
STATUTORY INSTRUMENTS

2007 No. 1355

EDUCATION, ENGLAND

The School Organisation (Transitional Provisions) (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 31 and 183 of the Education and Inspections Act 2006(1), the Secretary of State for Education and Skills makes the following Regulations:

PART 1

General

Citation, commencement and application

1.—(1) These Regulations may be cited as the School Organisation (Transitional Provisions) (England) Regulations 2007 and come into force on 25th May 2007.

(2) These Regulations apply in relation to England only.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Education and Inspections Act 2006;

“EA 1996” means the Education Act 1996(2);

“EA 2005” means the Education Act 2005(3);

“SSFA 1998” means the School Standards and Framework Act 1998(4);

(1) 2006 c. 40. See section 32 for definition of “regulations”.

(2) 1996 c.56.

(3) 2005 c.18.

(4) 1998 c.31.

“the Change of Category Regulations” means Education (Change of Category of Maintained Schools) (England) Regulations 2000(5);

“the Constitution Regulations” means the School Governance (Constitution) (England) Regulations 2007(6);

“discontinuance proposals” means proposals published under section 29 or 31 of SSFA 1998 for the discontinuance of a maintained school;

“excepted expansion” means, in respect of secondary schools except grammar schools, a prescribed alteration falling within paragraphs 1, 2 3 (but in respect of a prescribed alteration falling with paragraph 3, only where the alteration of the upper age limit is being made so as to provide sixth form education) 11, 12 or 13 of Schedule 1 to the Education (School Organisation Proposals) (England) Regulations 1999(7);

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

“initial decision” means in relation to Part 2 a decision made by the adjudicator under regulation 7 except a decision made by him following a referral to him by an aggrieved person pursuant to regulation 11;

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

“the New Secondary School Proposals Regulations” means the Education (New Secondary School Proposals) (England) Regulations 2006(8);

“NHS foundation trust” has the same meaning as in section 30 (1) of the National Health Service Act 2006(9);

“NHS trust” means a body established by the Secretary of State under section 25 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;

“relevant authority” has the meaning given by regulation 5 (2) in Parts 2 and 3 of these Regulations;

“representation period” means any period prescribed in these Regulations or the regulations referred to in regulations 4 and 26 in which objections or comments may be made on, or in relation to, the proposals or revocation proposals;

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

“the Special Schools Regulations” means the Education (Maintained Special Schools) (England) Regulations 1999(10);

“the School Organisation Proposals Regulations” means the Education (School Organisation Proposals) (England) Regulations 1999;

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- (5) [S.I. 2000/2195](#); relevant amending instruments are [S.I. 2003/2136](#), [S.I. 2005/1731](#), and [S.I. 2006/1507](#). These Regulations were otherwise revoked by the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 ([S.I. 2007/1289](#)).
- (6) [S.I. 2007/957](#).
- (7) [S.I. 1999/2213](#); relevant amending instruments are [S.I. 2000/2198](#), [S.I. 2003/1229](#), [S.I. 2005/1801](#) and [S.I. 2005/3342](#). These Regulations were otherwise revoked by the School Organisation (Establishment and Discontinuance of Schools) (England) Regulations 2007 ([S.I. 2007/1288](#)).
- (8) [S.I. 2006/2139](#), amended by [SI 2007/59](#). These Regulations were otherwise revoked by the School Organisation (Establishment and Discontinuance of Schools) (England) Regulations 2007 ([S.I. 2007/1288](#)).
- (9) [2006 c.26](#).
- (10) [S.I. 1999/2212](#) amended by [S.I. 2002/2469](#); there is another amending instrument but it is not relevant. These Regulations were otherwise revoked by the School Organisation (Establishment and Discontinuance of Schools) (England) Regulations 2007 ([S.I. 2007/1288](#)).

“undetermined proposal” means proposals for the establishment, discontinuance or alteration of a maintained school that have been published under section 28, 28A, 29 or 31 of SSFA 1998 or section 66 of EA 2005 before 25th May 2007 and that have not been determined by either the school organisation committee or by the adjudicator;

“the upper and lower age limits” means the highest and lowest ages of pupils for whom it is intended that education is normally provided at the school;

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

and any reference to sections 7, 8, 9, 10, 11, 13 and 15 or to Schedule 2 is a reference to that section of, or Schedule to, the Act.

(2) For the purposes of Part 2 and 4 of these Regulations, proposals are to be treated as published before 25th May 2007, if one or more of the requirements of the following regulations as applicable are satisfied before that date—

- (a) regulation 5 of School Organisation Proposals Regulations and
- (b) regulation 5 of the Special Schools Regulations.

(3) For the purposes of Part 2 of these Regulations, a notice under section 66 of EA 2005 is to be treated as published before 25th May 2007, if one or more of the requirements of regulation 5 of the New Secondary School Proposals Regulations are satisfied before that date.

PART 2

Savings and transitional provisions relating to proposals for the establishment and discontinuance of maintained schools published under SSFA 1998 or EA 2005 and undetermined

Undetermined Proposals published under SSFA 1998 and EA 2005: general

3.—(1) The following provisions of this regulation apply to—

- (a) proposals which were published before 25th May 2007 and which remain undetermined by that date, and
- (b) the notice and proposals made under section 66 (7) of EA 2005 pursuant to the notice or proposals published under section 66 (8) (b) of EA 2005, where the notice was published before 25th May 2007.

(2) Where proposals for the establishment or discontinuance of a mainstream school have been published under section 28, 28A or 29 of SSFA 1998 **(11)**, regulations 1, 2, 4, 5 and 7 (1) and (2) of the School Organisation Proposals Regulations continue to apply in relation to the proposals.

(3) Where a notice inviting proposals for the establishment of a school has been published under section 66 of EA 2005 **(12)**, regulations 1 to 5 and 7 to 12 of the New Secondary School Proposals Regulations continue to apply in relation to the notice and proposals made under section 66 (7) of EA 2005 pursuant to the notice or published under section 66(8)(b) of EA 2005.

(4) Where proposals for the establishment or discontinuance of a special school have been published under section 31 of SSFA **(13)**, regulations 1, 2, 4, 5, 8(1) and (2) of the Special Schools Regulations continue to apply in relation to the proposals.

(11) Sections 28, 28A and 29 of SSFA 1998 ceased to apply to England by virtue of being amended by section 30 of and paragraph 18 and 20 of Schedule 3 to the Act.

(12) Section 66 of EA 2005 ceased to apply to England by virtue of its being amended by section 30 of and paragraph 49 of Schedule 3 to the Act.

(13) Section 31 of SSFA 1998 ceased to apply to England by virtue of its being amended by section 30 of and paragraph 23 of Schedule 3 to the Act.

(5) Sections 28(6), 29(5), 28A(6) and 31(5) of SSFA 1998, regulation 6 of the School Organisation Proposals Regulations, regulation 13 of the New Secondary School Proposals Regulations and regulation 6 of the Special Schools Regulations continue to apply in relation to information to be sent to the school organisation committee.

(6) In cases where the provisions for making objections and comments continue in accordance with the regulations referred to in regulation 4 as applicable, the school organisation committee must send copies of the proposals referred to in paragraphs (2) to (4) respectively (together with any objections or comments and other information received by it in accordance with the regulations referred to paragraph 5 as applicable) to the relevant authority as defined by regulation 5(2), or to the adjudicator as provided for in regulation 9 within 1 week of the end of the representation period.

(7) Except where paragraph (6) or (8) applies, any other proposals referred to in paragraphs (2) to (4) (together with any objections or comments and other information received by it in accordance with the regulations referred to paragraph 5 as applicable) must be sent by the school organisation committee to the relevant authority or to the adjudicator as provided for in regulation 9 by 1st June 2007, and determined in accordance with this Part of these Regulations.

(8) Where the school organisation committee has failed to reach a decision as provided for in paragraph 3(6) of Schedule 6 to SSFA 1998 or regulation 17(1) of the New Secondary School Proposals Regulations, it must send copies of the proposals referred to in paragraphs (2) to (4) respectively (together with any objections or comments or other information received by it in accordance with the regulations referred to paragraph 5 as applicable) to the adjudicator by 1st June 2007 and determined in accordance with regulation 14.

