals should be determined.
- (5) Any determination made under sub-paragraph (1) must be made within the period of 2 months from the end of the representation period.

### **Transitional exemption orders under the Sex Discrimination Act 1975**

- 37.**—(1) This paragraph applies to proposals for a school to cease to be an establishment which admits pupils of one sex only.
- (2) Sub-paragraph (3) applies where such proposals fall within paragraph 7 or paragraph 23 of Schedule 2, and in accordance with paragraph 28(3)(a) of this Schedule the governing body sends a copy of the published proposals to the local education authority.

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(3) Sending the published proposals is to be treated as an application to the local education authority for a transitional exemption order under section 27 of the Sex Discrimination Act 1975, and the local education authority must make such an order accordingly.

(4) Where—

- (a) the authority have failed to make a transitional exemption order; or
- (b) the authority refer the proposals to the adjudicator under paragraph 31(5) or 33

they must refer the question whether to make a transitional exemption order to the adjudicator.

(5) Where that question is referred to the adjudicator—

- (a) he must consider the matter afresh, and
- (b) he may make a transitional exemption order accordingly.

(6) In this paragraph “make”, in relation to the transitional exemption order, includes (so far as the context permits) vary or revoke.

### Conditional approvals

**38.**—(1) The following events are prescribed as specified events which (if the approval is expressed to take effect only if they occur) must occur by the date specified in the approval—

- (a) the grant of planning permission under Part 3 of the Town and Country Planning Act 1990<sup>(24)</sup>;
- (b) the acquisition of any site required for the implementation of the proposals;
- (c) the acquisition of playing fields required for the implementation of the proposals;
- (d) the securing of any necessary access to a site referred to in sub-paragraph (b) or playing fields referred to in sub-paragraph (c);
- (e) the private finance credit approval given by the Department for Education and Skills following the entering into a private finance contract by a local education authority;
- (f) the entering into an agreement for any necessary building project supported by the Department for Education and Skills in connection with the programme known as “Building Schools for the Future”;
- (g) in the case of mainstream schools, the agreement to any change to the admission arrangements of any other school or schools, as specified in the approval;
- (h) the making of any scheme relating to any charity connected with the school;
- (i) the formation of any federation (within the meaning of section 24(2) of EA 2002) of which it is intended that the school should form part, or the fulfilling of any other condition relating to the school forming part of a federation;
- (j) the Secretary of State giving approval under regulation 5(4) of the Education (Foundation Body)(England) Regulations 2000<sup>(25)</sup> to a proposal that a foundation body must be established and that the school must form part of a group for which a foundation must act;
- (k) the Secretary of State making a declaration under regulation 22(3) of the Education (Foundation Body) (England) Regulations 2000 that the school should form part of a group for which a foundation body acts; and
- (l) where the proposals in question depend upon any of the events specified in paragraphs (a) to (g) occurring by a specified date in relation to proposals relating to any other school or proposed school, the occurrence of such an event.

<sup>(24)</sup> 1990 c.8.

<sup>(25)</sup> S.I. 2000/2872.



- (2) For the purpose of paragraph (g) above a change to the admission arrangements is agreed—
- (a) in the case where the change arises from the admission arrangements for the school year in question being different from the admission arrangements for the previous school year, if the admission arrangements are determined under section 89(4) of SSFA 1998 and either—
    - (i) no objection is made to the change in accordance with section 90 of SSFA 1998, or
    - (ii) if an objection to the change is made and referred to the adjudicator in accordance with section 90 of SSFA 1998, the objection is not upheld;
  - (b) in a case where the change arises from a variation made under section 89(5) of SSFA 1998 or made under The School Admissions (Alteration and Variation of, and Objections to, Arrangements) (England) Regulations 2007<sup>(26)</sup>, where the variation is required to be referred to the adjudicator, if the adjudicator determines that the variation should have effect without modifications; and
  - (c) in a case where the change arises from a variation made under those regulations where the variation is not required to be referred to the adjudicator, when the variation is made.

### **Withdrawal of proposals**

**39.** Proposals may be withdrawn by the governing body which published the proposals provided that—

- (a) such proposals are withdrawn before any determination is made,
- (b) written notice is given to—
  - (i) the local education authority;
  - (ii) in cases where the proposals have been referred to the adjudicator, the adjudicator and the Secretary of State; and
- (c) written notice is placed at the main entrance to the school or, if there is more than one main entrance, all of them.

### **Duty to implement proposals**

**40.**—(1) Subject to the following provisions of this Schedule proposals must be implemented in the form in which they were approved.

(2) Where the local education authority or adjudicator have approved any proposals then the proposals must be implemented by the governing body in the form in which they were approved.

### **Revocation of proposals (after approval)**

**41.**—(1) If the local education authority, or adjudicator (where the original proposals were referred to him under paragraph 31(5) only, or a referral is made to him under sub-paragraph (9)) are satisfied that—

- (a) implementation of the proposals would be unreasonably difficult; or
- (b) circumstances have so altered since approval was given that implementation would be inappropriate,

the authority or adjudicator as appropriate may determine that paragraph 40 (duty to implement) is to cease to apply to the proposals.

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(26) [S.I. 2007/496](#).

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(2) The authority or adjudicator (as the case may be) may only make a determination under sub-paragraph (1) where proposals have been published by the governing body under sub-paragraph (3) (“revocation proposals”).

(3) Revocation proposals must contain—

- (a) a description of the original proposals as published in accordance with section 19(3);
- (b) the date of publication of the original proposals;
- (c) a statement as to why it is proposed that, in accordance with sub-paragraph (1), paragraph 40 should not apply in relation to the original proposals; and
- (d) details of how copies of the original proposals can be obtained.

(4) Revocation proposals must be published by—

- (a) posting them in a conspicuous place in the area served by the school, and at or near the main entrance to the school or, if there is more than one main entrance, all of them, and
- (b) publishing them in at least one newspaper circulating in the area served by the school.

(5) The governing body must submit the revocation proposals within 1 week of the date of publication to the authority.

(6) Any person may object to or comment on revocation proposals, and such objections and comments must be sent to the authority within 6 weeks of the date of publication of the proposals.

(7) Where the original proposals were decided by the adjudicator pursuant to a reference under paragraph 31(5), the authority must refer the revocation proposals, together with any objections or comments in relation to them, to him within 2 weeks of the end of the representation period.

(8) Where the authority determine revocation proposals, any determination must be made within a period ending 2 months after the end of the representation period.

(9) If the authority does not make a determination within the period specified in sub-paragraph (8) they must refer the proposals to the adjudicator within 1 week from the end of that period.

(10) The authority must notify the following persons of each decision taken under sub-paragraph (1) together with their reasons—

- (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 authority;
- (b) the bishop of a diocese of the Roman Catholic Church any part of which is comprised in the area of the authority;
- (c) where proposals relate to a school providing or proposing to provide education for pupils aged 14 or over, the Learning and Skills Council for England;
- (d) where the proposals relate to a voluntary or foundation school, or a foundation special school—
  - (i) the governing body; and
  - (ii) the trustees of the school; and
- (e) where the original proposal is an excepted expansion, (as defined in paragraph 29(3)), the governing body.

(11) The persons at whose request revocation proposals must after their determination by the authority be referred to the adjudicator are—

- (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 authority;
- (b) the bishop of a diocese of the Roman Catholic Church any part of which is comprised in the area of the authority;

- (c) where proposals relate to a school providing or proposing to provide education for pupils aged 14 or over, the Learning and Skills Council for England;
- (d) where the proposals relate to a voluntary or foundation school, or a foundation special school—
  - (i) the governing body, and
  - (ii) the trustees of the school; and
- (e) where the proposal is an excepted expansion (as defined in paragraph 29(3)) the governing body.

(12) A request under sub-paragraph (11) must be made within 4 weeks of the initial determination of the revocation proposals by the authority.

(13) Where a request is made under sub-paragraph (11) the authority must submit the revocation proposals, and any objections or comments relating to the proposals to the adjudicator within 1 week of receiving the request.

### **Modification post determination**

**42.**—(1) Where the local education authority has determined the proposals, the authority may make modifications to the proposals, and where there has been a conditional approval, specify a later date by which the event in question must occur, at the request of the governing body at any time after determination but before implementation.

(2) Where the adjudicator has determined the proposals, he may modify the proposals, and where there has been a conditional approval, specify a later date by which the event in question must occur, after consulting the governing body and the local education authority (unless they have proposed the modifications) at any time after determination but before implementation.

### **Proposals not falling to be implemented**

**43.**—(1) Where by virtue of paragraph 41(1), paragraph 40 (duty to implement) ceases to apply to any proposals, those proposals are to be treated for the purpose of this Schedule as if they had been rejected.

(2) Where a conditional approval under paragraph 38 is given, and an event specified in that approval does not occur by the required date—

- (a) paragraph 40 ceases to apply to the proposals,
- (b) the proposals must be considered afresh by the local education authority or adjudicator (as the case may be) and paragraphs 30 to 42 apply accordingly.

