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STATUTORY INSTRUMENTS

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**2013 No. 3110**

**EDUCATION, ENGLAND**

**The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013**

*Made* - - - - *16th December 2013*  
*Laid before Parliament* *18th December 2013*  
*Coming into force* - - *28th January 2014*

The Secretary of State for Education makes the following Regulations in exercise of the powers conferred by sections 18(1), (2) and (3), 19(2) and (3), 21(1) to (6), 22(3) to (5), 23(1), and (3) to (5), 24(1) to (7), 181(2) and 183(1) and (2) of the Education and Inspections Act 2006<sup>(1)</sup> and sections 29(5) and 537 of the Education Act 1996<sup>(2)</sup>.

**Citation, commencement and application**

1.—(1) These Regulations may be cited as the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013 and come into force on 28th January 2014.

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

**Interpretation**

2.—(1) In these Regulations—

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

“SSFA 1998” means the School Standards and Framework Act 1998<sup>(3)</sup>;

“the Constitution Regulations” means the School Governance (Constitution) (England) Regulations 2012<sup>(4)</sup>;

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

“Early Years Foundation Stage” means the learning and development requirements specified by the Secretary of State by order and the welfare requirements specified by the Secretary of State by regulations both made under section 39 of the Childcare Act 2006<sup>(5)</sup>;

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

(2) 1996 c.56.

(3) 1998 c.31.

(4) S.I. 2012/1034.

(5) 2006 c.21.

“foundation” has the meaning set out in section 21(3) of SSFA 1998;

“foundation body” means a body corporate established under section 21 of SSFA 1998(6);

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

“further education institution” means an institution within the further education sector (within the meaning of section 91(3) of the Further and Higher Education Act 1992(7));

“grammar school” has the same meaning as in section 104(7) of SSFA 1998;

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

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

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

“playing fields” has the meaning set out in section 77 of SSFA 1998 (control of disposals or changes in use of school playing fields);

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

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

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

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

“special educational needs” has the meaning given by section 312(1) of the Education Act 1996(8);

“special school” has the same meaning as in section 337 of the Education Act 1996(9);

“sponsor governor” means a person who is nominated as a sponsor governor and is appointed as such by the governing body in accordance with Schedule 5 to the School Governance (Constitution) Regulations 2007(10);

“transferor” and “transferee” mean the transferor and transferee under any transfer to which these Regulations apply;

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

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

(2) In these Regulations, any reference to sections 18, 19, 20, 21, 23 or 24 is a reference to that section of the Act.

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- (6) Section 21(6) was amended by paragraph 14 of Schedule 3 and Part 3 of Schedule 18 to the Education and Inspections Act 2006 (c.40).
- (7) 1992 c. 13. Section 91(3) was amended by paras 1 and 13 of Sched 8 to the Apprenticeships, Skills, Children and Learning Act 2009.
- (8) 1996 c.56. Section 312 was amended by section 57(1) and paragraph 23 of Schedule 7 to the Education Act 1997 (c.44); section 140(1) and (3), and paragraph 71(a) and (b) of Schedule 30 to SSFA 1998; section 149 of, and paragraphs 1 and 56 of Schedule 9 to the Learning and Skills Act 2000 (c.21), and section 6(2) and paragraphs 2 and 3 of Schedule 1 to the Act.
- (9) 1996 c. 56.
- (10) S.I. 2007/957. These Regulations were revoked by the School Governance (Constitution) (England) Regulations 2012/1034 subject to savings and transitional provisions specified in SI 2012/1034.

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

3.—(1) Foundation proposals are [proposals for] the alterations specified in paragraph (2) and are—

- (a) prescribed under section 18 as alterations that may be implemented in respect of a community, foundation, voluntary aided, voluntary controlled or special school in pursuance of proposals published by the governing body; and
  - (b) in the case of a community or community special school, are designated under section 19(3) as alterations capable of being proposed by the governing body.
- (2) The alterations are—
- (a) a change of category (a “change of category to foundation”)—
    - (i) from a community, voluntary aided or voluntary controlled school to a foundation school;
    - (ii) from a community special school to a foundation special school;
  - (b) in relation to foundation and foundation special schools only, the acquisition of a foundation otherwise than under SSFA 1998;
  - (c) in relation to foundation and foundation special schools only, where the instrument of government of the school does not provide for a majority of the governing body to be foundation governors<sup>(11)</sup>, any change in the instrument of government which results in the majority of governors being foundation governors (“a relevant change”).