(9) Any proposals as referred to in paragraphs (2) to (4) that have been sent to the adjudicator for determination pursuant to—

- (a) paragraph 3(5), 3(6), 3(6A), or 3(6D) of Schedule 6 to SSFA 1998, or
- (b) regulation 17 of the New Secondary School Proposals Regulations,

must be determined by the adjudicator afresh as provided for in regulation 14.

Objections and comments

4.—(1) Paragraph 2 of Schedule 6 to SSFA 1998 continues to apply in relation to proposals which were published before 25th May 2007 and which remain undetermined on that date.

(2) In relation to proposals published before 25th May 2007 under sections 28, 28A or 29 of SSFA 1998 for the establishment or discontinuance of a mainstream school, regulation 7(1) and (2) of the School Organisation Proposals Regulations continue to apply in relation to the making of objections and comments.

(3) In relation to proposals published under section 66 of EA 2005, regulation 12 of the New Secondary School Proposals Regulations continues to apply in relation to the making of objections and comments.

(4) In relation to proposals published under section 31 of SSFA 1998 for the establishment or discontinuance of a special school, regulations 8(1) and (2) of the Special Schools Regulations continue to apply in relation to making objections and comments.

Consideration of proposals published under SSFA 1998 and EA 2005: general

5.—(1) Proposals published under section 28, 28A, 29 or 31 of SSFA 1998 or section 66 of EA 2005 for the establishment or discontinuance of a maintained school that are undetermined on 25th May 2007 are to be determined by the relevant authority or by the adjudicator as provided for in this Part of these Regulations.

(2) In this Part and Part 3 to these Regulations, the relevant authority is—

- (a) in the case of proposals published under section 28 or 28A, 29 or 31 of SSFA 1998 or revocation proposals relating to those proposals, the local education authority who maintain the school or (in the case of a new school) who it is proposed should maintain the school, and
 - (b) in the case of proposals published under section 66 of EA 2005 or revocation proposals relating to those proposals, the local education authority who published the notice under that section.
- (3) In this Part “proposers” in relation to any proposals means the persons who made the proposals, but does not include a local education authority.
- (4) For the purposes of this Part and Part 3 of these Regulations—
- (a) proposals under section 66 of EA 2005 are to be taken to be made by the person who submitted them to the relevant authority under subsection (7) of that section, or in the case of proposals published by the relevant authority under subsection (8) of that section, by the relevant authority, and
 - (b) proposals under section 28, 28A, 29 or 31 of SSFA 1998 for the establishment or discontinuance of a school are to be taken to be made by the person who published them.

Proposals requiring consideration under regulation 7

- 6.—(1) All proposals under sections 28, 28A, 29 or 31 of SSFA 1998 or section 66 of EA 2005 for the establishment or discontinuance of a maintained school require consideration under regulation 7.
- (2) Discontinuance proposals require consideration under regulation 7 unless paragraph (3) applies.
- (3) Discontinuance proposals fall to be dealt with under regulation 16 (and do not require consideration under regulation 7) if the proposals were made by the relevant authority and either—
- (a) no objections were made in relation to the relevant proposals in accordance with regulation 7 of the School Organisation Proposals Regulations or regulation 8 of the Special Schools Regulations, or
 - (b) all objections so made were withdrawn in writing within the periods prescribed by regulation 7 of the School Organisation Proposals Regulations or regulation 8 of the Special Schools Regulations.

Consideration of proposals

- 7.—(1) Proposals which require consideration under this regulation, other than proposals to which regulation 16 applies, must be considered in the first instance by the relevant authority, or, where regulation 9 applies, by the adjudicator.
- (2) Paragraphs (3) and (4) apply in relation to the relevant authority unless the authority is required by any of regulations 9, 10 or 12 to refer the proposals to the adjudicator.
- (3) In a case where the proposals were published under section 66 of EA 2005 and two or more sets of proposals were published, the authority may—
- (a) reject all the proposals,
 - (b) approve any of the proposals without modification, or
 - (c) approve any of the proposals with such modifications as the authority think desirable, after consulting the following persons:
 - (i) the proposers or the authority who made the proposals; and
 - (ii) where the proposals are to establish a new foundation, foundation special or voluntary school, the authority who it is proposed should maintain the school;

- (4) in any other case, the authority may—
- (a) reject the proposals,
 - (b) approve any of the proposals without modification, or
 - (c) approve any of the proposals with such modifications as the authority think desirable, after consulting the persons specified in regulation 7(3) (c) and—
 - (i) where the proposals were published by the governing body of a school, the authority who maintain the school; and
 - (ii) where the proposals were published by the authority to discontinue a school, the governing body of the school.
- (5) Any approval given under this regulation may be expressed to take effect only if one of the following events occurs by a specified date—
- (a) the grant of planning permission under Part 3 of the Town and Country Planning Act 1990 **(14)**;
 - (b) the acquisition of the site on which a new school is to be constructed;
 - (c) the acquisition of playing fields to be provided for the school;
 - (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) the making of any scheme relating to any charity connected with the school;
 - (h) the formation of any federation (within the meaning of section 24(2) of the EA 2002) of which it is intended that the proposed school should form part, or the fulfilling of any other condition relating to the proposed school forming part of a federation;
 - (i) the Secretary of State giving approval under regulation 5(4) of the Education (Foundation Body) (England) Regulations 2000**(15)** to an application that a foundation body shall be established and that the school shall form part of a group for which a foundation body shall act;
 - (j) 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;
 - (k) in the case of mainstream schools, the agreement to any change to admission arrangements of any other school or schools specified in the approval;
 - (l) the establishment of any foundation meeting the requirements of section 23A of SSFA 1998**(16)**;
 - (m) the making of any agreement under section 482 of EA 1996**(17)** for the establishment of an Academy;
 - (n) in the case of proposals to establish a maintained school in place of an existing independent school, the securing of approval by the Secretary of State to relax the requirements of the

(14) 1990 c.8.

(15) S.I. 2000/2872.

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

(17) Section 482 was inserted by section 65 of the Education Act 2002 (c.32)

Education (School Premises) Regulations 1999⁽¹⁸⁾ as provided for by section 543 (1) of EA 1996;

- (o) in the case of proposals to establish any other maintained school, the securing of approval by the Secretary of State to relax the requirements of the Education (School Premises) Regulations 1999 in respect of school playing fields as provided for by section 543 (1) of EA 1996;
- (p) in the case of proposals whose funding is dependent upon capital receipts from the disposal of any school land or buildings, the securing of consent from the Secretary of State for the disposal as provided for by paragraph 2 of Schedule 35A to EA 1996⁽¹⁹⁾ or section 77 of SSFA 1998, or determination in accordance with Schedule 22 to the SSFA 1998 as applicable; and
- (q) where the proposals in question depend upon any of the events specified in paragraphs (a) to (p) occurring by a specified date in relation to proposals relating to any other school or proposed school, the occurrence of such an event.

(6) Part 1 of Schedule 1 to these Regulations has effect for specifying the modifications to which this Part of these Regulations are to be subject where proposals published under section 66 of EA 2005 relate to a school which is proposed to be situated in an area other than that of the authority who published the notice.

(7) Part 2 of Schedule 1 to these Regulations has effect for specifying the modifications to which this Part of these Regulations are to be subject where proposals published under section 28, 28A, or 31 of SSFA 1998 relate to a school which is proposed to be established in an area other than that of the authority who it is proposed should maintain the school.

Consideration of proposals that are related to other proposals

8.—(1) The requirement to consider proposals under regulation 7 only applies if, at the time when the proposals fall to be considered, the relevant authority are satisfied that the proposals do not relate to any proposals under section 113A of the Learning and Skills Act 2000⁽²⁰⁾ which fall to be determined by the Secretary of State but have not yet been determined by him.

(2) Where proposals published under section 28, 28A, 29 or 31 of SSFA 1998 or section 66 of EA 2005 for the establishment or discontinuance of a maintained school appear to the relevant authority to be related to—

- (a) other proposals published under any of those sections or under sections 7, 10, 11 or 15 and not yet determined, or
- (b) proposals published under Schedule 7 to the Learning and Skills Act 2000 and not yet determined,

the authority must consider the proposals together.