## **PART 3**

### **Provisions relating to change of category only**

#### **Unimplemented statutory proposals**

**44.** Where a school changes category in accordance with this Schedule and there are other proposals for alterations falling to be implemented in respect of that school which have not been implemented—

- (a) in the case of a school which has changed category from a community or voluntary aided school to become a voluntary controlled school, the proposals must to the extent that they have not been implemented, be implemented by the local education authority;

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- (b) in the case of a school which has changed category from a foundation or voluntary controlled school to become a voluntary aided school, the proposals must continue to be implemented by the governing body and local education authority (as the case may be) as if the school had remained a foundation or voluntary controlled school.

#### **Revision or replacement of the school's instrument of government**

**45.**—(1) The governing body and the local education authority must secure that by the end of the implementation period a new instrument of government is made for the school in accordance with the Constitution Regulations.

(2) The implementation period is the period commencing on the date a proposal is approved under paragraph 31 or 32 and ending on the implementation date.

(3) The new instrument of government is to take effect from the date of making for the purpose of reconstituting the governing body but does not affect the constitution of the governing body conducting the school pending the implementation date.

(4) For all other purposes the new instrument of government is to take effect from the implementation date.

#### **Reconstitution or replacement of the governing body**

**46.**—(1) The governing body and the local education authority must secure that as soon as reasonably practicable after the commencement of the implementation period (and in any event within a period of 3 months beginning on the implementation date) the governing body are reconstituted in accordance with the new instrument of government, and the Constitution Regulations.

(2) The current governing body must exercise their functions under the Act and these Regulations in a manner calculated to enable the authority to fulfil their duties under sub-paragraph (1).

#### **Current governors continuing in office**

**47.**—(1) Sub-paragraph (2) applies to any member of a current governing body in respect of which a new instrument of government has been made under these Regulations.

(2) Subject to paragraph 48 a governor to whom this paragraph applies is to continue from the implementation date (or the making of the new instrument of government if later) as a governor of the corresponding category required by the new instrument of government (if any such category exists).

(3) A member of a current governing body who continues as a governor under sub-paragraph (2) holds office for the remainder of the term for which he was originally appointed or elected.

(4) The proceedings of the governing body are not invalidated by the school having more governors of a particular category than are provided for by the new instrument of government pending removal of the surplus governors pursuant to paragraph 48.

#### **Surplus governors**

**48.**—(1) Where—

- (a) on or after the implementation date a school has more governors of any of the categories of governors than are required as governors of the corresponding category by the new instrument of government; and

- (b) the excess is not eliminated by the required number of governors resigning,

such number of that category as is required to eliminate the excess must cease to hold office in accordance with sub-paragraphs (2) and (3).

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(2) The governors who are to cease to hold office are determined on the basis of seniority, the governor whose current period of continuous service (whether as a governor of one or more than one category) is the shortest being the first to cease to hold office.

(3) Where it is necessary for the purposes of paragraph (2) to select one or more governors from a group of equal seniority, it must be done by drawing lots.

(4) For the purposes of this paragraph, sponsor governors nominated by a particular category of person are treated as if they constituted a separate category of governor.

(5) Any procedure set out in the new instrument of government for the removal of excess foundation governors does not apply to the reconstitution of the governing body under these Regulations.

### **Transfer of staff**

**49.** Where a voluntary aided or foundation school changes category to a voluntary controlled school—

- (a) the contract of employment between a person to whom this paragraph applies and the governing body has effect from the implementation date as if originally made between him and the local education authority;
- (b) all the governing body's rights, powers, duties and liabilities under or in connection with the contract of employment transfer by virtue of this paragraph to the local education authority on the implementation date; and
- (c) anything done by that date by, or in relation to, the governing body in respect of that contract or the employee is deemed from that date to have been done by or in relation to the local education authority.

**50.—**(1) Subject to sub-paragraph (2), paragraph 49 applies to any person who immediately before the implementation date is employed by the governing body to work at the school who is the subject of the proposal.

(2) Paragraph 49 does not apply to any person whose contract of employment terminates on the day immediately preceding the implementation date.

**51.** Any person who before the implementation date has been appointed by the governing body to work at the school as from the implementation date or a date thereafter is to be treated for the purpose of paragraph 49 as if he had been employed by the governing body immediately before the implementation date to do such work at the school as he would have been required to do on or after the date under his contract of employment with the governing body.

**52.** Where a voluntary controlled school changes category to a voluntary aided school—

- (a) the contract of employment between a person to whom this paragraph applies and the local education authority has effect from the implementation date as if originally made between him and the governing body;
- (b) all the authority's rights, powers, duties and liabilities under or in connection with the contract of employment transfer by virtue of this paragraph to the governing body on the implementation date; and
- (c) anything done before that date by or in relation to the authority in respect of that contract or the employee is deemed from that date to have been done by or in relation to the governing body.

**53.—**(1) Subject to sub-paragraph (2), paragraph 52 applies to any person who immediately before the implementation date is employed by the authority to work solely at the school who is the subject of the proposal.

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(2) Paragraph 52 does not apply to any person whose contract of employment terminates on the day immediately preceding the implementation date, or to any person employed by the authority to work at the school solely in connection with the provision of meals.

**54.** Any person who before the implementation date has been appointed by the authority to work at the school as from the implementation date or a date thereafter is to be treated for the purpose of paragraph 52 as if he had been employed by the authority immediately before the implementation date to do such work at the school as he would have been required to do on or after the date under his contract of employment with the authority.

(1) Paragraphs 49 to 54 are without prejudice to any right of an employee to terminate his contract if a substantial change is made to his detriment in his working conditions, but no such right arises by reason only of the change in employer effected by these Regulations.

**55.—(1)** This paragraph applies where a voluntary controlled school with a religious character changes category to become a voluntary aided school with a religious character.

(2) Where immediately before the implementation date a teacher in a voluntary controlled school enjoyed by virtue of section 60(2) of the School Standards and Framework Act 1998, rights not conferred on him on or after the implementation date by section 60 as a teacher at a voluntary aided school, he must continue to enjoy those rights until he ceases to be employed as a teacher at the voluntary aided school.

#### SCHEDULE 4

Regulation 5

### ALTERATIONS WHICH MAY BE PUBLISHED BY A LOCAL EDUCATION AUTHORITY

## PART 1

### Prescribed alterations proposed by a local education authority in respect of community schools

#### **Enlargement to premises**

**1.—(1)** An enlargement of the premises of the school which would increase the capacity of the school by—

- (a) more than 30 pupils; and
- (b) by 25% or 200 pupils (whichever is the lesser).

(2) Subject to sub-paragraph (3) in this paragraph—

“an enlargement” of the premises of a school includes—

- (a) the proposed enlargement; and
- (b) any enlargements made in the 5 years preceding the date when the new enlargement will be made, excluding any temporary enlargements where it is anticipated the enlargement will be in place for less than 3 years; and
- (c) the making permanent of any temporary enlargement.

(3) Where there have been any enlargements for which proposals have been published and approved under section 28 of SSFA or section 19 of the Act (“approved proposal”), “enlargement of the premises” includes—

- (a) the proposed enlargements; and

- (b) any enlargements made in the period since the last approved proposal (excluding any temporary enlargements where it is anticipated the enlargement will be in place for less than 3 years); and
- (c) the making permanent of any temporary enlargements.

### **Increase in number of pupils**

2.—(1) Subject to sub-paragraphs (2) to (4), an increase in the number of pupils in any relevant age group by 27 or more.

(2) No increase arises for the purposes of sub-paragraph 1 unless the school's admission number, taking into account the additional pupils, will exceed its highest admission number during the 3 school years immediately preceding the year in which it is intended that the increase will take effect.

(3) This paragraph does not apply in relation to any relevant age group comprising pupils the majority of whom are over compulsory school age.

(4) This paragraph does not apply to temporary increases which it is anticipated will be in place for no more than a year.

### **Alteration of upper age limit**

3. The alteration of the upper age limit by a year or more, except—

- (a) an alteration which consists of providing or ceasing to provide education for pupils over compulsory school age who are repeating a course of education completed before they reach compulsory school age;
- (b) an alteration resulting from persons being provided with education falling within section 80(1) of SSFA 1998; or
- (c) where the alteration is a temporary one, which will be in place for no more than 2 years.

In this paragraph “the upper age limit” in relation to a school means the highest age of pupils for whom education is normally provided at the school.

### **Alteration of lower age limit**

4.—(1) The alteration of the lower age limit such that when taken with all previous such alterations (if any) taking place since the appropriate date the lower age limit is at least a year higher or lower than the lower age limit on the appropriate date.

(2) In this paragraph—

“the lower age limit” in relation to the school means the lowest age of pupils for whom education is normally provided at the school; and

“the appropriate date” means whichever is the latest of the following dates—

- (a) the date falling 5 years before the date on which the local education authority or, as the case may be, the governing body, form the intention to make the alteration in question;
- (b) the date on which the school was established;
- (c) where any previous proposals for a change in the lower age limit have been approved under any of the provisions mentioned in this paragraph, the date (or latest date) on which the last of any such proposals were implemented;

(3) This paragraph does not apply where the alteration of the lower age limit is a temporary one which will be in place for no more than 2 years.

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### **Special education needs**

5. In relation to provision for special educational needs—
- (a) the establishment of a provision that is recognised by the local education authority as reserved for children with special educational needs;
  - (b) a change in the type, or types of special educational needs that is recognised by the local education authority as reserved for children with special educational needs; or
  - (c) discontinuance of provision which is recognised by the local education authority as reserved for children with special educational needs.