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

- 4.—(1) The alterations specified in paragraphs 4(a), 10 and 16(e) to (f) of Schedule 2 are—
- (a) prescribed under section 18 as alterations that may be implemented in respect of a community school, in pursuance of proposals published by the governing body of the school; and
  - (b) designated under section 19(3) as alterations capable of being proposed by that governing body.
- (2) The alterations specified in paragraphs 5, 6, 7, 9, 11, 13 and 14 of Schedule 2 are—
- (a) prescribed under section 18 as alterations that may be implemented in respect of a community special school or a foundation special school in pursuance of proposals published by the governing body of the school; and
  - (b) in the case of a community special school, designated under section 19(3) as alterations capable of being proposed by that governing body.
- (3) The alterations specified in paragraphs 3, 4, 8, 10, 11, 12(b), 12(c), 14, 15 and 16(a) to (d) of Schedule 2 are prescribed under section 18 as alterations that may be implemented in respect of a foundation or voluntary school in pursuance of proposals published by the governing body of the school.

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

- 5.—(1) The alterations specified in paragraphs 1, 2, 8, 11, 12, 14 and 15 of Schedule 2 are—
- (a) prescribed under section 18 as alterations that may be implemented in respect of a community school in pursuance of proposals published by the local authority; and

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(11) For the meaning of “foundation governor” see section 19(1A)(e) of the Education Act 2002 (c. 32).

- (b) designated under section 19(2) as alterations capable of being proposed by the local authority.
- (2) The alterations specified in paragraphs 5, 6, 7, 9, 11, 13 and 14 of Schedule 2 are—
  - (a) prescribed under section 18 as alterations that may be implemented in respect of a community special school in pursuance of proposals published by the local authority; and
  - (b) designated under section 19(2) as alterations capable of being proposed by the local authority.
- (3) The alteration specified in paragraph 14 of Schedule 2 is—
  - (a) prescribed under section 18 as an alteration that may be implemented in respect of a maintained nursery school<sup>(12)</sup> in pursuance of proposals published by the local authority; and
  - (b) designated under section 19(2) as an alteration capable of being proposed by the local authority.
- (4) The alterations specified in paragraphs 1, 4(a), 8(a) and 8(c) of Schedule 2 are prescribed under section 18 as alterations that may be implemented in respect of a foundation or voluntary school in pursuance of proposals published by the local authority<sup>(13)</sup>.
- (5) The alterations specified in paragraphs 6 and 9 of Schedule 2 are prescribed under section 18 as alterations that may be implemented in respect of a foundation special school in pursuance of proposals published by the local authority<sup>(14)</sup>.

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

- 6.—(1) Part 1 of Schedule 1 sets out the information to be included in, or provided in relation to, foundation proposals.
- (2) Part 2 of Schedule 1 provides for the publication, determination and implementation of foundation proposals.
- (3) Schedule 3 provides for the publication, determination and implementation of proposals concerning alterations falling within Schedule 2.
- (4) Schedule 4 has effect in relation to provisions relating to foundation proposals and other changes of category.
- (5) Schedule 5 has effect in relation to the transfer of land where a school changes category or acquires a foundation.

### **Regard to guidance**

- 7. Any governing body, local authority or adjudicator (where applicable) when exercising functions under these regulations must have regard to any guidance given from time to time by the Secretary of State.

### **Revocations and saving provisions**

- 8.—(1) The following are revoked—
  - (a) the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007<sup>(15)</sup>;

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<sup>(12)</sup> For the meaning of “maintained nursery school” see section 22(9) of the School Standards and Framework Act 1998 (c. 31).

<sup>(13)</sup> These are capable of being proposed by a local authority in accordance with section 19(2)(b).

<sup>(14)</sup> These are capable of being proposed by a local authority in accordance with section 19(2)(c).

<sup>(15)</sup> S.I. 2007/1289.

- (b) regulations 17 to 25 of the School Organisation and Governance (Amendment) (England) Regulations 2007<sup>(16)</sup>;
  - (c) regulation 6 of the School Organisation and Governance (Amendment) (England) Regulations 2009<sup>(17)</sup>;
  - (d) regulation 23 of the Apprenticeships, Skills, Children and Learning Act 2009 (Consequential Amendments to Subordinate Legislation) (England) Order 2010<sup>(18)</sup>;
  - (e) Regulation 18 of the Young People’s Learning Agency Abolition (Consequential Amendments to Subordinate Legislation) (England) Order 2012<sup>(19)</sup>.
- (2) Notwithstanding the provisions of paragraph (1) the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 continue to apply in relation to proposals published by a local authority or by a governing body under section 19 before 28th January 2014.

16th December 2013

*John Nash*  
Parliamentary Under Secretary of State  
Department for Education

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<sup>(16)</sup> S.I. 2007/3464.  
<sup>(17)</sup> S.I. 2009/1556.  
<sup>(18)</sup> S.I. 2010/1941.  
<sup>(19)</sup> S.I. 2012/956.