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

9.—(1) The relevant authority or the school organisation committee, as the case may be, must refer to the adjudicator—

- (a) all proposals published under section 66 of EA 2005 in response to a notice under that section, if they consist of or include any proposals which are made by the relevant authority, or

⁽¹⁸⁾ S.I. 1999/2.

⁽¹⁹⁾ Schedule 35A was inserted by Schedule 7 to the Education Act 2002 (c.32).

⁽²⁰⁾ 2000 c.21.

- (b) any proposals under section 28, 28A or 31 of SSFA 1998 which are made by the relevant authority,

within 1 week from the end of the representation period as prescribed by the regulations referred to in regulation 4, or by 1st June 2007 as provided for in regulations 3(6) and 3(7).

Duty to refer proposals to the adjudicator where determination delayed

10.—(1) If by the end of 2 months from the date of expiry of the period in which proposals, objections and comments must be forwarded to the relevant authority as provided by regulations 3(6) and 3(7) as applicable, the authority have not determined whether to give any approval under regulation 7(3) or (4), they must within 2 weeks refer to the adjudicator—

- (a) in the case mentioned in regulation 7(3), all the proposals published under section 66, and
 (b) in the case mentioned in regulation 7(4), the proposals concerned,

together with comments made on the proposals by the authority and any other comments and objections in relation to the proposals that they have received.

Reference to the adjudicator at request of aggrieved person after determination under regulation 7 (4)

11.—(1) The relevant authority must if so requested by any relevant person within 4 weeks from the date of the notification of the determination pursuant to regulation 17 refer to the adjudicator any proposals which the relevant authority have determined under regulation 7 together with any reasons given by the authority for their determination.

(2) The persons specified in paragraph 14 of Schedule 2 are relevant persons for the purposes of paragraph (1).

(3) References to the adjudicator falling within paragraph (1) must be made within 1 week from the date on which the authority receives notice of a request for a referral.

Duty to refer related proposals

12. Where the relevant authority are required under any of regulations 9 to 11 or under Schedule 7 to the Learning and Skills Act 2000 to refer any proposals (“the relevant proposals”) to the adjudicator, the authority must also within 1 week from the date of expiry of the period in which proposals, objections and comments must be forwarded to them as provided by regulations 3(6) and 3(7), refer to the adjudicator—

- (a) any other proposals under section 28, 28A, 29 or 31 of SSFA 1998 or section 66 of EA 2005 which relate to the area of the relevant authority and which by virtue of regulation 8(2) fall to be considered with the relevant proposals, and
 (b) where the relevant proposals are referred to the adjudicator by virtue of regulation 11, any other proposals under section 28, 28A, 29 or 31 of SSFA 1998 which by virtue of regulation 8(2) were determined by the relevant authority with the relevant proposals.

Withdrawal of proposals before determination

13.—(1) Nothing in regulations 7(1) to (4) prevents the proposers by whom any proposals have been made from withdrawing those proposals by notice in writing—

- (a) to the relevant authority, and
 (b) in a case where the proposals have been referred to the adjudicator, also to the adjudicator,

at any time before the proposals are determined under regulation 7 by the authority or by the adjudicator.

(2) Nothing in regulation 7(1) to (4) prevents the relevant authority from withdrawing any proposals made by the authority themselves by notice in writing to the adjudicator at any time before the proposals are determined under regulation 7 by the adjudicator.

Effect of referring proposals to adjudicator

14.—(1) Where any proposals are referred to the adjudicator under any provision of this Part of these Regulations—

- (a) he must consider the proposals or, in a case where the proposals have previously been determined by the relevant authority, must consider them afresh,
- (b) the following provisions of regulation 7 apply to him in connection with his decision on the proposals as they apply to the relevant authority—
 - (i) paragraph (3) or (4) (as the case requires), and
 - (ii) paragraph (5), and
- (c) regulation 8 applies to him as it applies to the relevant authority.

Proposals to establish Academies

15.—(1) Where proposals submitted to a local education authority in accordance with section 66(7) of EA 2005 consist of or include proposals to establish an Academy, the authority must within 1 week of receiving those proposals consult the Secretary of State before taking any decision under regulation 7.

(2) The relevant authority may not approve under regulation 7 proposals to establish an Academy unless the Secretary of State, on being consulted under paragraph (1), has given a statement in writing that, if the proposals were approved, he would be willing to commence negotiations with a view to entering into an agreement [under section 482 of EA 1996] for the establishment of an Academy.

(3) If the proposals have been referred to the adjudicator under regulation 9, 10 or 12, the reference in paragraph (1) to the authority is to be read as a reference to the adjudicator.

(4) Paragraph (2) has effect in relation to a decision of the adjudicator under regulation 7 as it has effect in relation to a decision of the relevant authority under that regulation.

(5) Approval under regulation 7 by the relevant authority or the adjudicator of proposals to establish an Academy does not oblige the Secretary of State to enter into, or seek to enter into, an agreement under section 482 of EA 1996.

Determination whether to implement discontinuance proposals not requiring consideration under regulation 7

16.—(1) Where any discontinuance proposals have been made and regulation 6 does not require the proposals to be considered under regulation 7, the authority must (subject to the following provisions of this paragraph) determine whether the proposals should be implemented.

(2) Any determination under paragraph (1) must be made within 2 months from the date of expiry of the period in which proposals, objections and comments must be forwarded to them as provided by regulations 3(6) and 3(7).

(3) The requirement to make a determination under paragraph (1) only applies if, at the time when the proposals fall to be considered, the relevant authority are satisfied that the proposals do not relate to any proposals under section 113A of the Learning and Skills Act 2000 which fall to be determined by the Secretary of State but have not yet been determined by him.

(4) The requirement to make a determination under paragraph (1) does not apply where the proposals appear to the relevant authority to be related to—

- (a) other discontinuance proposals published under section 29 or section 31 of SSFA 1998 or section 15 and not yet determined,
 - (b) proposals for the establishment of a maintained school published under section 28, 28A or 31 of SSFA 1998 or section 66 of EA 2005 or section 10 or 11 and not yet determined, or
 - (c) proposals published under Schedule 7 to the Learning and Skills Act 2000 and not yet determined.
- (5) Where, in the case of any proposals falling within paragraph (1)—
- (a) the authority fail to make a determination under that sub-paragraph within the period mentioned in paragraph (2), or
 - (b) the requirement to make such a determination does not apply by virtue of paragraph (3) or (4),

the proposals require consideration under regulation 7 and, in a case falling within sub-paragraph (a), must be referred to the adjudicator.

Provision of information

17.—(1) The local education authority must notify the following persons of each decision taken under regulation 7 together with their reasons—

- (a) the persons or body who submitted the proposals;
- (b) subject to paragraph (5), each objector;
- (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 a diocese of the Roman Catholic Church any part of which is comprised in the area of the authority;
- (g) where the proposals concern a special school, the relevant Primary Care Trust, NHS trust and NHS foundation trust, and
- (h) the adjudicator.

(2) In the case of any determination made by an authority pursuant to regulation 16, the relevant authority must notify the governing body of the school which is the subject of the proposals, and the Secretary of State.

(3) The authority must notify the persons referred to in sub-paragraphs (a) to (c) of paragraph (1) if they refer any proposals or matter to the adjudicator under regulation 10.

(4) The adjudicator must notify the persons referred to in sub-paragraphs (1)(a) to (g) and the relevant authority of each decision together with his reasons.

(5) 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 the adjudicator as the case may be may comply with paragraph (1) (b) by—

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

(6) Where proposals have been sent to the decision-maker and further proposals are sent to the decision maker which in the opinion of the decision-maker pursuant to regulation 8(2) are related,

the decision-maker must notify the proposers or the local education authority as the case may be of that fact.

Requirement to implement proposals, revocation and modification

18.—(1) Where—

- (a) any proposals have been approved under regulation 7, or
- (b) the relevant authority have determined under regulation 16 to implement any proposals,

then the proposals must be implemented, in the form in which they were so approved or determined, in accordance with this Part of, and Schedule 2 to, these Regulations.