### **Sex of pupils**

- 6.—(1) An alteration to a school to provide that—
- (a) a school which was an establishment which admitted pupils of one sex only becomes an establishment which admits pupils of both sexes; or
  - (b) a school which was an establishment which admitted pupils of both sexes becomes an establishment which admits pupils of one sex only.
- (2) For the purpose of this paragraph a school is to be treated as an establishment which admits pupils of one sex only if the admission of pupils of the other sex—
- (a) is limited to pupils over compulsory school age; and
  - (b) does not exceed 25% of the number of pupils in the age group in question normally at the school.

### **Boarding**

- 7.—(1) The introduction or ending of boarding provision.
- (2) The alteration of boarding provision such that the number of pupils for whom boarding provision is made is increased or decreased by 50 pupils or 50% (whichever is the greater).

### **Transfer to new site**

8. The transfer of a school to a new site except where the main entrance of the school on the proposed new site would be within 2 miles of the main entrance of the school on its current site (unless the school is transferring to a site within the area of another local education authority).

### **Discontinuance of use of site**

9. The discontinuance of provision at any site of a school which occupies more than one site, if the main entrance at any of the school's remaining sites is 1 mile or more from the main entrance of the site use of which is to be discontinued.

## **PART 2**

Prescribed alterations proposed by a local education authority in respect of community special schools.

### **Special educational needs**

10. A change in the type of special educational needs for which the school is organised to make provision.



### **Transfer to new site**

11. The transfer of a school to a new site except where the main entrance of the school on the proposed new site would be within 2 miles of the main entrance of the school on its current site (unless the school is transferring to a new site within the area of another local education authority).

### **Increase in number of pupils**

12.—(1) Except where the school is established in a hospital, any increase in the number of pupils for whom the school is organised to make provision which, when taken together with all such previous increases in the number of pupils would increase the number of such pupils by 10% or the relevant number of pupils (whichever is the lesser) as compared with—

- (a) the number of such pupils on the appropriate date; or
- (b) if, at any time after that date the number of such pupils was lower than on that date, the lowest number at any such time.

(2) In this paragraph—

the “appropriate date” means whichever is the latest of the following dates—

- (a) the date falling 5 years before the date on which the local education authority publish proposals to increase the number of pupils for which the school is organised to make provision;
- (b) the date when the school was established;
- (c) where any proposals for the making of a prescribed alteration to the school consisting of an increase in the number of pupils have been approved under paragraph 3 or 4 of Schedule 6 or paragraph 8 or 9 of Schedule 7 to SSFA 1998, or under these Regulations, the date (or latest date) on which any such proposals were implemented;

the “relevant number of pupils” is 5 where the school only makes boarding provision and 20 in any other case.

### **Decrease in numbers**

13. Except where the school is established in a hospital, any decrease in the number of pupils for whom the school is organised to make provision.

### **Boarding**

14.—(1) The introduction or ending of boarding provision.

(2) Where the school makes provision for day pupils and boarding pupils, the alteration of boarding provision such that the number of pupils for whom boarding provision is made is increased or decreased by 5 pupils or more.

### **Alteration of upper or lower age limits**

15. The alteration of the upper or lower age limits of the school (that is to say the highest and the lowest ages of pupils for whom education is normally provided at the school).

### **Sex of pupils**

16.—(1) An alteration to a school to provide that—

- (a) a school which was an establishment which admitted pupils of one sex only becomes an establishment which admits pupils of both sexes; or

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- (b) a school which was an establishment which admitted pupils of both sexes becomes an establishment which admits pupils of one sex only.
- (2) For the purpose of this paragraph a school is to be treated as an establishment which admits pupils of one sex only if the admission of pupils of the other sex—
  - (a) is limited to pupils over compulsory school age; and
  - (b) does not exceed 25% of the number of pupils in the age group normally at the school.

### PART 3

#### Prescribed alterations proposed by a local education authority in respect of maintained nursery schools

##### **Transfer to new site**

**17.** The transfer of a school to a new site except where the main entrance of the school on the proposed new site would be within 2 miles of the main entrance of the school on its current site (unless the school is transferring to a site within the area of another local education authority).

### PART 4

#### Prescribed alterations proposed by a local education authority in respect of foundation or voluntary schools.

##### **Enlargement to premises**

**18.—**(1) An enlargement of the premises of the school which would increase the capacity of the school by—

- (a) more than 30 pupils; and
- (b) by 25% or 200 pupils (whichever is the lesser).

(2) Subject to sub-paragraph (3) in this paragraph “an enlargement” of the premises of a school includes—

- (a) the proposed enlargement; and
- (b) any enlargements made in the 5 years preceding the date when the new enlargement will be made, excluding any temporary enlargements where it is anticipated the enlargement will be in place for less than 3 years; and
- (c) the making permanent of any temporary enlargement.

(3) Where there have been any enlargements for which proposals have been published and approved under section 28 of SSFA or section 19 of the Act (“approved proposal”), “enlargement of the premises” includes—

- (a) the proposed enlargements; and
- (b) any enlargements made in the period since the last approved proposal (excluding any temporary enlargements where it is anticipated the enlargement will be in place for less than 3 years); and
- (c) the making permanent of any temporary enlargements.

### **Increase in number of pupils**

**19.**—(1) Subject to sub-paragraphs (2) to (4), an increase in the number of pupils in any relevant age group by 27 or more.

(2) No increase arises for the purpose of sub-paragraph (1) unless the school's admission number, taking into account the additional pupils, will exceed its highest admission number during the 3 school years immediately preceding the year in which it is intended that the increase will take effect.

(3) This paragraph does not apply in relation to any relevant age group comprising pupils the majority of whom are over compulsory school age.

(4) This paragraph does not apply to temporary increases which it is anticipated will be in place for no more than a year.

### **Special educational needs**

**20.** In relation to provision for special educational needs—

- (a) the establishment of a provision that is recognised by the local education authority as reserved for children with special educational needs; or
- (b) discontinuance of provision which is recognised by the authority as reserved for children with special educational needs.

### **Alteration of upper age limit**

**21.**—(1) The alteration of the upper age limit so as to provide sixth form education other than such an alteration resulting from persons being provided with education falling within section 80(1) of SFFA 1998.

(2) In this paragraph the “upper age limit” in relation to the school means the highest age of pupils for whom education is normally provided at the school.

## **PART 5**

### **Prescribed alterations proposed by a local education authority in respect of foundation special schools**

#### **Increase in number of pupils**

**22.**—(1) Except where the school is established in a hospital, any increase in the number of pupils for whom the school is organised to make provision which, when taken together with all such previous increases in the number of pupils would increase the number of such pupils by 10% or the relevant number of pupils (whichever is the lesser) as compared with—

- (a) the number of such pupils on the appropriate date; or
- (b) if, at any time after that date the number of such pupils was lower than on that date, the lowest number at any such time.

(2) In this paragraph—

the “appropriate date” means whichever is the latest of the following dates—

- (a) the date falling 5 years before the date on which the local education authority publish proposals to increase the number of pupils for which the school is organised to make provision;
- (b) the date when the school was established;

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- (c) where any proposals for the making of a prescribed alteration to the school consisting of an increase in the number of pupils have been approved under paragraph 3 or 4 of Schedule 6 or paragraph 8 or 9 of Schedule 7 to SSFA 1998, or under these Regulations, the date (or latest date) on which the last of any such proposals were implemented;

the “relevant number of pupils” is 5 where the school only makes boarding provision and 20 in any other case.

### **Special educational needs**

23. A change in the type of special educational needs for which the school is organised to make provision.

## SCHEDULE 5

Regulation 5

### LOCAL EDUCATION AUTHORITY PROPOSALS FOR PRESCRIBED ALTERATIONS

## PART 1

### Information to be included in or provided in relation to proposals

#### **School and local education authority details**

1. The name, address and category of the school and a contact address for the local education authority who are publishing the proposals.

#### **Implementation and any proposed stages for implementation**

2. The date on which the proposals are planned to be implemented, and if they are to be implemented in stages, a description of what is planned for each stage, and the number of stages intended and the dates of each stage.

#### **Objections and comments**

3. A statement explaining the procedure for making representations, including—
- (a) the date prescribed in accordance with paragraph 33 of this Schedule by which objections or comments should be sent to the local education authority; and
  - (b) the address of the authority to which objections or comments should be sent.

#### **Alteration description**

4. A description of the proposed alteration and in the case of special school proposals, a description of the current special needs provision.

#### **School capacity**

5.—(1) Where the alteration is an alteration falling within any of paragraphs 1 to 4, and paragraph 7 and 8, of Schedule 4, the proposals must also include—

- (a) details of the current capacity of the school and where the proposals will alter the capacity of the school, the proposed capacity of the school after the alteration;

- (b) details of the numbers of pupils to be admitted to the school in each relevant age group in the first school year in which the proposals will have been implemented;
- (c) where it is intended that proposals should be implemented in stages, the number of pupils to be admitted to the school in the first school year in which each stage will have been implemented; and
- (d) where the number of pupils in any relevant age group is lower than the indicated admission number for that relevant age group a statement to this effect and details of the indicated admission number in question.