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## SCHEDULE 1

Regulation 6

### FOUNDATION PROPOSALS

#### PART 1

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

1. All foundation proposals must include the following information—
  - (a) the name, address and category of the school for which the proposals are being published;
  - (b) the implementation date;
  - (c) a statement of which one of, or combinations of, the prescribed alterations in regulation 3 comprise the proposals.
2. Where the prescribed alteration is a change of category to foundation, the proposals must contain the following information—
  - (a) a statement whether the school will have a foundation and if so, the name or proposed name of the foundation;
  - (b) where it is a change of category to foundation from a voluntary aided school or voluntary controlled school, a statement that, in accordance with section 20, the consent of the trustees and the persons by whom the foundation governors are appointed has been obtained; and
  - (c) the rationale for the change and the particular ethos that the foundation will bring to the school.
3. Where the prescribed alteration is the acquisition of a foundation or a relevant change at a school for which a foundation already acts, the proposals must contain the following information—
  - (a) the name or proposed name of the foundation;
  - (b) the details of membership of the foundation, including the names of the members;
  - (c) the proposed constitution of the school's governing body;
  - (d) the foundation's charitable objects; and
  - (e) the rationale for the alteration and the particular ethos that the foundation will bring to the school.
4. In addition where the relevant change relates to—
  - (a) a foundation school which, immediately before 25th May 2007, was a foundation school having a foundation; or
  - (b) a foundation school which, having been a voluntary school immediately before 25th May 2007, changed category to a foundation school on or after that date,

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

## PART 2

### Publication, determination and implementation of foundation proposals

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

- 5.—(1) The governing body must publish—
- (a) the proposals on a website; and
  - (b) a notification of the proposals (including the address of the website where the proposals are published) in a local newspaper.
- (2) Any publication under sub-paragraph (1)(a) must contain a statement detailing—
- (a) how copies of the proposals may be obtained;
  - (b) that any person may object to or comment on the proposals and the address of the governing body to which any objections or comments should be sent; and
  - (c) the date (in accordance with paragraph 6) by which any such objections or comments must be sent.
- (3) Within one week of the date of publication under sub-paragraph (1)(a) the governing body must send a copy of the proposals together with the statement published under sub-paragraph (2) to—
- (a) the local authority;
  - (b) where the proposals involve, or are likely to affect, a school which has a religious character—
    - (i) the Diocesan Board of Education for any diocese of the Church of England any part of which is comprised in the area of the local authority;
    - (ii) the bishop of a diocese of the Roman Catholic Church any part of which is comprised in the area of the local authority; or
    - (iii) the relevant faith group in relation to the school;
  - (c) where the school is a special school, the parents of every registered pupil at the school; and
  - (d) any other body or person that the governing body think appropriate.
- (4) Within one week of receiving a request for a copy of the proposals the governing body must send a copy to the person requesting it.
- (5) Where a governing body publishes a proposal under sub-paragraph (1)(a), they must post a notification of the proposal in a conspicuous place on the school premises and at or near the main entrance to the school, or, if there is more than one main entrance, all of them.

#### **Objections and comments**

- 6.—(1) Any person may send objections or comments in relation to proposals to the governing body within four weeks of the date of publication.
- (2) In cases where proposals have been referred to the adjudicator in accordance with paragraph 8 the governing body must forward any objections or comments which they have received under paragraph (1) to the adjudicator within one week of the end of the representation period.

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

7. For the purposes of section 21(2)(f) the governing body of the school to which the proposals relate is prescribed as the person who (subject to paragraph 8) must consider and determine the proposals.

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

**8.—(1)** The local authority may, subject to paragraphs 9 and 10, require the governing body to refer proposals falling within sub-paragraph (2) to the adjudicator.

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

- (a) a foundation or foundation special school having a foundation;
- (b) a foundation or foundation special school whose instrument of government provides for the majority of governors to be foundation governors.

**9.** Where the local authority require a referral to the adjudicator under paragraph 8 they must do so in writing within four weeks of the date of the publication of the proposals.

**10.** The local authority may only require that the proposals specified in paragraph 8 be referred to the adjudicator if they consider that the proposals will have a negative impact on standards at the school.

**11.** Where the governing body are required (under paragraph 8) to refer proposals to the adjudicator, they must also send to the adjudicator within one week of the end of the representation period, a copy of the proposals and any objections or comments received.

### **Withdrawal of proposals**

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

- (a) such proposals are withdrawn before any determination is made;
- (b) written notice of the withdrawal is given to—
  - (i) the local authority;
  - (ii) in cases where the proposals have been referred to the adjudicator, the adjudicator; and
- (c) notification of the withdrawal is placed on the website where the original proposal was published.

### **Consideration and determination of proposals by the governing body or adjudicator**

**13.—(1)** In determining proposals to which this Schedule applies the governing body may—

- (a) reject the proposals;
- (b) approve the proposals without modifications; or
- (c) approve the proposals with such modifications as the governing body think desirable, having consulted the local authority.

(2) Where proposals are approved by the governing body (whether with or without modifications), the approval may be conditional on the occurrence of an event prescribed in paragraph 16.