(2) Subject to paragraphs (9) and (12), the relevant authority may, at the request of the proposers who made the proposals referred to in paragraph (1), or, where the proposals were made by the authority themselves on their own initiative—

- (a) modify the proposals after consulting—
 - (i) the proposers or the local education authority who made the proposals,
 - (ii) where the proposals are to establish a new foundation, foundation special or voluntary school, the local education authority who it is proposed should maintain the school,
 - (iii) where the proposals were published by the governing body of a school, the authority who maintain the school, and
 - (iv) where the proposals were published by the authority to discontinue a school, the governing body of the school, and
- (b) where any approval was given in accordance with regulation 7(5), specify a later date by which the event in question must occur.

(3) If the relevant authority or the adjudicator (where the original proposals were referred to him under paragraph (9) or (12)) are satisfied—

- (a) that implementation of the proposals would be unreasonably difficult, or
- (b) that circumstances have so altered since approval was given under regulation 7 that implementation of the proposals would be inappropriate,

the authority or the adjudicator may determine that paragraph (1) is to cease to apply to the proposals.

(4) The relevant authority or the adjudicator may only make a determination under paragraph (3) where proposals that they or he should do so have been published by the proposers or a local education authority (“revocation proposals”).

(5) Revocation proposals must contain—

- (a) a description of the original proposals as published in accordance with sections 28, 28A, 29 or 31 of SSFA 1998 or section 66 of EA 2005;
- (b) the date of publication of the original proposals;
- (c) details of who published the proposals; and
- (d) a statement as to why it is proposed that, in accordance with paragraph (3), paragraph (1) should not apply in relation to the original proposals.

(6) Revocation proposals must be published by—

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

(7) The proposers must submit their revocation proposals within 1 week of the date of publication to the relevant authority.

(8) In relation to revocation proposals—

- (a) any person may object to or comment on such proposals and such objections and comments must be sent to the local education authority within 6 weeks of the date of publication of such proposals;
- (b) any determination by the authority must be made within 2 months of the end of the representation period.
- (c) in cases where the authority does not make a determination within the time specified in sub-paragraph (b), they must refer the proposals to the adjudicator within 1 week from the end of that period .

(9) The relevant authority must refer to the adjudicator any matter falling within paragraph (2) and any revocation proposals, together with objections and comments in relation to them, where the initial decision was made by the adjudicator within—

- (a) 2 weeks of the request from the proposer or from the authority making a decision on its own initiative in relation to matters falling within paragraph (2), or
- (b) 2 weeks of the end of the representation period.

(10) The relevant authority must notify the following persons of each decision taken under paragraph (3) and their reasons—

- (a) the persons or body who submitted the proposals;
- (b) subject to paragraph (12), each objector;
- (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 a diocese of the Roman Catholic Church any part of which is comprised in the area of the authority;
- (g) the adjudicator; and
- (h) 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.

(11) 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 the adjudicator as the case may be may comply with paragraph (1) (b) by—

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

(12) If by the end of the period of 2 months from the date of the request from the proposer, 2 months of a decision taken on the authority's own initiative or 2 months from the date of publication of the proposals as referred to in paragraph (9) as the case may be, the relevant authority have failed to make a determination, the authority must refer the matter to the adjudicator.

(13) The relevant authority must if so requested by any relevant person within 4 weeks from the date of the notification of the determination pursuant to regulation 17 refer any revocation proposals

which the relevant authority have determined under paragraph (3) together with any reasons given by the authority for their determination.

(14) The persons specified in paragraph 14 of Schedule 2 are relevant persons for the purposes of paragraph (13).

(15) References to the adjudicator falling within paragraph (13) must be made within 1 week from the date on which the authority receives notice of a request for a referral.

(16) Where any matter is referred to the adjudicator under this regulation—

- (a) the relevant authority may refer to the adjudicator with the matter their comments on it,
- (b) the adjudicator must consider the matter afresh, and
- (c) such of the provisions of paragraphs (2) and (3) as are relevant shall apply to him in connection with his decision on that matter as they apply to the authority.

Proposals not falling to be implemented

19.—(1) Where, by virtue of regulation 18(3), regulation 18(1) (duty to implement) ceases to apply to any proposals, those proposals are to be treated for the purposes of this Part of these Regulations as if they had been rejected under regulation 7.

(2) Where—

- (a) any approval under regulation 7 was given in accordance with regulation 7(5), and
- (b) the event specified under regulation 7(5) does not occur by the date in question (whether as specified under that provision or as specified under regulation 18(2)(b)),

regulation 18(1) ceases to apply to the proposals.

(3) Where, by virtue of paragraph (2), regulation 18(1) ceases to apply to any proposals approved by the relevant authority under regulation 7 and not referred to the adjudicator, those proposals must be considered afresh by the authority under that regulation.

(4) Where, by virtue of paragraph (2), regulation 18(1) ceases to apply to any proposals approved by the adjudicator under regulation 7, those proposals must be considered afresh by him under that paragraph (and regulation 14 applies accordingly).

PART 3

Savings and transitional provisions relating to proposals for the establishment and discontinuance of maintained schools published and determined under SSFA 1998 or EA 2005

Requirement to Implement Proposals

20.—(1) This regulation applies to proposals for the establishment or discontinuance of a maintained school published under section 28, 28A, 29 or 31 of SSFA 1998 or section 66 of EA 2005 and approved or determined under paragraph 3 or 4 of Schedule 6 to SSFA 1998 or paragraph 4 or 9 of Schedule 10 to EA 2005 as applicable.

(2) The proposals referred to in paragraph (1) must be implemented (insofar as not already implemented), in the form in which they were so approved or determined, in accordance with this Part of, and Schedule 2 to, these Regulations.

Modification post determination

21. The adjudicator may, at the request of the relevant authority or proposers who made the proposals—

- (a) modify the proposals after consulting—
 - (i) the proposers or the local education authority who made the proposals;
 - (ii) where the proposals are to establish a new foundation, foundation special or voluntary school, the local education authority who it is proposed should maintain the school;
 - (iii) where the proposals were published by the governing body of a school, the local education authority who maintain the school; and
 - (iv) where the proposals were published by the local education authority to discontinue a school, the governing body of the school, and
- (b) where any approval was given in accordance with paragraph 3(3) of Schedule 6 to the SSFA or paragraph 4(5) of Schedule 10 to EA 2005, specify a later date by which the event in question must occur.

Revocation of proposals

22.—(1) Subject to paragraph (5), if the adjudicator is satisfied—

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

the adjudicator may determine that regulation 20(2) is to cease to apply to the proposals.

(2) The adjudicator may only make a determination under paragraph (1) where proposals that he should do so have been published by the proposers or a local education authority (“revocation proposals”).

(3) Revocation proposals must contain—

- (a) a description of the original proposals as published in accordance with sections 28, 28A, 29 or 31 of SSFA 1998 or section 66 of EA 2005;
- (b) the date of publication of the original proposals;
- (c) details of who published the proposals; and
- (d) a statement as to why it is proposed that, in accordance with paragraph (1), regulation 20 (2) should not apply in relation to the original proposals.

(4) Revocation proposals must be published by—

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

(5) The local education authority or the proposers as the case may be must submit the revocation proposals within 1 week of the date of publication to the adjudicator.

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

Proposals not falling to be implemented

23.—(1) Where, by virtue of regulation 22(1), regulation 20(2) (duty to implement) ceases to apply to any proposals, those proposals are to be treated for the purposes of this Part of these Regulations as if they had been rejected.

(2) Where—

- (a) any approval under paragraph 3 of Schedule 6 to SSFA 1998 was given in accordance with paragraph 3 (3) of Schedule 6 to SSFA 1998 or any approval under paragraph 4 of Schedule 10 to EA 2005 was given in accordance with paragraph 4 (5) of Schedule 10 to EA 2005, and
- (b) the event specified does not occur by the date in question (whether as specified under either of those provisions or as specified under paragraph 5 (2) (b) of Schedule 6 to SSFA 1998 or paragraph 10 (2)(b) of Schedule 10 to EA 2005),

regulation 20 (2) ceases to apply to the proposals.

(3) Where, by virtue of paragraph (2), regulation 20(2) ceases to apply to any proposals, those proposals must be considered afresh by the adjudicator under paragraph 8 of Schedule 2.