(2) Where the alteration is an alteration falling within any of paragraphs 1 to 4, and 7 and 8 of Schedule 4 a statement of the number of pupils at the school at the time of the publication of the proposals.

### **Implementation**

6. Where the proposals relate to a foundation or voluntary controlled school a statement as to whether the proposals are to be implemented by the local education authority or by the governing body, and, if the proposals are to be implemented by both, a statement as to the extent to which they are to be implemented by each body.

### **Additional Site**

7.—(1) A statement as to whether any new or additional site will be required if proposals are implemented and if so the location of the site if the school is to occupy a split site.

(2) Where proposals relate to a foundation or voluntary school a statement as to who will provide any additional site required, together with details of the tenure (freehold or leasehold) on which the site of the school will be held, and if the site is to be held on a lease, details of the proposed lease.

### **Changes in boarding arrangements**

8.—(1) Where the proposals are for the introduction or removal of boarding provision, or the alteration of existing boarding provision such as is mentioned in paragraph 7 or 14 of Schedule 4—

- (a) the number of pupils for whom it is intended that boarding provision will be made if the proposals are approved;
- (b) the arrangements for safeguarding the welfare of children at the school;
- (c) the current number of pupils for whom boarding provision can be made and a description of the boarding provision; and
- (d) except where the proposals are to introduce boarding provision, a description of the existing boarding provision.

(2) Where the proposals are for the removal of boarding provisions or an alteration to reduce boarding provision such as is mentioned in paragraph 7 or 14 of Schedule 4—

- (a) the number of pupils for whom boarding provision will be removed if the proposals are approved; and
- (b) a statement as to the use to which the former boarding accommodation will be put if the proposals are approved.

### **Transfer to new site**

9. Where the proposals are to transfer a school to a new site the following information—

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- (a) the location of the proposed site (including details of whether the school is to occupy a single or split site), and including where appropriate the postal address;
- (b) the distance between the proposed and current site;
- (c) the reason for the choice of proposed site;
- (d) the accessibility of the proposed site or sites;
- (e) the proposed arrangements for transport of pupils to the school on its new site; and
- (f) a statement about other sustainable transport alternatives where pupils are not using transport provided, and how car use in area will be discouraged.

### **Objectives**

- 10. The objectives of the proposals.

### **Consultation**

- 11. Evidence of the consultation before the proposals were published including—
  - (a) a list of persons who were consulted;
  - (b) minutes of all public consultation meetings;
  - (c) the views of the persons consulted;
  - (d) a statement to the effect that all applicable statutory requirements in relation to the proposals to consult were complied with; and
  - (e) copies of all consultation documents and a statement on how these documents were made available.

### **Project costs**

12. A statement of the estimated total capital cost of the proposals and the breakdown of the costs that are to be met by the governing body, the local education authority, and any other party.

13. A copy of confirmation from the Secretary of State, local education authority and the Learning and Skills Council for England (as the case may be) that funds will be made available (including costs to cover any necessary site purchase).

### **Age range**

- 14. Where the proposals relate to a change in age range, the current age range for the school.

### **Early years provision**

15. Where the proposals are to alter the lower age limit of a mainstream school so that it provides for pupils aged between 2 and 5—

- (a) details of the early years provision, including the number of full-time and part-time pupils, the number and length of sessions in each week, and the services for disabled children that will be offered;
- (b) how the school will integrate the early years provision with childcare services and how the proposals are consistent with the integration of early years provision for childcare;
- (c) evidence of parental demand for additional provision of early years provision;

- (d) assessment of capacity, quality and sustainability of provision in schools and in establishments other than schools who deliver the Early Years Foundation Stage within 3 miles of the school; and
- (e) reasons why such schools and establishments who have spare capacity cannot make provision for any forecast increase in the number of such provision.

### **Changes to sixth form provision**

**16.** Where the proposals are to alter the upper age limit of the school so that the school provides sixth form education or additional sixth form education, a statement of how the proposals will—

- (a) improve the educational or training achievements;
- (b) increase participation in education or training; and
- (c) expand the range of educational or training opportunities for 16-19 year olds in the area.

**17.** Where the proposals are to alter the upper age limit of the school so that the school ceases to provide sixth form education, a statement of the effect on the supply of 16-19 places in the area.

### **Special educational needs**

**18.** Where the proposals are to establish or change provision for special educational needs—

- (a) a description of the types of learning difficulties in respect of which education will be provided;
- (b) any additional specialist features will be provided;
- (c) the proposed numbers of pupils for which the provision is to be made;
- (d) details of how the provision will be funded;
- (e) a statement as to whether the education will be provided for children with special educational needs who are not registered pupils at the school to which the proposals relate;
- (f) a statement as to whether the expenses of the provision will be met from the school's delegated budget;
- (g) the location of the provision if it is not to be established on the existing site of the school; and
- (h) where the provision will replace existing educational provision for children with special educational needs, a statement as to how the local education authority believes that the new provision is likely to lead to improvement in the standard, quality and range of the educational provision for such children.

**19.** Where the proposals are to discontinue provision for special educational needs—

- (a) details of alternative provision for pupils for whom the provision is currently made;
- (b) details of the number of pupils for whom provision is made that is recognised by the local education authority as reserved for children with special educational needs during each of the 4 school years preceding the current school year;
- (c) details of provision made outside the area of the local education authority for pupils whose needs will not be able to be met in the area of the authority as a result of the discontinuance of the provision; and
- (d) a statement as to how the authority believe that the proposals are likely to lead to improvement in the standard, quality and range of the educational provision for such children.

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**20.** Where the proposals will lead to alternative provision for children with special educational needs, as a result of the establishment, alteration or discontinuance of existing provision, the specific educational benefits that will flow from the proposals in terms of—

- (a) improved access to education and associated services including the curriculum, wider school activities, facilities and equipment with reference to the local education authority's Accessibility Strategy;
- (b) improved access to specialist staff, both educational and other professionals, including any external support and outreach services;
- (c) improved access to suitable accommodation; and
- (d) improved supply of suitable places.

### **Sex of pupils**

**21.** Where the proposals are to make an alteration to provide that a school which was an establishment which admitted pupils of one sex only becomes an establishment which admits pupils of both sexes—

- (a) details of the likely effect which the alteration will have on the balance of the provision of single sex education in the area;
- (b) evidence of local demand for single-sex education; and
- (c) details of any transitional period which the body making the proposals wishes specified in a transitional exemption order (within the meaning of section 27 of the Sex Discrimination Act 1975).

**22.** Where the proposals are to make an alteration to a school to provide that a school which was an establishment which admitted pupils of both sexes becomes an establishment which admits pupils of one sex only—

- (a) details of the likely effect which the alteration will have on the balance of the provision of single-sex education in the area; and
- (b) evidence of local demand for single-sex education.

### **Extended services**

**23.** If the proposed alterations affect the provision of the school's extended services, details of the current extended services the school is offering and details of any proposed change as a result of the alterations.

### **Need or demand for additional places**

**24.** If the proposals involve adding places—

- (a) a statement and supporting evidence of the need or demand for the particular places in the area;
- (b) where the school has a religious character, a statement and supporting evidence of the demand in the area for education in accordance with the tenets of the religion or religious denomination; and
- (c) where the school adheres to a particular philosophy, evidence of the demand for education in accordance with the philosophy in question and any associated change to the admission arrangements for the school.

**25.** If the proposals involve removing places—

- (a) a statement and supporting evidence of the reasons for the removal, including an assessment of the impact on parental choice; and



- (b) a statement on the local capacity to accommodate displaced pupils.

#### **Additional information in the case of special schools**

**26.** Where the proposals relate to a special school the following information must also be provided—

- (a) information as to the numbers, age range, sex and special educational needs of the pupils (distinguishing boarding and day pupils) for whom provision is made at the school;
- (b) information on the predicted rise or fall (as the case may be) in the number of children with particular types of special educational needs requiring specific types of special educational provision;
- (c) a statement about the alternative provision for pupils who may be displaced as a result of the alteration;
- (d) where the proposals would result in the school being organised to make provision for pupils with a different type or types of special educational needs with the result that the provision which would be made for pupils currently at the school would be inappropriate to their needs, details of the other schools which such pupils may attend including any interim arrangements and transport arrangements to such schools; and
- (e) where the proposals relate to a foundation special school a statement as to whether the proposals are to be implemented by the local education authority or by the governing body, and if the proposals are to be implemented by both, a statement as to the extent to which they are to be implemented by each body.