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

**14.—(1)** Where proposals have been referred to the adjudicator for determination pursuant to paragraphs 8 or 15, 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, having consulted the governing body (unless they proposed the modifications).
- (2) Where proposals are approved by the adjudicator (whether with or without modifications), the approval may be conditional on the occurrence of an event prescribed in paragraph 16.

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

- 15.—(1) Sub-paragraph (2) applies to proposals which relate to—
- (a) a change of category from voluntary aided to foundation school, without the acquisition of a foundation or a relevant change in the instrument of government; or
  - (b) a change of category from voluntary aided to foundation school, together with the acquisition of a foundation or a relevant change in the instrument of government (or both).
- (2) For the purposes of section 21(2)(h) the prescribed persons at whose request proposals to which this paragraph applies (after their initial determination by the governing body) must be referred to the adjudicator, are—
- (a) the local authority;
  - (b) the Diocesan Board of Education for any diocese of the Church of England any part of which is comprised in the area of the local authority; and
  - (c) the bishop of a diocese of the Roman Catholic Church any part of which is comprised in the area of the local authority.
- (3) A request under sub-paragraph (2) must be made within four weeks of the determination by the governing body.
- (4) Where a request is made, the governing body must submit the proposals and any objections or comments made in relation to the proposals to the adjudicator within one week of receiving it.

### **Conditional approvals**

16. The following events are prescribed as specified events which (if the approval is expressed to take effect only if they occur) must occur by the date specified in the approval—
- (a) the making of any scheme relating to any charity connected with the school; and
  - (b) the establishment of a foundation within the meaning of section 23A of SSFA 1998<sup>(20)</sup>.

### **Provision for notification of determinations**

- 17.—(1) Within one week of making the determination, the governing body must notify the local authority of the decision together with reasons, which must be published on the website where the original proposal was published.
- (2) In the case of any determination made by the adjudicator pursuant to paragraph 14 or 15 the adjudicator must notify the governing body and local authority of their decision together with reasons, which must be published on the website where the original proposal was published.
- (3) Where any determination relates to proposals to which paragraph 15(1) applies the adjudicator must also notify the prescribed persons in paragraph 15(2) of their decision together with reasons.

### **Duty to implement proposals and provide information to the Secretary of State**

- 18.—(1) Subject to the following provisions of this Schedule—

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<sup>(20)</sup> Section 23A was inserted by section 33(1) of the Act.

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- (a) foundation proposals must be implemented by the governing body in the form in which they were approved; and
  - (b) within one week of implementation, the governing body must provide information to the Secretary of State about foundation proposals that have been implemented.
- (2) The information in paragraph 18(1)(b) must be provided through the Department for Education’s register of educational establishments.
- (3) For the purposes of the provision of information under sub-paragraph (2), regard must be had to any guidance given from time to time by the Secretary of State.

**Revocation of proposals (after approval)**

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

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

the governing body may determine at any time before implementation that paragraph 18 (duty to implement) is to cease to apply to the proposals.

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

(3) Revocation proposals must contain—

- (a) a description of the original proposals as published in accordance with section 19(3);
- (b) the date of publication of the original proposals; and
- (c) a statement as to why it is proposed that, in accordance with sub-paragraph (1), paragraph 18 should not apply in relation to the original proposals.

(4) The governing body must publish—

- (a) the revocation proposals on a website; and
- (b) a notification of the revocation proposals (including the address of the website where the proposals are published) in a local newspaper.

(5) Any publication under sub-paragraph (4)(a) must contain a statement detailing—

- (a) how copies of the revocation proposals may be obtained;
- (b) that any person may object to or comment on the revocation proposals and the address of the governing body to which any objections or comments should be sent; and
- (c) the date by which such objections or comments must be sent.

(6) Any objections or comments must be sent to the governing body within four weeks of the date of publication of the revocation proposals.

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

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

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

(10) Sub-paragraphs (11) to (15) apply where paragraph 15(2) applies to the proposals (voluntary aided to foundation).

(11) The governing body must publish the determination on the website where the original proposal was published.

(12) The governing body must notify the following persons of the determination together with 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 local authority;
- (b) the bishop of a diocese of the Roman Catholic Church any part of which is comprised in the area of the local authority; and
- (c) the trustees of the school (if any).

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

- (a) the Diocesan Board of Education for any diocese of the Church of England any part of which is comprised in the area of the local authority; and
- (b) the bishop of a diocese of the Roman Catholic Church any part of which is comprised in the area of the local authority.

(14) A request under sub-paragraph (13) must be made within four weeks of the initial determination of the revocation proposals by the governing body.

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

### **Modification post-determination**

**20.**—(1) The governing body may, at any time after determination but before implementation modify the proposals or, where there has been a conditional approval, specify a later date by which the event specified in the approval must occur.

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

(3) Details of the modification must be published on the website where the original proposal was published.

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

**21.**—(1) Where by virtue of paragraph 19, paragraph 18 (duty to implement) ceases to apply to any proposals, those proposals are to be treated for the purposes of this Schedule as if they had been rejected.