PART 4

Savings and transitional provisions relating to proposals for the making of prescribed alterations to maintained schools and to changes of category where the proposals have been published under SSFA 1998 and are undetermined

Undetermined Proposals published under SSFA 1998 Act: general

24.—(1) The following provisions of this regulation apply to proposals which were published before 25th May 2007 and which remain undetermined by that date.

(2) Where proposals to make any prescribed alteration to a maintained school have been published under section 28 of SSFA 1998(**21**), regulations 1, 2, 4, 5 and 7(1) and (2) of and paragraphs 1, 2, 3, 11, 12 and 13 of Schedule 1 to the School Organisation Proposals Regulations continue to apply in relation to the proposals.

(3) Where proposals to make any prescribed alteration to a special school have been published under section 31 of SSFA 1998, regulations 1, 2, 4, 5 and 8(1) and (2) of the Special Schools Regulations continue to apply to in relation to the proposals.

(4) Where proposals for changing the category of a maintained school have been published under paragraph 2 or 3 of Schedule 8 to SSFA 1998(**22**), regulations 1, 2 and 4 of the Change of Category Regulations and paragraph 2 of Schedule 6 to SSFA 1998(**23**) continue to apply in relation to the proposals.

(5) Sections 28(6) and 31(5) of SSFA 1998, regulation 6 of the School Organisation Proposals Regulations, and regulation 6 of the Special Schools Regulations 1999 continue to apply in relation to information to be sent to the school organisation committee.

(21) Section 28 of SSFA 1998 ceased to apply to England by virtue of its being amended by section 30 of, and paragraph 18 of Schedule 3 to the Act.

(22) Section 35 of and Schedule 8 to SSFA 1998 ceased to apply to England by virtue of being amended by section 30 of, and paragraph 26 of Schedule 3 to the Act.

(23) Paragraph 2 of Schedule 6 to SSFA 1998 (as modified by Schedule 1 and 2A to the Education (Change of Category of Maintained Schools) (England) Regulations 2000 (S.I. 2000/2195)) is otherwise repealed by section 30 of, and paragraph 33 of Schedule 3 to the Act, subject to the saving provisions in regulation 25.

(6) Where the provisions for making objections and comments continue in accordance with the regulations referred to in regulation 26 as applicable, the school organisation committee must send copies of the proposals referred to in paragraphs (2) to (4) respectively (together with any objections or comments and other information received by it in accordance with the regulations referred to in paragraph 5 as applicable) to the relevant authority within 1 week of the end of the representation period, being in each case the period prescribed by the regulations referred to in regulation 26 which apply to those proposals.

(7) Copies of any proposals that have been published under section 28 or 31 of, or paragraph 2 or 3 of Schedule 8 to, SSFA 1998 and which relate to—

- (a) making a prescribed alteration to a maintained school, or
- (b) changing the category of a maintained school

must be sent by the school organisation committee (together with any objections or comments and other relevant information it has received) to the adjudicator by 1st June 2007 in any case where the school organisation committee have failed to reach a decision on the proposals by 25th May 2007 in accordance with paragraph 3(6) of Schedule 6 to SSFA 1998.

(8) Except as provided for in paragraphs (6) and (7), copies of any other proposals which were published under section 28 or 31 of, or paragraph 2 or 3 of Schedule 8 to, SSFA 1998 before 25th May 2007 must be sent by the school organisation committee to the relevant authority by 1st June 2007 for determination in accordance with this Part of these Regulations.

(9) Proposals which are sent to the adjudicator pursuant to paragraph (7) must be determined by him afresh under regulation 27.

(10) Where any proposals that have been published under section 28 or 31 of SSFA 1998 or paragraph 2 or 3 of Schedule 8 to SSFA 1998 have been sent to the adjudicator pursuant to paragraph 3(5), 3(6), 3(6A) or 3(6D) of Schedule 6 to SSFA 1998⁽²⁴⁾ before 25th May 2007, they must be determined by the adjudicator afresh under regulation 27.

(11) In this regulation, references to paragraphs 3(5) and 3(6) of Schedule 6 to the SSFA 1998 include reference to those paragraphs as modified by Schedules 1 and 2 of the Change of Category Regulations.

Consideration of proposals published under SSFA 1998: general

25.—(1) Subject to paragraph (2), proposals published under section 28 or 31 of SSFA 1998 or paragraph 2 or 3 of Schedule 8 to SSFA 1998 for the making of a prescribed alteration to a maintained school or the changing of the category of a maintained school that are undetermined on 25th May 2007 must be determined by the local education authority or by the adjudicator in accordance with this Part of these Regulations.

(2) Proposals made by a governing body under paragraph 2 of Schedule 8 to SSFA 1998 that either a community or a voluntary controlled school should become a foundation school must be determined in accordance with the provisions of Part 1 of Schedule 6 to SSFA 1998 as modified by Schedule 2A to the Change of Category Regulations and for these purposes Part 1 of Schedule 6 to SSFA 1998 continues to apply.

(3) Insofar as proposals referred to in paragraph (2) are unimplemented, such proposals must be implemented in accordance with Schedules 3 and 4 to these Regulations.

(4) If at the time when the proposals were published, sections 15, 17 or 51 of, or Schedule 15 to, SSFA 1998⁽²⁵⁾ applied to the school or it was eligible for intervention under sections 60, 61 or 62 of the Act, paragraph (3) does not apply.

⁽²⁴⁾ Paragraph 3 of Schedule 6 to SSFA 1998 was amended by Schedule 12 to EA 2005 and is repealed by section 30 of and paragraph 33 of Schedule 3 to the Act, subject to the saving provisions in regulation 25.

⁽²⁵⁾ Sections 15 and 17 ceased to apply in England on 1st April 2007 by virtue of being amended by Schedule 7 to the Act.

Objections and Comments

26.—(1) Paragraph 2 of Schedule 6 to SSFA 1998 continues to apply in relation to proposals which were published before 25th May 2007 and which remain undetermined on that date.

(2) In relation to proposals published under section 28 of SSFA 1998 for the making of prescribed alterations, the periods prescribed by regulation 7(2) of the School Organisation Proposals Regulations for the making of objections to, or comments on, the proposals continue to apply.

(3) In relation to proposals published under section 31 of SSFA 1998 for the making of a prescribed alteration to a special school, the periods prescribed by regulation 8(2) of the Special Schools Regulations for the making of objections to, or comments on, the proposals continue to apply.

(4) In relation to proposals published under paragraph 2 or 3 of Schedule 8 to SSFA 1998 for changing the category of a maintained school, the periods prescribed by paragraph 2 of Schedule 6 to SSFA 1998 (as modified by Schedule 1 to the Change of Category Regulations) and paragraph 2 of Schedule 6 to SSFA 1998 (as modified by Schedule 2A of the Change of Category Regulations) for the making of objections to, or comments on, the proposals continue to apply.

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

27.—(1) Where any proposals have been published by the governing body or a local education authority, the authority may —

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

(2) Before approving any proposals with modifications under sub-paragraph (1)(c) the authority must consult the relevant 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 by regulation 33.

(4) Any determination under paragraph (1) must be made within the period of 2 months from the end of the period in which proposals, objections and comments must be forwarded to the local education authority, as provided by regulations 24(6) or 26(8), as applicable.

(5) Where the authority does not make a determination within the period specified in paragraph (4), the proposals must be referred to the adjudicator.

(6) Where any proposals have been referred to the adjudicator pursuant to paragraph (5) or regulations 24 (7), 24 (10) or 29, 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

(7) Before modifying and determining any proposal, the adjudicator must consult the relevant governing body and the local education authority (unless they proposed the modification).

(8) 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 regulation 33.

Provision for notification of decisions

28.—(1) The local education authority must notify the following persons of each decision under regulation 27, 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 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 local education 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 paragraph (3), each objector to the proposals; and
- (i) the adjudicator.

(2) The adjudicator must notify the persons referred to in sub-paragraphs (1) (a) to (h) and the local education authority 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 local education authority or the adjudicator as the case may be, may comply with 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 local education authority; or
- (b) if there is no such person, notifying the objector whose name first appears on the petition.