## **PART 2**

### **Publication, determination and implementation of proposals**

#### **Consultation on proposals**

**27.—(1)** The local education authority must, before they publish any proposals, consult the following persons—

- (a) the governing body of any school which is the subject of the proposals;
- (b) any other local education authority likely to be affected by the proposals, in particular neighbouring local education authorities where there may be significant cross-border movement of pupils;
- (c) families, teachers and other staff at the school;
- (d) the governing body, teachers and other staff of any other school that may be affected by the proposals;
- (e) families at any other school that may be affected by the proposals including where appropriate parents of pupils at feeder primary schools;
- (f) any trade unions who represent staff at the school and representatives of any trade union of any other staff at schools that may be affected by the proposals;
- (g) the trustees of the school (if any);
- (h) if proposals involve, or are likely to affect a school which has a religious character—
  - (i) the Diocesan Board of Education for any diocese of the Church of England any part of which is comprised in the area of the local education authority;

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- (ii) the bishop of a diocese of the Roman Catholic Church any part of which is comprised in the area of the local education authority; or
  - (iii) the relevant faith group in relation to the school
- as appropriate;
- (i) if the proposals affect the provision of full-time 14-19 education, the Learning and Skills Council for England;
  - (j) Members of Parliament whose constituencies include the schools that are the subject of the proposals, or whose constituents are likely to be affected by the proposals;
  - (k) the local district or parish council where the school is situated;
  - (l) where proposals affect early years provision, the Early Years Development and Child Care Partnership or those who benefit from a contractual arrangement giving them the use of the premises;
  - (m) any other interested party; and
  - (n) any other persons whom the authority thinks appropriate.
- (2) Where proposals relate to a special school, the authority must also consult—
- (a) the relevant Primary Care Trust for the area in which the school is situated; and
  - (b) any NHS trust or NHS foundation trust responsible for a hospital or other provision in the area in which the school is situated.

### **Manner of publication of proposals**

- 28.**—(1) The local education authority must publish—
- (a) the information contained in paragraphs 1 to 7(1), 8(1)(a) and(b), 9(a) and 9 (a); and
  - (b) details of how complete copies of the proposals can be obtained.
- (2) The authority must publish the information in sub-paragraph (1)—
- (a) by posting it in a conspicuous place in the area served by the school and at or near the main entrance to the school, or if there is more than one main entrance, all of them; and
  - (b) by publishing it in at least one newspaper circulating in the area served by the school.
- (3) The authority must send a complete set of the proposals to—
- (a) the relevant governing body within 1 week of the date of publication;
  - (b) the Secretary of State within 1 week of publication; and
  - (c) anyone who requests a copy of the proposals within 1 week of the request.
- (4) Paragraph (3)(c) may be deemed to be satisfied if the proposals are available for inspection at an appropriate office of the local education authority.
- (5) Where the proposals relate to a special school the local education authority must also send a complete set of the proposals to—
- (a) the relevant Primary Care Trust for the area in which the school is situated;
  - (b) any NHS trust or NHS foundation trust responsible for a hospital or other provision in the area in which the school is situated;
  - (c) any authority which maintains a statement of special needs in respect of a registered pupil at the school;
  - (d) any authority who might be affected by the proposals; and
  - (e) parents of children who attend the special school.

### **Objections and comments**

**29.**—(1) Except where sub-paragraph (2) applies, any person may send objections or comments in relation to any proposals to the local education authority within 6 weeks from the date of the publication of the proposals.

(2) Where the proposal is for an excepted expansion any objections or comments must be sent to the authority within 4 weeks from the date of the publication of the proposals.

(3) For the purpose of this Schedule an excepted expansion means in respect of primary schools and secondary schools except grammar schools, a prescribed alteration falling within paragraphs—

- (a) 1, 2 and 3 (but in respect of a prescribed alteration falling within paragraph 3, only where the alteration of the upper age limit is being made so as to provide sixth form education) of Part 1 to Schedule 4;
- (b) 12 and 15 (but in respect of a prescribed alteration falling within paragraph 15, only where the alteration of the upper age limit is being made so as to provide sixth form education) of Part 2 to Schedule 4;
- (c) 18, 19 and 21 of Part 4 to Schedule 4;
- (d) 22 of Part 5 to Schedule 4.

(4) The representation period means the period starting on the date of publication of the proposals and ending 6 or 4 weeks later, as appropriate.

### **Local education authority as decision maker**

**30.**—(1) For the purpose of section 21(2)(f) the local education authority is prescribed as the person who (subject to the remaining provisions of this Schedule) must consider and determine the proposals.

(2) Where paragraph 36 applies, (transfer to a different local education authority area) the local education authority referred to in sub-paragraph (1) is the local education authority described in paragraph 36 as Local Education Authority A.

### **Consideration and determination of proposals by the local education authority or adjudicator**

**31.**—(1) In determining proposals to which this Schedule applies the local education authority may—

- (a) reject the proposals;
- (b) approve the proposals without modifications; or
- (c) approve the proposals with such modifications as the authority think desirable.

(2) Before approving any proposals with modifications the authority must consult the governing body (unless the modifications are proposed by the governing body).

(3) Where proposals are approved by the authority (whether with or without modifications) the approval may be conditional on the occurrence of an event prescribed in paragraph 38.

(4) Any determination under sub-paragraph (1) must be made within the period of 2 months from the end of the representation period.

(5) Where the authority does not make a determination within the period prescribed by sub-paragraph (4), the proposals must be referred to the adjudicator.

**32.**—(1) Where any proposals have been referred to the adjudicator pursuant to paragraphs 31(5) or 33, the adjudicator may—

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- (a) reject the proposals;
  - (b) approve the proposals without modifications; or
  - (c) approve the proposals with such modifications as the adjudicator think desirable.
- (2) Before approving any proposals with modifications, the adjudicator must consult the relevant governing body and local education authority (unless they proposed the modifications.)
- (3) Where proposals are approved by the adjudicator (whether with or without modifications) the approval may be conditional on the occurrence of an event prescribed in paragraph 38.

### **Referral to adjudicator post determination(27)**

**33.**—(1) For the purpose of section 21(2)(h), the prescribed persons at whose request proposals must, after their initial determination by the local education authority be referred to the adjudicator are—

- (a) the Diocesan Board of Education of the Church of England any part of which is comprised in the area of the local education authority;
- (b) the bishop of the diocese of the Roman Catholic Church any part of which is comprised in the area of the local education authority;
- (c) where proposals relate to a school providing, or proposing to provide education for pupils aged 14 or over, the Learning and Skills Council for England;
- (d) where proposals relate to a foundation, voluntary school or a foundation special school—
  - (i) the governing body of the school to whom the proposal relates; and
  - (ii) the trustees of the school (if any);
- (e) where proposals relate to a community school, and the proposal is an excepted expansion (as defined in paragraph 29), the governing body.

(2) A request under sub-paragraph (1) must be made within 4 weeks of the initial determination by the authority.

(3) Where a request is made under sub-paragraph (1) the authority must submit the proposals and any objection or commands made in relation to the proposals to the adjudicator within 1 week of receiving the request.

### **Provision for notification of decisions**

**34.**—(1) The local education authority must notify the following persons of each decision under paragraph 31, together with their reasons—

- (a) the governing body;
- (b) the trustees of the school (if any);
- (c) the Secretary of State;
- (d) where proposals include provision for 14-16 education or sixth form education, the Learning and Skills Council for England;
- (e) the Diocesan Board of Education for any diocese of the Church of England any part of which is comprised in the area of the authority;
- (f) the bishop of any diocese of the Roman Catholic Church any part of which is comprised in the area of the authority;
- (g) where the proposals relate to a special school—

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(27) As required by section 23(4) of the Act.

- (i) the relevant Primary Care Trust for the area in which the school is situated, and
  - (ii) any NHS trust or NHS foundation trust responsible for a hospital or other provision in the area in which the school is situated;
- (h) subject to sub-paragraph (3), each objector to the proposal; and
- (i) the adjudicator.

(2) In the case of any determination made by the adjudicator pursuant to paragraph 31(5) or 33, the adjudicator must notify the local education authority and the persons in sub-paragraphs (a) to (h) of sub-paragraph (1), of each decision, together with his reasons.

(3) Where objections to a proposal take the form of a petition (that is to say a document containing the text of one objection signed by more than one objector) the authority or adjudicator (as the case may be) may comply with sub-paragraph (1) (h) by—

- (a) notifying the person (if any) who appears to them to have arranged for the petition to be sent to the authority; or
- (b) if there is no such person, notifying the objector whose name appears first on the petition.

### **Related Proposals**

**35.**—(1) Where proposals appear to be related to other proposals the local education authority or adjudicator, as the case may be, must consider related proposals together.

(2) Where the authority are required under paragraph 31(5) or 33 to refer any proposals to the adjudicator, the authority must also within 1 week refer to the adjudicator any other proposals which appear to them to be related.

### **Determination of proposals where the school is transferring to a different local education authority**

**36.**—(1) This paragraph applies to the determination of any proposals for the transfer of the school to a new site falling within paragraphs 8, 11 and 17 of Schedule 4, where the new site is in an area other than that of the local education authority who maintain the school.

(2) The local education authority who maintain the school (“Local Education Authority A”) must send a copy of the proposals, together with all objections and comments received, to the local education authority for the area where it is proposed that the school will be situated (“Local Education Authority B”).

(3) Local Education Authority A must send the documents required under sub-paragraph (2) within 1 week of the end of the representation period.

(4) Before determining the proposals in accordance with paragraph 30, Local Education Authority A must first seek the recommendation of Local Education Authority B on how the proposals should be determined.

(5) Any determination made under sub-paragraph (1) must be made within the period of 2 months from the end of the representation period.

### **Transitional exemption orders under the Sex Discrimination Act 1975**

**37.**—(1) This paragraph applies to proposals for a school to cease to be an establishment which admits pupils of one sex only.