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

- (a) paragraph 18 ceases to apply to the proposals; and
- (b) the proposals must be considered afresh by the governing body or adjudicator (as the case may be) and paragraphs 13 or 14 apply accordingly.

## SCHEDULE 2

Regulations 4 and 5

### ALTERATIONS OTHER THAN ALTERATIONS PROPOSED IN FOUNDATION PROPOSALS WHICH MAY BE PUBLISHED BY A GOVERNING BODY OR LOCAL AUTHORITY AS SPECIFIED IN REGULATIONS 4 AND 5

#### **Enlargement of premises**

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

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

except where the enlargement is a temporary one, which it is anticipated will be in place for no more than three years.

(2) In this paragraph an enlargement of the premises of a school includes—

- (a) the proposed enlargement; and
- (b) the making permanent of any temporary enlargement.

#### **Alteration of upper or lower age limit of a community school including the addition or removal of nursery or sixth form provision**

2. The alteration of the upper or lower age limit of a community school including the addition or removal of nursery or sixth form provision by a year or more, except where the alteration is a temporary one, which it is anticipated will be in place for no more than two years.

#### **Alteration of upper or lower age limits of a foundation or voluntary school**

3. The alteration of the upper or lower age limit of a foundation or voluntary school by three years or more, except where the alteration is a temporary one, which it is anticipated will be in place for no more than two years.

#### **Alteration of upper age limit so as to add or remove a mainstream school's sixth form**

4. Except where the alteration is a temporary one, which it is anticipated will be in place for no more than two years—

- (a) the alteration of the upper age limit of a mainstream school so as to provide sixth form education;
- (b) the alteration of the upper age limit of such a school so as to remove sixth form education.

#### **Alteration of upper or lower age limit of a special school**

5. The alteration of the upper or lower age limit of a special school by a year or more, except where the alteration is a temporary one, which it is anticipated will be in place for no more than two years.

#### **Increase in number of pupils in a special school**

6.—(1) Except where a special school is established in a hospital, any increase in the number of pupils for whom the school is organised to make provision, which would increase the number of such pupils by 10% or the relevant number of pupils (whichever is the lesser).

(2) The “relevant number of pupils” is five where the school only makes boarding provision and 20 in any other case.

### **Decrease in number of pupils in a special school**

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

### **Special educational needs**

8. In relation to provision for special educational needs in a mainstream school—

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

9. In relation to provision for special educational needs in a special school, a change in the type of special educational needs for which the school is organised to make provision.

### **Grammar school admission arrangements**

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

### **Co-educational or single sex provision**

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

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

(2) For the purposes of this paragraph a school is to be treated as an establishment which admits pupils of one sex only if the admission of pupils of the other sex is limited to pupils over compulsory school age and is a comparatively small number of pupils in the age group normally at the school.

### **Boarding**

12. In the case of mainstream schools—

- (a) the introduction of boarding provision;
- (b) the ending of boarding provision; or
- (c) the alteration of boarding provision such that the number of pupils for whom boarding provision is made is decreased by 50 pupils or 50% (whichever is the greater).

13. In the case of special schools—

- (a) the introduction or ending of boarding provision; or
- (b) where the school makes provision for day pupils and boarding pupils, the alteration of boarding provision such that the number of pupils for whom boarding provision is made is increased or decreased by five pupils or more.

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

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

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

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

### **Changes of category**

16. A change of category—

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

## SCHEDULE 3

Regulation 6

### PUBLICATION, DETERMINATION AND IMPLEMENTATION OF PROPOSALS OTHER THAN FOUNDATION PROPOSALS

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

- 1.—(1) The proposer must publish—
- (a) the proposals on a website; and
  - (b) a notification of the proposals (including the address of the website where the proposals are published) in a local newspaper.
- (2) Any publication under sub-paragraph (1)(a) must contain a statement detailing—
- (a) how copies of the proposals may be obtained;
  - (b) that any person may object to or comment on the proposals and the address of the local authority to which any objections or comments should be sent; and
  - (c) the date (in accordance with paragraph 2) by which such objections or comments must be sent.
- (3) Within one week of the date of publication under sub-paragraph (1)(a) the proposer must send a copy of the proposals together with the statement published under sub-paragraph (2) to—
- (a) the governing body or local authority (as appropriate);
  - (b) if proposals involve, or are likely to affect a school which has a religious character—
    - (i) the Diocesan Board of Education for any diocese of the Church of England any part of which is comprised in the area of the local authority;

- (ii) the bishop of a diocese of the Roman Catholic Church any part of which is comprised in the area of the local authority; or
  - (iii) the relevant faith group in relation to the school;
  - (c) where the school is a special school, to the parents of every registered pupil at the school; and
  - (d) any other body or person that the proposer thinks appropriate.
- (4) Within one week of receiving a request for a copy of the proposals the proposer must send a copy to the person requesting it.
- (5) Where a governing body publish a proposal under sub-paragraph (1)(a) they must post a notification of the proposal in a conspicuous place on the school premises and at or near the main entrance to the school, or, if there is more than one main entrance, all of them.