(4) Where proposals have been sent to the authority or adjudicator as the case may be, they or he must notify the proposers or the local education authority, as the case may be, if any further proposals sent to them or him appear to them or him to be related.

Appeals to adjudicator

29.—(1) The 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 local education authority where the school is located;
- (b) the local bishop of a diocese of the Roman Catholic Church any part of which is comprised in the area of the local education authority where the school is located;
- (c) where proposals relate to a school providing or proposing to provide education for pupils aged 14 and over, the Learning and Skills Council for England;
- (d) where proposals are made by a authority and relate to a foundation or 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;

- (e) where proposals are made by a authority and relate to a community school, and is an excepted expansion, the governing body of the school to whom the proposal relates.
- (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 and comments made in relation to the proposals to the adjudicator within 1 week of receiving the request.

Related Proposals

- 30.**—(1) Where proposals appear to be related to other proposals the local education authority or adjudicator must consider the related proposals together.
- (2) Where the authority are required under regulation 27(5) 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

- 31.**—(1) This regulation applies to the determination of any proposals for the transfer of the school to a new site where the new site is in an area other than that of the local education authority who it is proposed should maintain the school.
- (2) The authority which maintains 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 paragraph (2) within 1 week of the period in which proposals, objections and comments must be forwarded to them as provided by regulations 24 (6) and (8), as applicable.
 - (4) Before determining the proposals in accordance with regulation 27, 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 paragraph (1) must be made within the period of 2 months from the end of the periods referred to in regulations 24 (6) and (8) as applicable.

Transitional exemption orders under the Sex Discrimination Act 1975

- 32.**—(1) This regulation applies to proposals for a school in England to cease to be an establishment which admits pupils of one sex only.
- (2) Where proposals are published by a governing body, the sending of the published proposals to the local education authority is to be treated as an application for the making by the local education authority of a transitional exemption order under section 27 of the Sex Discrimination Act 1975(26), and the local education authority must make such an order accordingly.
 - (3) Where proposals are published by an authority, the authority must make a transitional exemption order under section 27 of the Sex Discrimination Act 1975.
 - (4) Where—
 - (a) the authority have failed to make a transitional exemption order; or
 - (b) the authority refer the proposals to the adjudicator under regulation 29,

(26) 1975 c.65. Section 27 is amended by paragraph 3 of Schedule 3 to the Act.

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 context permits) vary or revoke.

Conditional approvals

33.—(1) The following events are 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⁽²⁷⁾;
 - (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 proposed school should form part of, or the fulfilling of any other condition relating to the proposed 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⁽²⁸⁾ to an application 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.
- (2) For the purposes 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

⁽²⁷⁾ 1990 c.8.

⁽²⁸⁾ S.I. 2000/2872.

- (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(29) 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

34. Proposals may be withdrawn by the governing body or local education authority which published the proposals provided that—

- (a) such proposals are withdrawn before any determination is made,
- (b) written notice is given to the local education authority in cases where the proposals have been made by the governing body, and in cases where the proposals have been referred to the adjudicator, to 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 main entrance, all of them.

Requirement to Implement Proposals

35.—(1) Subject to the following provisions of this Part of these Regulations, the proposals must be implemented in the form in which they were approved.

(2) Where—

- (a) the local authority have approved any proposal; or
- (b) an adjudicator has approved any proposal

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

Revocation of Proposals (after approval)

36.—(1) If the authority or the adjudicator (where the original proposals were referred to him under regulation 27 (5) only, or a referral is made to him under paragraph (9)) 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 the adjudicator may determine that regulation 35(2) (duty to implement) is to cease to apply to the proposals.

(2) The authority or the adjudicator (as the case may be) may only make a determination under paragraph (1) where proposals that they or he should do so have been published by the governing body or the local education authority under paragraph (3) (“revocation proposals”).

(3) Revocation proposals must contain—

- (a) a description of the original proposals as published in accordance with section 28 or 31 of SSFA 1998 or paragraph 2 or 3 of Schedule 8 to SSFA 1998;

- (b) the date of publication of the original proposals;
 - (c) a statement as to why it is proposed that, in accordance with paragraph (1), regulation 35(2) (duty to implement proposals) should not apply in relation to the original proposals.
- (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 local education authority who published the proposals 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 regulation 27 (5), the authority must refer the revocation proposals, together with any objections or comments in relation to them, to the adjudicator 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 representation period.
- (9) If the authority does not make a determination within the time specified in 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 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 and over, the Learning and Skills Council for England;
 - (d) where proposals are made by an authority and relate to a foundation or voluntary school or a foundation special school—
 - (i) the governing body ; and
 - (ii) the trustees of the school (if any); and
 - (e) where the school is a community school and the proposal is made by the authority and is an excepted expansion, the governing body .
- (11) The persons at whose request proposals must, after their determination by the authority pursuant to paragraph (1), 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 education for pupils aged 14 and over, the Learning and Skills Council for England;
 - (d) where proposals are made by a authority and relate to a foundation or voluntary school or a foundation special school—
 - (i) the governing body ; and

- (ii) the trustees of the school (if any); and
 - (e) where the school is a community school and the proposal is made by the authority and is an excepted expansion, the governing body .
- (12) A request under paragraph (11) must be made within 4 weeks of determination of the revocation proposals.
- (13) Where a request is made under paragraph (11) the local authority must submit the proposals and any comments and objections on the proposals to the adjudicator within 2 weeks of receiving the request.

Modification post determination

- 37.**—(1) The authority or the adjudicator (where the adjudicator has determined the original proposals following a reference under regulation 27(5)) may, at the request of the governing body who published the proposals, or, where the proposals were published by the authority themselves, on their own initiative—
- (a) modify the proposals, and
 - (b) where there has been a conditional approval, specify a later date by which the event in question must occur.
- (2) Before modifying any proposals the authority or the adjudicator as the case may be must consult the relevant governing body and the adjudicator must consult the local education authority (unless they proposed the modification).

Proposals not falling to be implemented

- 38.**—(1) Where by virtue of regulation 36(1), regulation 35(2) (duty to implement proposals) ceases to apply to any proposals, those proposals are to be treated as if they had been rejected.
- (2) Where any approval under regulation 27 was given, and the event specified in regulation 33 does not occur by the date in question, regulation 35(2) ceases to apply to the proposals.
- (3) Where by virtue of paragraph (2), regulation 35(2) ceases to apply to any proposals approved by the authority under regulation 27 and not referred to the adjudicator, those proposals must be considered afresh by the authority under that regulation.
- (4) Where by virtue of paragraph (2), regulation 35(2) ceases to apply to any proposals approved by the adjudicator under regulation 27, those proposals must be considered afresh by the authority under that regulation.

Unimplemented statutory proposals

- 39.**—(1) Where a school changes category 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 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;
 - (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.

Provisions applicable to proposals relating to change of category only

40. Schedules 3 and 4 to these Regulations have effect for specifying the provisions applicable to proposals relating to a change of category published under paragraph 2 or 3 of Schedule 8 to SSFA 1998.

PART 5

Savings and transitional provisions relating to proposals for the making of prescribed alterations to maintained schools and to changes of category where the proposals have been published and determined under SSFA 1998

Requirement to Implement Proposals

41.—(1) This regulation applies to proposals relating to a prescribed alteration or to a change of category of a maintained school published under section 28 or 31 of SSFA 1998 or paragraph 2 or 3 of Schedule 8 to SSFA and approved or determined under paragraph 3 of Schedule 6 to SSFA 1998 or paragraph 4 of Schedule 6 to SSFA 1998 as applicable.

(2) The proposals referred to in paragraph (1) must be implemented (insofar as not already implemented), in the form in which they were so approved or determined, in accordance with this Part of these Regulations.

Modification post determination

42.—(1) The adjudicator may at the request of the authority or governing body who made the proposals—

- (a) modify the proposals, and
- (b) where any approval was given in accordance with paragraph 3 (3) of Schedule 6 to SSFA 1998 specify a later date by which the event in question must occur.

(2) Before modifying any proposals the adjudicator must consult the relevant governing body and the local education authority (unless they proposed the modification)

Revocation of proposals (after approval)

43.—(1) If the adjudicator is 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 adjudicator may determine that regulation 41(2) (duty to implement) is to cease to apply to the proposals.