(2) Where such proposals are published under paragraph 6 or paragraph 16 of Schedule 4, the local education authority must make an order under section 27 of the Sex Discrimination Act 1975.

(3) Where—

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(a) the authority have failed to make a transitional exemption order; or  
 (b) the authority refer the proposals to the adjudicator under paragraph 31(5) or 33,  
 they must refer the question whether to make a transitional exemption order to the adjudicator.

(4) Where that question is referred to the adjudicator—

- (a) he must consider the matter afresh, and
- (b) he may make a transitional exemption order accordingly.

(5) In this paragraph “make”, in relation to the transitional exemption order, includes (so far as the context permits) vary or revoke;

### Conditional approvals

**38.**—(1) The following events are prescribed as specified events which (if the approval is expressed to take effect only if they occur) must occur by the date specified in the approval—

- (a) the grant of planning permission under Part 3 of the Town and Country Planning Act 1990<sup>(28)</sup>;
  - (b) the acquisition of any site required for the implementation of the proposals;
  - (c) the acquisition of playing fields required for the implementation of the proposals;
  - (d) the securing of any necessary access to a site referred to in sub-paragraph (b) or playing fields referred to in sub-paragraph (c);
  - (e) the private finance credit approval given by the Department for Education and Skills following the entering into of a private finance contract by a local education authority;
  - (f) the entering into an agreement for any necessary building project supported by the Department for Education and Skills in connection with the programme known as “Building Schools for the Future”;
  - (g) in the case of mainstream schools, the agreement to any change to the admission arrangements of any other school or schools, as specified in the approval;
  - (h) the making of any scheme relating to any charity connected with the school;
  - (i) the formation of any federation (within the meaning of section 24(2) of EA 2002) of which it is intended that the school should form part, or the fulfilling of any other condition relating to the school forming part of a federation;
  - (j) the Secretary of State giving approval under regulation 5(4) of the Education (Foundation Body)(England) Regulations 2000<sup>(29)</sup> to a proposal that a foundation body must be established and that the school must form part of a group for which a foundation must act;
  - (k) the Secretary of State making a declaration under regulation 22(3) of the Education (Foundation Body) (England) Regulations 2000 that the school must form part of a group for which a foundation body acts; and
  - (l) where the proposals in question depend upon any of the events specified in paragraphs (a) to (g) occurring by a specified date in relation to proposals relating to any other school or proposed school, the occurrence of such an event.
- (2) For the purpose of paragraph (g) above a change in admission arrangements is agreed—
- (a) in the case where the change arises from the admission arrangements for the school year in question being different from the admission arrangements for the previous school year, if the admission arrangements are determined under section 89(4) of SSFA 1998 and either—

<sup>(28)</sup> 1990 c.8.

<sup>(29)</sup> S.I 2000/2872.

- (i) no objection is made to the change in accordance with section 90 of SSFA 1998, or
- (ii) if an objection to the change is made and referred to the adjudicator in accordance with section 90 of SSFA 1998, the objection is not upheld;
- (b) in a case where the change arises from a variation made under section 89(5) of SSFA 1998 or made under The School Admissions (Alteration and Variation of, and Objections to, Arrangements) (England) Regulations 2007<sup>(30)</sup> where the variation is required to be referred to the adjudicator, if the adjudicator determines that the variation should have effect without modifications; and
- (c) in a case where the change arises from a variation made under those regulations where the variation is not required to be referred to the adjudicator, when the variation is made.

### **Withdrawal of proposals**

**39.** Proposals may be withdrawn by the local education authority which published the proposals provided that—

- (a) such proposals are withdrawn before any determination is made;
- (b) in cases where the proposals have been referred to the adjudicator, written notice is given to the adjudicator and to the Secretary of State; and
- (c) written notice is placed at the main entrance to the school or, if there is more than one main entrance, all of them.

### **Duty to implement proposals**

**40.**—(1) Subject to the following provisions of this Schedule proposals must be implemented in the form in which they were approved.

(2) Where the local education authority or adjudicator have approved any proposals then the proposals must be implemented in the form in which they were so approved.

(3) Proposals must be implemented by the governing body and the local education authority, respectively, to such extent as the proposals provide for each of them to do so.

### **Revocation of proposals (after approval)**

**41.**—(1) If the local education authority, or adjudicator (where the original proposals were referred to him under paragraph 31(5) only, or a referral is made to him under sub-paragraph (8)), are satisfied that—

- (a) implementation of proposals would be unreasonably difficult; or
- (b) circumstances have so altered since approval was given that implementation would be inappropriate,

the authority or adjudicator as appropriate may determine that paragraph 40 (duty to implement) is to cease to apply to the proposals.

(2) The authority or adjudicator (as the case may be) may only make a determination under sub-paragraph (1) where proposals have been published by the authority under sub-paragraph (3) (“revocation proposals”).

(3) Revocation proposals must contain—

- (a) a description of the original proposals as published in accordance with section 19 (1);
- (b) the date of publication of the original proposals;

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<sup>(30)</sup> S.I. 2007/496.

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- (c) a statement as to why it is proposed that, in accordance with sub-paragraph (1), paragraph 40 should not apply in relation to the original proposals; and
  - (d) details of how copies of the original proposals can be obtained.
- (4) Revocation proposals must be published by—
- (a) posting a copy in a conspicuous place in the area to be served by the school and at or near the main entrance to the school or, if there is more than one main entrance, all of them; and
  - (b) publishing them in at least one newspaper circulating in the area to be served by the school.
- (5) Any person may object to or comment on revocation proposals, and such objections and comments must be sent to the authority within 6 weeks of the date of publication of the proposals.
- (6) Where the original proposals were decided by the adjudicator pursuant to a reference to him under paragraph 31(5), the authority must refer the revocation proposals, together with any objections or comments in relation to them, to him within 2 weeks of the end of the representation period.
- (7) Where the authority determine revocation proposals, any determination must be made within a period ending 2 months after the end of the representation period.
- (8) If the authority do not make a determination within the period specified in sub-paragraph (7) they must refer the proposals to the adjudicator within 1 week from the end of that period.
- (9) The authority must notify the following persons of each decision taken under sub-paragraph (1) together with their reasons—
- (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 authority;
  - (b) the bishop of a diocese of the Roman Catholic Church any part of which is comprised in the area of the authority;
  - (c) where proposals relate to a school providing or proposing to provide education for pupils aged 14 or over, the Learning and Skills Council for England;
  - (d) where the proposals relate to a voluntary or foundation school, or a foundation special school—
    - (i) the governing body, and
    - (ii) the trustees of the school; and
  - (e) where the original proposal is an excepted expansion (as defined in paragraph 29(3)), the governing body.
- (10) The persons at whose request revocation proposals must after their determination by the authority be referred to the adjudicator are—
- (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 authority;
  - (b) the bishop of a diocese of the Roman Catholic Church any part of which is comprised in the area of the authority;
  - (c) where proposals relate to a school providing or proposing to provide education for pupils aged 14 or over, the Learning and Skills Council for England;
  - (d) where proposals relate to a voluntary or foundation school or a foundation special school—
    - (i) the governing body, and
    - (ii) the trustees of the school; and
  - (e) where the proposal is an excepted expansion (as defined in paragraph 29(3)), the governing body.



(11) A request under sub-paragraph (10) must be made within 4 weeks of the initial determination of the revocation proposals by the authority.

(12) Where a request is made under sub-paragraph (10) the authority must submit the revocation proposals and any objections or comments relating to the proposals, to the adjudicator within 1 week of receiving the request.

### **Modification post determination**

**42.—**(1) Where the local education authority has determined the proposals the authority may make modifications to the proposals at any time after determination but before implementation, and where there has been a conditional approval, specify a later date by which the event in question must occur.

(2) Where the adjudicator has determined the proposals he may modify the proposals and where there has been a conditional approval, specify a later date by which the event in question must occur, after consulting the governing body and the authority (unless they have proposed the modifications) at any time after determination but before implementation.

### **Proposals not falling to be implemented**

**43.—**(1) Where by virtue of paragraph 41(1), paragraph 40 (duty to implement) ceases to apply to any proposals, those proposals are to be treated for the purpose of this Schedule as if they had been rejected.

(2) Where a conditional approval under paragraph 38 is given and an event specified in that approval does not occur by the required date—

- (a) paragraph 40 ceases to apply to the proposals;
- (b) the proposals must be considered afresh by the local education authority or the adjudicator (as the case may be) and paragraphs 30 to 42 apply accordingly.

## SCHEDULE 6

Regulation 7

### LAND TRANSFERS WHEN A SCHOOL CHANGES CATEGORY

**1.** Where any land is transferred to and vests in any body in accordance with this Schedule, any rights or liabilities—

- (a) enjoyed or incurred by the transferor in connection with the land; and
- (b) subsisting immediately before the implementation date,

also transfer to, and by virtue of these Regulations, vest in, that body.

### **Rules relating to transfer**

**2.—**(1) This paragraph applies where any proposals that a community school should become a foundation school have been approved.