### **Objections and comments**

- 2.—(1) Any person may send objections or comments in relation to any proposals to the local authority within four weeks from the date of publication.
- (2) The representation period starts on the date of publication of the proposals and ends four weeks later.

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

- 3.—(1) For the purposes of section 21(2)(f) the local authority is prescribed as the person who (subject to the remaining provisions of this Schedule) must consider and determine the proposals.
- (2) Where paragraph 11 applies (transfer to a different local authority area), the local authority referred to in sub-paragraph (1) is the local authority described in paragraph 11 as Local Authority A.

### **Withdrawal of proposals**

4. Proposals may be withdrawn by the proposer who published the proposals provided that—
- (a) such proposals are withdrawn before any determination is made;
  - (b) written notice is given to—
    - (i) the governing body or local authority (as appropriate);
    - (ii) in cases where the proposals have been referred to the adjudicator, the adjudicator;and
  - (c) notification is placed on the website where the original proposal was published.

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

- 5.—(1) In determining proposals to which this Schedule applies the local authority may—
- (a) reject the proposals;
  - (b) approve the proposals without modifications; or
  - (c) approve the proposals with such modifications as the local authority think desirable, having consulted the governing body (unless the modifications are proposed by the governing body).
- (2) Where proposals are approved by the local authority (whether with or without modifications), the approval may be conditional on the occurrence of an event prescribed in paragraph 8.

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

(4) Where the local authority does not make a determination within the period prescribed by sub-paragraph (3), the proposals must be referred to the adjudicator.

6.—(1) Where proposals have been referred to the adjudicator for determination pursuant to paragraphs 5(4) or 7, 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, having consulted the governing body and the local authority (unless they proposed the modifications).

(2) Where proposals are approved by the adjudicator (whether with or without modifications), the approval may be conditional on the occurrence of an event prescribed in paragraph 8.

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

7.—(1) For the purposes of section 21(2)(h) the prescribed persons at whose request proposals to which this paragraph applies (after their initial determination by the local authority) must 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 authority;
- (b) the bishop of a diocese of the Roman Catholic Church any part of which is comprised in the area of the local authority; and
- (c) where proposals relate to a foundation, voluntary or foundation special school—
  - (i) the governing body of the school to whom the proposal relates; and
  - (ii) the trustees of the school (if any).

(2) A request under sub-paragraph (1) must be made within four weeks of the decision by the local authority.

(3) Where a request is made, the local authority must send the proposals and any objections or comments made in relation to the proposals to the adjudicator within one week of receiving it.

#### **Conditional approvals**

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

- (a) the grant of planning permission under Part 3 of the Town and Country Planning Act 1990(21);
- (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 Paragraph (b) or playing fields referred to in Paragraph (c);
- (e) the entering into an agreement for any necessary building project supported by the Department for Education;

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(21) 1990 c.8.



- (f) in the case of mainstream schools, the agreement to any change to the admission arrangements relating to the school or any other school or schools, as specified in the approval;
  - (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 Education Act 2002<sup>(22)</sup>) of which it is intended that the school should form part, or the fulfilling of any other condition relating to the school forming part of a federation;
  - (i) where the proposals are to alter the upper age limit of the school, the decision of the Secretary of State to establish a new further education institution under section 16 or 33C of the Further and Higher Education Act 1992<sup>(23)</sup>;
  - (j) where the proposals in question depend upon any of the events specified in Paragraphs (a) to (i) occurring by a specified date in relation to proposals relating to any other school or proposed school, the occurrence of such an event; and
  - (k) where proposals are related to proposals for the establishment of new schools or discontinuance of schools, and those proposals depend on the occurrence of events specified in regulation 20 of the School Organisation (Establishment and Discontinuance of Schools) Regulations 2013<sup>(24)</sup> the occurrence of such an event.
- (2) For the purposes of sub-paragraph (1)(f) 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 88C of SSFA 1998<sup>(25)</sup> and either—
    - (i) no objection is made to the change in accordance with section 88H of SSFA 1998<sup>(26)</sup>; or
    - (ii) if an objection to the change is made and referred to the adjudicator in accordance with section 88H of SSFA 1998, the objection is not upheld;
  - (b) in a case where the change arises from a variation made pursuant to section 88E of SSFA 1998<sup>(27)</sup> and under the School Admissions (Admissions Arrangements and Co-ordination of Admissions Arrangements) (England) Regulations 2012<sup>(28)</sup>, where the variation is required to be referred to the adjudicator, if the adjudicator determines that the variation should have effect without modifications; and
  - (c) in a case where the change arises from a variation made under those regulations where the variation is not required to be referred to the adjudicator, when the variation is made.

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

9.—(1) Within one week of making the determination, the local authority must publish their decision and the reasons for it on the website where the original proposal was published.