(2) The adjudicator may only make a determination under paragraph (1) where proposals that he should do so have been published by the governing body or the local authority as appropriate under paragraph (3) (“revocation proposals”).

(3) Revocation proposals must contain—

- (a) a description of the original proposals as published in accordance with section 28, 31 of, or paragraph 2 or 3 of Schedule 8 to, SSFA 1998;
- (b) the date of publication of the original proposals;

- (c) a statement as to why it is proposed that, in accordance with paragraph (1), regulation 41(2) should not apply in relation to the original proposals.
- (4) Revocation proposals must be published by—
 - (a) posting them 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) The local education authority or the governing body as the case may be must submit the revocation proposals within 1 week of the date of publication to the adjudicator.
- (6) Any person may object to or comment on revocation proposals and such objections and comments must be sent to the adjudicator within 6 weeks from the date of publication of the proposals.

Proposals not falling to be implemented

- 44.—(1) Where by virtue of regulation 43(1), regulation 41(2) (duty to implement) ceases to apply to any proposals, those proposals are to be treated as if they had been rejected.
- (2) Where any approval was given in accordance with paragraph 3 (3) of Schedule 6 to SSFA 1998 and the event specified in the approval does not occur by the date in question, regulation 41 (2) ceases to apply to the proposals.
- (3) Where by virtue of sub-paragraph (2), regulation 41 (2) ceases to apply to any proposals, those proposals must be considered afresh by the adjudicator under regulation 27.

Unimplemented statutory proposals

- 45.—(1) Where a school changes category 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 be to the extent to which 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 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 authority;
 - (c) 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.

Provisions applicable to proposals relating to change of category only

- 46. Insofar as proposals relating to a change of category are unimplemented, such proposals must be implemented in accordance with provisions as specified in Schedules 3 and 4 to these Regulations.

26th April 2007

Jim Knight
Minister of State
Department for Education and Skills

SCHEDULE 1

Regulation 7

MODIFICATION OF PART 2 OF THESE REGULATIONS WHERE SCHOOLS ESTABLISHED OUTSIDE AREA OF RELEVANT LEA

Part 1

Proposals published under section 66 of EA 2005 where school is to be established in area other than that of local education authority that published the notice

1. In relation to proposals published under section 66 of EA 2005 which relate to a school proposed to be situated in an area other than that of the local education authority who published the notice under section 66 of EA 2005, Part 2 of these Regulations has effect in accordance with the following modifications.

2. After regulation 3 (9) insert—

“(10) Where the notice published by the local education authority pursuant to section 66 (1) of EA 2005 specifies that the proposed school is to be situated in an area other than their own (“notice specific cases”), the local education authority (“Local Education Authority A”) must send complete copies of all published proposals that have not been withdrawn to the local education authority for the area in which it is proposed that the school will be situated (“Local Education Authority B”).

(11) Where the notice published by the authority pursuant to section 66 (1) of EA 2005 does not specify that the proposed school is to be situated in an area other than their own, but a proposer includes this in his proposals (“non-notice specific cases”), the local education authority (“Local Education Authority A”) must send a copy of the proposals published by that proposer only, to the local education authority for the area in which it is proposed that the school will be situated (“Local Education Authority B”).”

3. After regulation 4 (4) insert—

“(5) Local Education Authority A—

(a) in notice specific cases, must send copies of all objections and comments received together with the proposals it sends in accordance with regulation 3 (10) to Local Education Authority B within 1 week of the expiry of the representation period as prescribed by the regulations referred to in regulation 4, or by 1st June 2007, as applicable; and

(b) in non-notice specific cases, must send copies of any objections and comments received in respect only of the proposals sent by the authority under regulation 3 (11) to Local Education Authority B within 1 week of the end of the representation period as prescribed by the regulations referred to in regulation 4, or by 1st June 2007 as applicable.”

4. For regulation 7 (3) substitute the following—

“(3) Local Education Authority A, after seeking and, unless Local Education Authority B have failed to reach a decision on what recommendation to give, obtaining the recommendation of Local Authority B, may—

(a) reject all the proposals;

(b) approve any of the proposals without modification; or

(c) approve any of the proposals with such modifications as the authority think desirable after consulting the body who published the proposals.”

5. For regulation 10 substitute the following—

“10. If within 2 months from the end of the period in which proposals, objections and comments must be forwarded to the relevant authority as provided by regulations 3(6) and 3 (7) as applicable, Local Education Authority A have failed to make a decision, they must refer all the proposals together with any objections or comments received to the adjudicator.

Part 2

Proposals published under section 28, 28A or 31 of SSFA 1998 where school is to be established in area other than that of local education authority who it is proposed should maintain the school

6. In relation to proposals published under section 28,28A or 31 of SSFA 1998 which relate to a school proposed to be situated in an area other than that of the authority who it is proposed should maintain the school, Part 2 of these Regulations has effect with the following modifications.

7. After regulation 3 (9) insert—

“(10) Where the proposed school is to be situated in an area other than that of the authority who it is proposed should maintain the school, the authority who it is proposed should maintain the school (“Local Education Authority A”) must send a copy of the proposals to the authority for the area in which it is proposed that the school will be situated (“Local Education Authority B”).”

8. After regulation 4 (4) insert—

“(5) Local Education Authority A must send copies of all objections and comments received together with the proposals it sends in accordance with regulation 3 (10) to Local Education Authority B within 1 week of the expiry of the period in which objections or comments may be made as prescribed by the regulations referred to in regulation 4 or within 1 week of 25th May 2007 as applicable.”

9. For regulation 7 (4) substitute the following—

“(4) Local Education Authority A, after seeking and, unless Local Education Authority B have failed to reach a decision on what recommendation to give, obtaining the recommendation of Local Authority B may—

- (a) reject all the proposals;
- (b) approve any of the proposals without modification; or
- (c) approve any of the proposals with such modifications as the authority think desirable after consulting the body who published the proposals.”

10. For regulation 10 substitute the following—

“10. If within 2 months from the end of the period in which proposals, objections and comments must be forwarded to the relevant authority as provided by regulations 3(6) and 3 (7) as applicable, Local Education Authority A have failed to make a decision, they must refer all the proposals together with all and any objections or comments received to the adjudicator.”

SCHEDULE 2

Regulations 18 and 20

IMPLEMENTATION OF ESTABLISHMENT AND DISCONTINUANCE PROPOSALS

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

1.—(1) This paragraph applies to proposals which fall to be implemented under regulation 18 or 20 and relate to a community school, a community special school or a maintained nursery school or to a proposed such school.

(2) The proposals must be implemented by the relevant authority.

Proposals relating to foundation or voluntary controlled schools

2.—(1) This paragraph applies to proposals which fall to be implemented under regulation 18 or 20 and relate to a foundation or voluntary controlled school, or a proposed such school.

(2) Proposals made by the relevant authority must be implemented by the authority.

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

Proposals relating to voluntary aided schools

3.—(1) This regulation applies to proposals which fall to be implemented under regulation 18 or 20 and relate to a voluntary aided school, or a proposed voluntary aided school.

(2) The proposals must be implemented—

- (a) so far as relating to the provision of any relevant premises for a proposed school, by the relevant authority,
- (b) in the case of discontinuance proposals made by proposers, by the proposers and the relevant authority, and
- (c) otherwise by the proposers or, in the case of proposals made by the relevant authority, by the relevant authority.

(3) In sub-paragraph (2) “relevant premises” means—

- (a) in the case of proposals published under section 66 of EA 2005, the site specified in the notice under that section, or playing fields, and
- (b) in any other case, playing fields.

(4) Nothing in sub-paragraph (2) requires the relevant authority to provide any playing fields where—

- (a) a new voluntary aided school is to be established in place of one or more existing independent, foundation or voluntary schools falling to be discontinued on or before the date of implementation of the proposals, and
- (b) those playing fields—
 - (i) were part of the premises of any of the existing schools (whether it was an independent school or a foundation or voluntary school), and
 - (ii) (if it was a foundation or voluntary school) were not provided by the authority.