(2) In such a case, any land which, immediately before the implementation date, was held or used by a local authority for the purposes of the community school must on that date transfer to, and by virtue of this paragraph vest in—

- (a) the trustees of the school, to be held by them on trust for the purposes of the school; or
- (b) if the school has no trustees, the governing body, to be held by that body for the relevant purposes.

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**3.—(1)** This paragraph applies where any proposals that a community school should become a voluntary aided school have been approved.

(2) In such a case, any land other than playing fields which, immediately before the implementation date, was held or used by a local authority for the purposes of the community school must on that date transfer to, and by virtue of this paragraph vest in, the trustees of the school, to be held by them on trust for the purposes of the school.

**4.—(1)** This paragraph applies where any proposals that a community school should become a voluntary controlled school have been approved.

(2) In such a case, any land other than playing fields which, immediately before the implementation date, was held or used by a local authority for the purposes of the community school must on that date transfer to, and by virtue of this paragraph vest in, the trustees of the school, to be held by them on trust for the purposes of the school.

**5.—(1)** This paragraph applies where any proposals that a voluntary aided school should become a foundation school have been approved.

(2) In such a case, any land which, immediately before the implementation date, was held by the local authority for the purposes of the voluntary aided school must on that date transfer to, and by virtue of this paragraph vest in—

- (a) the trustees of the school, to be held by them on trust for the purposes of the school; or
- (b) if the school has no trustees, the governing body to be held by that body for the relevant purposes.

**6.—(1)** This paragraph applies where any proposals that a voluntary controlled school should become a foundation school have been approved.

(2) In such a case, any land which, immediately before the implementation date, was held by the local authority for the purposes of the voluntary controlled school must on that date transfer to, and by virtue of this paragraph vest in—

- (a) the trustees of the school, to be held by them on trust for the purposes of the school; or
- (b) if the school has no trustees, the governing body to be held by that body for the relevant purposes.

**7.—(1)** This paragraph applies where any proposals that a community special school should become a foundation special school have been approved.

(2) In such a case, any land which, immediately before the implementation date, was held or used by a local authority for the purposes of the community special school must on that date be transferred to, and by virtue of this paragraph vest in—

- (a) the trustees of the school, to be held by them on trust for the purposes of the school; or
- (b) if the school has no trustees, the governing body to be held by that body for the relevant purposes.

### **Outstanding transfers**

**8.** Where immediately before the implementation date in relation to any change of category—

- (a) any land vested in a local authority is by virtue of any statutory provision required to be transferred to the governing body or any trustees of a school, but
- (b) the land has not yet been so transferred,

paragraphs 2 to 7 are to apply to the school as if it had been so transferred by that time.

### **Transfers of right to use land**

9. Where paragraph 2, 3, 4 or 7 applies to a school and any land held by a person or body other than a local authority was, immediately before the implementation date, used for the purposes of the school, any rights or liabilities—

- (a) enjoyed or incurred by the local authority in connection with the use of the land, and
- (b) subsisting immediately before the implementation date,

on that date transfers to, and by virtue of these Regulations vests in, the trustees of the school or, if there are no trustees, the governing body.

### **Land excluded from transfers**

10.—(1) Nothing in paragraphs 2 to 8 of this Schedule has the effect of transferring to, or vesting in, any body—

- (a) any land, rights or liabilities excluded under sub-paragraph (2) or (3);
- (b) any liability of a local authority, governing body or trustees in respect of the principal of, or any interest on, any loan; or
- (c) any liability in tort.

(2) If after the proposal has been approved, but before the implementation date in relation to any change of category, the prospective transferee and transferor have agreed in writing that any land should be excluded, that land (and any rights or liabilities relating to it) is excluded.

(3) Where the prospective transferee and transferor cannot agree what land should be excluded they must refer the matter to the adjudicator.

(4) If in default of agreement under sub-paragraph (2)—

- (a) the prospective transferee or transferor have applied to the adjudicator to exclude any land from the operation of paragraphs 2 to 8 of this Schedule; and
- (b) the adjudicator has by order directed its exclusion;

the land (and any rights or liabilities relating to it) is excluded.

(5) An agreement under sub-paragraph (2) may provide for the land to be used or held for the purposes of the school on such terms as may be specified in or determined in accordance with the agreement; and directions under sub-paragraph (4)—

- (a) may confer any rights or impose any liabilities that could have been conferred or imposed by such an agreement, and
- (b) must have effect as if contained in such an agreement.

### **Restrictions on disposal of land when proposals are pending**

11.—(1) For the purposes of paragraphs 11 to 13 of this Schedule the procedure for becoming a school of another category is pending in relation to a school when it has been initiated by the governing body in relation to the school on any occasion and not terminated (as initiated on that occasion).

(2) For those purposes, that procedure is to be regarded as initiated in relation to a school on any occasion on the date written notice of a meeting of the governing body at which a motion for a resolution to consult about proposals to change category is to be considered, is given.

(3) For those purposes, that procedure, as initiated on any occasion, is to be regarded as terminated—

- (a) if the meeting is not held;

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- (b) if the meeting is held but the motion is not moved or, though the motion is moved, the resolution is not passed;
- (c) if consultation is not initiated in accordance with paragraph 5 of Schedule 1, or paragraph 27 of Schedule 3;
- (d) if the proposals in respect of which consultation was initiated are not published;
- (e) if the proposals are rejected by the governing body, the authority or the adjudicator, or withdrawn before implementation;
- (f) if the governing body decide not to implement the proposals; or
- (g) if revocation proposals are approved.

**12.—**(1) During any period when the procedure for becoming a school of another category is pending in relation to a school, a local authority must not—

- (a) dispose of any land used wholly or partly for the purposes of the school, or
- (b) enter into a contract to dispose of any such land,

except with the consent of the adjudicator.

(2) Sub-paragraph (1) does not apply in relation to a disposal which is made in pursuance of a contract entered into, or an option granted, before the procedure for becoming a school of another category was initiated in relation to the school.

(3) Where proposals for becoming a school of another category have been approved, the procedure for becoming a school of another category is not to be treated as terminated for the purposes of this paragraph in relation to any land, where agreement is required to be reached under paragraph 16 of this Schedule on any matter relating to that land, until the date on which that matter is finally determined.

(4) A disposal or contract is not to be invalid or void by reason only that it has been made or entered into in contravention of this paragraph and a person acquiring land, or entering into a contract to acquire land, from a local authority need not be concerned to enquire whether any consent required by this paragraph has been given.

(5) This paragraph has effect notwithstanding anything in section 123 of the Local Government Act 1972(31) (general power to dispose of land) and the consent required by this paragraph is in addition to any consent required by subsection (2) of that section.

(6) In this paragraph—

- (a) references to disposing of land include granting or disposing of any interest in land, and
- (b) references to entering into a contract to dispose of land include granting an option to acquire land or such an interest.

**13.—**(1) During any period when the procedure for becoming a school of another category is pending in relation to a school, a local authority must not, in relation to any land of the authority used or held for the purposes of the school, take without the consent of the adjudicator any action (including appropriation of the land for any purpose) by which the land ceases to any extent to be so used or held.

(2) If in the case of any school—

- (a) proposals that a school become a school of another category have been approved, and
- (b) a local authority have, in relation to any land, taken any action in contravention of sub-paragraph (1),

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(31) 1972 c.70.

the provisions relating to the transfer of property in this Schedule have effect as if, immediately before the implementation date in relation to the change of category, the property were used or held by the authority for the purposes for which it was used or held when the procedure for becoming a school of another category was initiated.

### **Provision of information**

**14.** Any local authority and governing body of a maintained school must give the adjudicator such information as he may require for the purposes of the exercise of his functions under these Regulations.

### **Division and apportionment of property**

**15.—(1)** Any property, rights and liabilities of a transferor held or used or subsisting—

- (a) for purposes wider than that of the school; or
- (b) partly for the purposes of the school and partly for other purposes

where the nature of the property, right or liability permits, is to be divided or apportioned between the transferor and the transferee, in such proportions as may be appropriate.

(2) Where any estate or interest in land falls to be divided in accordance with sub-paragraph (1)—

- (a) any rent payable under a lease in respect of that estate or interest; and
- (b) any rent charged on that estate or interest

must be correspondingly divided or apportioned so that each part is payable in respect of, or charged on, only one part of the estate or interest and the other part or parts are payable in respect of, or charged on, only the other part or parts of the estate or interest.

(3) Any such property, right or liability as is mentioned in sub-paragraph (1) the nature of which does not permit its division or apportionment as so mentioned must be transferred to the transferee or retained by the transferor according to—

- (a) in the case of an estate or interest in land, whether on the transfer date the transferor or the transferee appears to be in greater need of the security afforded by that estate or interest or, where neither of them appears to be in greater need of that security, which of them appears on that date to be likely to make use of the land to the greater extent; or
- (b) in the case of any other right or liability, which of them appears on the transfer date to be likely to be affected by the right or liability to the greater extent

subject (in either case) to such arrangements for the protection of the other person concerned as may be agreed between the transferor and the transferee or determined by the adjudicator under paragraph 17.

### **Identification of property, rights and liabilities**

**16.—(1)** The transferor and the transferee must arrive at such written agreements, and execute such other instruments, as are necessary or expedient to identify or define the property, rights and liabilities transferred to the transferee or retained by the transferor, or for making any such arrangements as are mentioned in paragraph 15 as will afford to the transferor and the transferee as against one another such rights and safeguards as they may require for the proper discharge of their respective functions.