(2) Within one week of making the determination, the local authority must notify the following persons of their decision together with their reasons—

- (a) the adjudicator;

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<sup>(22)</sup> 2002 c. 32.

<sup>(23)</sup> 1992 c.13. Section 33C was inserted by paragraphs 1 and 3 of Schedule 8 to the Apprenticeships, Skills, Children and Learning Act 2009 (c. 22).

<sup>(24)</sup> S.I. 2013/3109.

<sup>(25)</sup> Section 88C was inserted by section 151(1) and (4) of the Education and Skills Act 2008 (c. 25).

<sup>(26)</sup> Section 88H was inserted by section 151(1) and (4) of the Education and Skills Act 2008.

<sup>(27)</sup> Section 88E was inserted by section 151(1) and (4) of the Education and Skills Act 2008.

<sup>(28)</sup> S.I. 2012/8.

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- (b) the governing body;
- (c) the trustees of the school (if any);
- (d) 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 authority;
- (e) the bishop of a diocese of the Roman Catholic Church any part of which is comprised in the area of the local authority;
- (f) where the school is a special school, the parents of every registered pupil at the school; and
- (g) any other body or person that the local authority think appropriate.

(3) In the case of any determination made by the adjudicator pursuant to paragraph 5(4) or 7, the adjudicator must notify the local authority and the persons in Paragraphs (b) to (g) of sub-paragraph (2) of their decision together with reasons within one week of making the determination.

(4) Within one week of receiving notification under sub-paragraph (3), the local authority must publish the adjudicator's decision with reasons on the website where the original proposal was published.

### **Related proposals**

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

(2) Where the local authority are required under paragraph 5(4) or 7 to refer any proposals to the adjudicator, the local authority must also within one 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 authority**

**11.**—(1) This paragraph applies to the determination of any proposals for the transfer of the school to a new site falling within paragraph 14 of Schedule 2, where the new site is in an area other than that of the local authority which maintain the school.

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

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

(4) Before determining the proposals in accordance with paragraph 5, Local Authority A must first seek the recommendation of Local Authority B on how the proposals should be determined.

(5) Any determination to which this paragraph applies must be made within the period of two months of the end of the representation period.

### **Transitional exemption orders under the Equality Act 2010**

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

(2) Where such proposals are published by the local authority, the local authority must make a transitional exemption order<sup>(29)</sup>.

(3) Where such proposals are published by the governing body, sending the published proposals to the local authority is to be treated as an application to the local authority for a transitional exemption order and the local authority must make such an order accordingly.

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(29) For the meaning of "transitional exemption order" see paragraph 3 of Schedule 11 to the Equality Act 2010 (c. 15).

- (4) Where—
  - (a) the local authority have failed to make a transitional exemption order; or
  - (b) the local authority refer the proposals to the adjudicator under paragraph 5(4) or 7,they must refer the question whether to make a transitional exemption order to the adjudicator.
- (5) Where that question is referred to the adjudicator, the adjudicator—
  - (a) must consider the matter afresh; and
  - (b) may make a transitional exemption order accordingly.
- (6) In this paragraph “make”, in relation to the transitional exemption order, includes (so far as the context permits) vary or revoke.

### **Duty to implement proposals and provide information to the Secretary of State**

- 13.**—(1) Subject to the following provisions of this Schedule—
- (a) proposals must be implemented in the form in which they were approved or determined; and
  - (b) within one week of implementation, the proposer must provide information to the Secretary of State about the proposals that have been implemented.
- (2) The information in sub-paragraph (1)(b) must be provided through the Department for Education’s register of educational establishments.
- (3) For the purposes of the provision of information under sub-paragraph (2), regard must be had to any guidance given from time to time by the Secretary of State.

### **Proposals relating to foundation, foundation special or voluntary controlled schools**

**14.** Proposals relating to a foundation, foundation special, or voluntary controlled school 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.

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

**15.** Proposals relating to a community, community special or maintained nursery school must be implemented by the local authority.

### **Proposals relating to voluntary aided schools**

- 16.** Proposals relating to a voluntary aided school must be implemented—
- (a) so far as relating to the provision of any playing fields for the school, by the local authority; and
  - (b) otherwise by the governing body.

### **Provision of site and buildings for foundation, foundation special or voluntary controlled schools**

- 17.**—(1) Where a local authority are required by virtue of the provisions contained in the proposals to provide a site for a foundation, foundation special or voluntary controlled school, the local authority must—
- (a) transfer their interest in the site and in any buildings on the site which are to form part of the school’s premises to the trustees of the school, to be held by them on trust for the purposes of the school; or

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- (b) if the school has no trustees, to the governing body, to be held by that body for the purposes of the school.
- (2) If any doubt or dispute arises as to the persons to whom the local authority are required to make the transfer, it must be made to such persons as the adjudicator thinks appropriate.
- (3) The local authority must pay to the persons to whom the transfer is made their reasonable costs in connection with the transfer.
- (4) 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 authority that Paragraph (b) applies to them, and they or their successors must pay to the local 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 local authority or, in default of agreement, by the adjudicator.