Proposals relating to foundation special schools

4.—(1) This paragraph applies to proposals which fall to be implemented under regulation 18 or regulation 20 and relate to a foundation special school or a proposed foundation special school.

(2) Where the proposals were made by the relevant authority, they must be implemented by the authority.

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

Proposals relating to Academies

5. Where proposals published under section 66 of EA 2005 to establish an Academy are implemented by the Secretary of State making an agreement under section 482 of EA 1996, subsection (3) of that section (requirement to consult certain LEAs about the establishment of the school) does not apply.

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

6.—(1) This paragraph applies where a local education authority are required—

- (a) by virtue of paragraph 2 (2) or (3) to provide a site for a proposed foundation or voluntary controlled school, or
- (b) by virtue of paragraph 4 (2) or (3) to provide a site for a proposed foundation special school.

(2) The authority must transfer their interest in the site and in any buildings on the site which are to form part of the school's premises—

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

(3) If any doubt or dispute arises as to the persons to whom the authority are required to make the transfer, it must be made to such persons as the adjudicator thinks proper.

(4) The authority must pay to the persons to whom the transfer is made their reasonable costs in connection with the transfer.

(5) Where—

- (a) a transfer is made under this paragraph, and
- (b) the transfer is made to persons who possess, or are or may become entitled to, any sum representing proceeds of the sale of other premises which have been used for the purposes of the school,

those persons must notify the local education authority that sub-paragraph (b) applies to them; and they or their successors must pay to the authority so much of that sum as, having regard to the value of the interest transferred, may be determined to be just, either by agreement between them and the authority or, in default of agreement, by the adjudicator.

(6) In sub-paragraph (5)(b) the reference to proceeds of the sale of other premises includes a reference to—

- (a) consideration for the creation or disposition of any kind of interest in other premises, including rent, and

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(b) interest which has accrued in respect of any such consideration.

(7) Any sum paid under sub- paragraph (5) is to be treated for the purposes of section 14 of the Schools Sites Act 1841⁽³⁰⁾ (which relates to the sale or exchange of land held on trust for the purposes of a school) as a sum applied in the purchase of a site for the school.

(8) A determination may be made under sub-paragraph (5) in respect of any property subject to a trust which has arisen under section 1 of the Reverter of Sites Act 1987⁽³¹⁾ (right of reverter replaced by trust for sale) if and only if—

- (i) the determination is made by the adjudicator, and
- (ii) he is satisfied that steps have been taken to protect the interests of the beneficiaries under the trust.

(9) Sub-paragraph (5) is to apply for the purpose of compensating the authority notified under that sub-paragraph only in relation to such part of the sum mentioned in paragraph (5)(b) (if any) as remains after the application of paragraphs A1 to A16 or 1 to 3 of Schedule 22 to SSFA 1998⁽³²⁾ to that sum.

(10) In this paragraph—

“the relevant purposes” means—

- (a) in relation to a transfer to a school’s foundation body, the purposes of the schools comprising the group for which that body acts, and
- (b) in relation to a transfer to a school’s governing body, the purposes of the school;

“site” does not include playing fields but otherwise includes any site which is to form part of the premises of the school in question.

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

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

7.—(1) This paragraph applies where any proposers are required by virtue of paragraph 3 (2) to implement proposals involving the establishment of a new voluntary aided school.

(2) Paragraph 5 of Schedule 3 to SSFA 1998 applies in relation to the new school as it applies in relation to an existing voluntary aided school.

(3) In the application of that paragraph in relation to a new voluntary aided school—

- (a) the references to the governing body, in relation to any time before the governing body are constituted, are to be read as references to the proposers;
- (b) where requirements are imposed in relation to grant paid by virtue of this paragraph to the proposers, the requirements must be complied with by the governing body, when they are constituted, as well as by the proposers.

Assistance for proposers of proposed voluntary aided school

8. A local education authority may give to persons required by virtue of paragraph 3 (2) to implement proposals involving the establishment of a voluntary aided school such assistance as the authority think fit in relation to the carrying out by those persons of any obligation arising by virtue of that provision.

⁽³⁰⁾ 1841 c. 38.

⁽³¹⁾ 1987 c 15.

⁽³²⁾ Paragraphs A1 to A16 were inserted by Schedule 4 to the Act.

Duty to transfer interest in premises provided under paragraph 8

9.—(1) Where assistance under paragraph 8 consists of the provision of any premises for use for the purposes of a school, the local education authority must transfer their interest in the premises

- (a) to the trustees of the school to be held on trust for the purposes of the school; or
- (b) if the school has not trustees, to the school’s foundation body, to be held by that body for the relevant purpose.

(2) If any doubt or dispute arises as to the persons to whom the authority are required to make the transfer it must be made to such persons as the adjudicator thinks proper.

(3) The authority must pay to the persons to whom the transfer is made their reasonable costs in connection with the transfer.

(4) In this paragraph “the relevant purposes” means, in relation to a transfer to a school’s foundation body, the purposes of the schools comprising the group for which that body acts.

SCHEDULE 3

Regulations 40 and 46

PROVISIONS APPLICABLE TO PROPOSALS RELATING TO A CHANGE OF CATEGORY

Revision or replacement of the school’s instrument of government

1.—(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 3 or 4 of Schedule 6 to SSFA 1998 or regulation 27 as applicable 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

2.—(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

3.—(1) 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.

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(2) Subject to paragraph 4 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 paragraph (2) must hold 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 4.

Surplus governors

4.—(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).

(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

5. Where a voluntary aided or foundation school changes category to a voluntary controlled or community school, or from a foundation special school to a community special 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 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 authority.

6.—(1) Subject to sub-paragraph (2), paragraph 5 applies to any person who immediately before the implementation date is employed by the governing body to work at the school which is the subject of the proposal.

(2) Paragraph 5 does not apply to any person whose contract of employment terminates on the day immediately preceding the implementation date.

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7. 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 must be treated for the purpose of paragraph 5 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.

8. Where a school changes category from a voluntary controlled or community school to a foundation or voluntary aided 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.

9.—(1) Subject to sub-paragraph (2), paragraph 8 applies to any person who immediately before the implementation date is employed by the local education authority to work at the school which is the subject of the proposal.

(2) Paragraph 5 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 school meals.

10. 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 must be treated for the purpose of paragraph 8 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.

11. Paragraphs 5 to 10 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 affected by these Regulations.

12.—(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 SSFA 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

Regulations 40 and 46

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

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(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.

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 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.

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)—

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- (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;
- (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 section 28 (5) of SSFA 1998 as modified by the Change of Category Regulations;
- (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 on or before the date of implementation of such proposals;
- (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(33) (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),

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,

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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;
- (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 six 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⁽³⁴⁾, 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⁽³⁵⁾ 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.

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.

⁽³⁴⁾ 1925 c.21, 1987 c.2, and 2002 c.9.

⁽³⁵⁾ 1925 c.21.

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(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.

(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 that person by the transferor, the transferee or both.

(4) Any dispute as to whether and if so how much compensation is payable under sub-paragraph (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;

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set transitional provisions relating to the coming into force of Part 2 of the Act.

Part 1 contains provisions of general application.

Part 2 and Part 3 relate to establishment and discontinuance proposals published before 25th May 2007 under previous enactments but not determined on or before that date.

Regulations 3 to 5 set out general saving provisions in relation to the process to be followed in respect of proposals published before 25th May 2007 but not yet determined. Regulations 6 to 19 with Schedule 1 provide for the determination of such proposals.

Regulations 20 to 23 with Schedule 2 provide for the determination and implementation of establishment or discontinuance proposals published and determined under previous enactments before 25th May 2007.

Part 4 and Part 5 relate to proposals to make prescribed alterations or to change the category of a maintained school published before 25th May 2007 under previous enactments but not determined on or before that date.

Regulations 24 to 26 set out general saving provisions in relation to the process to be followed in respect of proposals to make prescribed alterations published before 25th May 2007 but not yet determined. Regulations 27 to 40 with Schedules 3 and 4 provide for the determination and implementation of such proposals.

Regulations 41 to 46 with Schedules 3 and 4 provide for the determination and implementation of proposals to make prescribed alterations or to change the category of a maintained school published and determined under previous enactments before 25th May 2007.