(2) Any such agreement may provide so far as it is expedient—

- (a) for the granting of leases and for the creation of other liabilities and rights over land whether amounting in law to interests in land or not, and whether involving the surrender of any existing interest or the creation of a new interest or not;

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- (b) for the granting of indemnities in connection with the severance of leases and other matters;
  - (c) for responsibility for registration of any matter in any description of statutory register.
- (3) If and to the extent that he is requested to do so by the transferor or the transferee, the adjudicator may—
- (a) assist the transferor, the transferee and any other interested person in identifying or defining the property, rights and liabilities transferred to the transferee or retained by the transferor;
  - (b) advise such persons as to the terms of any agreement or instrument falling to be made under sub-paragraph (1) above;
  - (c) assist such persons to negotiate any such agreement or instrument and mediate in any such negotiations;
  - (d) prepare drafts of any such agreement or instrument; and
  - (e) assist the parties in executing and giving effect to any such agreement or instrument.
- (4) Any transfer of any estate or interest in land under these Regulations (whether by virtue of an agreement or instrument entered into before or after the implementation date) is to be regarded as having taken place on the implementation date.

### **Resolution of disputes**

17.—(1) In the case of any matter on which agreement is required to be reached under paragraph 15 or 16, if such an agreement has not been reached within a period of 6 months from the implementation date, the adjudicator may give a direction determining that matter, and may include in the direction any provision which may have been included in an agreement under paragraph 15 or 16.

(2) Any property, rights or liabilities required by a direction under this paragraph to be transferred to the transferee must be regarded as having been transferred to, and by virtue of this Schedule vested in, the transferee on the implementation date.

(3) The adjudicator must consult the transferor, the transferee and any other interested person before giving a direction under this paragraph.

### **Right to production of documents of title**

18.—(1) Where a transfer to which this Schedule applies relates to registered land, the transferor must execute any instrument under the Land Registration Acts 1925 to 2002<sup>(32)</sup>, deliver any certificate under those Acts, and do such other things under those Acts as he would be required to execute, deliver or do in the case of a transfer by agreement between the transferor and the transferee.

(2) Where on any transfer to which this Schedule applies the transferor is entitled to retain possession of any documents relating in part to the title to any land or other property transferred to the transferee, the transferor must be treated as having given to the transferee an acknowledgment in writing of the right of the transferee to production of that document and to delivery of copies of it; and section 64 of the Law of Property Act 1925<sup>(33)</sup> has effect accordingly, and on the basis that the acknowledgment did not contain any such expression of contrary intention as is mentioned in that section.

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<sup>(32)</sup> 1925 c.21, 1987 c.2, and 2002 c.9.

<sup>(33)</sup> 1925 c.20.

### **Proof of title by certificate**

19. The adjudicator may issue a certificate stating that any property specified in the certificate, or any interest in or right over any such property as may be so specified, or any right or liability so specified, was or was not transferred by virtue of these Regulations to any body corporate or persons so specified; and any such certificate is to be conclusive evidence for all purposes of that fact.

### **Construction of agreements**

20.—(1) Where in the case of any transfer to which this Schedule applies any rights or liabilities transferred are rights or liabilities under an agreement to which the transferor was a party immediately before the transfer date, the agreement, unless the context otherwise requires, has effect on and after the transfer date as if—

- (a) the transferee had been a party to the agreement;
- (b) for any reference (whether express or implied and, if express, however worded) to the transferor there were substituted, as respects anything falling to be done on or after the transfer date, a reference to the transferee;
- (c) any reference (whether express or implied and, if express, however worded) to a specified officer of the transferor or a person employed by the transferor in a specified capacity were, as respects anything falling to be done on or after the transfer date, a reference to such person as the transferee may appoint or, in default of appointment, to an officer or employee of the transferee who corresponds as closely as possible to the person referred to in the agreement;
- (d) where the agreement refers to property, rights or liabilities which fall to be apportioned or divided between the transferor and the transferee, the agreement constituted two separate agreements separately enforceable by and against the transferor and the transferee as regards the part of the property, rights or liabilities retained by the transferor or (as the case may be) the part vesting in the transferee, and not as regards the other part;

and paragraph (d) applies in particular to the covenants, stipulations and conditions of any lease by or to the transferor.

(2) This paragraph applies to any agreement whether in writing or not and whether or not of such a nature that rights and liabilities under it could be assigned by the transferor.

21.—(1) Without prejudice to the generality of paragraph 20, the transferee under a transfer to which this Schedule applies and any other person must, as from the implementation date, have the same rights, powers and remedies (and in particular the same rights and powers as to the taking or resisting of legal proceedings or the making or resisting of applications to any authority) for ascertaining, perfecting or enforcing any right or liability transferred to and vested in the transferee by virtue of these regulations as he would have had if that right or liability had at all times been a right or liability of the transferee.

(2) Any legal proceedings or applications to any authority pending on the transfer date by or against the transferor, in so far as they relate to any property, right or liability transferred to the transferee by virtue of these regulations, or to any agreement relating to any such property, right or liability, must be continued by or against the transferee to the exclusion of the transferor.

### **Third parties affected by vesting provisions**

22.—(1) Without prejudice to the generality of paragraphs 20 to 21, any transaction effected between a transferor and a transferee in pursuance of paragraph 15 or of a direction under paragraph 17 is binding on all other persons, even if it would, apart from this sub-paragraph, have required the consent or concurrence of any person other than the transferor and the transferee.

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(2) If as a result of any such transaction any person’s rights or liabilities become enforceable as to part by or against the transferor and as to part by or against the transferee, the adjudicator must give that person written notification of that fact.

(3) If in consequence of a transfer to which this Schedule applies or of anything done in pursuance of the provisions of this Schedule—

(a) the rights or liabilities of any person other than the transferor or the transferee which were enforceable against or by the transferor become enforceable as to part against or by the transferor and as to part against or by the transferee; and

(b) the value of any property or interest of that person is thereby diminished;

such compensation as may be just must be paid to the that person by the transferor, the transferee or both.

(4) Any dispute as to whether and if so how much compensation is payable under subparagraph (3), or as to the person to whom it must be paid, must be referred to and determined by the adjudicator.

**23.** In this Schedule—

“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 the body acts; or

(b) in relation to a transfer to a school’s governing body, the purposes of the school;

“transferor” and “transferee” mean the transferor and transferee under any transfer to which this Schedule applies.

SCHEDULE 7

REVOCATION

**Regulations revoked**

<i>Regulations revoked</i>	<i>References</i>
The Education (Change of Category of Maintained Schools) (England) Regulations 2000	<a href="#">S.I 2000/2195</a>
The Education (Change of Category of Maintained Schools) (Amendment)(England) 2003	<a href="#">S.I 2003/2136</a>
The Education (Change of Category of Maintained Schools) (Amendment)(England) 2005	<a href="#">S.I 2005/1731</a>
The Education (Change of Category of Maintained Schools) (Amendment)(England) 2006	<a href="#">S.I 2006/1164</a>
The Education (Change of Category of Maintained Schools) (Amendment No. 2)(England) Regulations	<a href="#">S.I 2006/1507</a>
Education (New Procedures for Property Transfers) Regulations 2000 - Regulations 5 to 7, and Schedule 1 in relation to England only	<a href="#">S.I 2000/3209</a>



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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations prescribe various matters relating to prescribed alterations to maintained schools pursuant to provisions contained in Part 2 of the Education and Inspections Act 2006.

Regulation 3 with Schedule 1 provides that governing bodies of maintained schools can publish and determine their own ‘foundation proposals’ with rights of referral to the adjudicator in certain circumstances. Foundation proposals are defined in regulation 3 as a change of category from a community school, voluntary controlled or voluntary aided school to a foundation school, or from a community special school to a foundation special school; and for foundation and foundation special schools only the acquisition of a foundation, and a change in the instrument of government so as the majority of governors may be foundation governors (“a relevant change”).

Regulation 4 with Schedule 2 prescribes other alterations capable of being published by the governing body of a maintained school. Part 1 of Schedule 3 provides for the information that must be provided in relation to these proposals. Part 2 of Schedule 3 outlines the procedure to be followed for publication, determination and implementation. Part 2 provides that these governing body proposals are determined by the local education authority, with rights of referral to the adjudicator for prescribed persons after this initial determination.

Regulation 5 with Schedule 4 prescribes the alterations capable of being published by a local education authority to maintained schools. Part 1 designates the alterations which may be made in respect of community schools; Part 2 in respect of community special schools. Part 3 in respect of maintained nursery schools; Part 4 in respect of foundation and voluntary schools; and Part 5 in respect of foundation special schools.

Part 1 of Schedule 5 provides for the information to be provided in relation to proposals published by a local education authority. Part 2 of Schedule 5 outlines the procedures to be followed for publication, determination and implementation of the proposals. It provides that these proposals are determined by the local education authority, with rights of referral to the adjudicator for prescribed persons after this initial determination.

Regulation 6 outlines the transitional provisions.

Regulation 7 and Schedule 6 provide for land transfers when a school changes category.