- (5) In sub-paragraph (4)(b) the reference to proceeds of the sale of other premises includes a reference to—
  - (a) consideration for the creation or disposition of any kind of interest in other premises, including rent; and
  - (b) interest which has accrued in respect of any such consideration,

and for the purposes of any agreed determination under sub-paragraph (4) regard must be had to any guidance given from time to time by the Secretary of State.

(6) Any sum paid under sub-paragraph (4) is to be treated for the purposes of section 14 of the School Sites Act 1841<sup>(30)</sup> (which relates to the sale, or exchange of land held on trust for the purposes of the school) as a sum applied in the purchase of a site for the school.

(7) A determination may be made under sub-paragraph (4) in respect of any property subject to a trust which has arisen under section 1 of the Reverter of Sites Act 1987<sup>(31)</sup> (right of reverter replaced by trust for sale) only if—

- (a) the determination is made by the adjudicator; and
- (b) the adjudicator is satisfied that steps have been taken to protect the interests of the beneficiaries under the trust.

(8) Sub-paragraph (4) is to apply for the purposes of compensating the local authority notified under that sub-paragraph only in relation to such part of the sum mentioned in sub-paragraph (4) (b) (if any) as remains after the application of paragraphs A1 to A16<sup>(32)</sup> or paragraphs 1 to 3 of Schedule 22 to SSFA 1998 to that sum.

### **Assistance for voluntary aided schools**

**18.** A local authority may give to the governing body implementing proposals relating to voluntary aided schools such assistance as the local authority think fit in relation to the carrying out by the governing body of any obligation arising by virtue of the provision of any playing fields for the school by the local authority.

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<sup>(30)</sup> 1841 c.38.

<sup>(31)</sup> 1987 c.15.

<sup>(32)</sup> Part A1 to Schedule 22 to the School Standards and Framework Act 1998 was inserted by Schedule 4 to the Education and Inspections Act 2006.

### **Duty to transfer interest in premises provided under paragraph 18**

**19.**—(1) Where assistance under paragraph 18 consists of the provision of any premises for use for the purposes of a school, the local authority must transfer their interest in the premises to the trustees of the school to be held on trust for the purposes of the school.

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

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

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

**20.**—(1) If the local authority, or adjudicator (where the original proposals were referred under paragraph 5(4) only, or a referral is made to the adjudicator under sub-paragraph (10)) are satisfied that—

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

the local authority or adjudicator (as appropriate) may determine at any time before implementation that paragraph 13 (duty to implement) is to cease to apply to the proposals.

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

(3) Revocation proposals must contain—

- (a) a description of the original proposals as published in accordance with section 19(1) or 19(3) (as appropriate);
- (b) the date of publication of the original proposals; and
- (c) a statement as to why it is proposed that, in accordance with sub-paragraph (1), paragraph 13 should not apply in relation to the original proposals.

(4) The proposer must publish—

- (a) the revocation proposals on a website; and
- (b) a notification of the revocation proposals (including the address of the website where the proposals are published) in a local newspaper.

(5) Any publication under sub-paragraph (4)(a) must contain a statement detailing—

- (a) how copies of the revocation proposals may be obtained;
- (b) that any person may object to or comment on the revocation proposals and the address of the local authority to which any objections or comments should be sent; and
- (c) the date by which such objections or comments must be sent.

(6) The governing body (if appropriate) must send the revocation proposals within one week of the date of publication to the local authority.

(7) Any objections and comments must be sent to the local authority within four weeks of the date of publication of the proposals.

(8) Where the original proposals were decided by the adjudicator pursuant to a reference under paragraph 5(4), the local authority must refer the revocation proposals, together with any objections or comments in relation to them, to the adjudicator within two weeks of the end of the representation period.

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

(10) If the local authority do not make a determination within the period specified in sub-paragraph (9) they must refer the proposals to the adjudicator within one week of the end of that period.

(11) The local authority must publish the determination on the website where the original proposal was published.

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

- (a) the Diocesan Board of Education for any diocese of the Church of England any part of which is comprised in the area of the local authority;
- (b) the bishop of a diocese of the Roman Catholic Church any part of which is comprised in the area of the local authority; and
- (c) where the proposals relate to a voluntary, foundation or foundation special school—
  - (i) the governing body; and
  - (ii) the trustees of the school (if any).

(13) The persons at whose request revocation proposals must after their determination by the local 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 authority;
- (b) the bishop of a diocese of the Roman Catholic Church any part of which is comprised in the area of the local authority; and
- (c) where the proposals relate to a voluntary, foundation or foundation special school—
  - (i) the governing body; and
  - (ii) the trustees of the school (if any).

(14) A request under sub-paragraph (13) must be made within four weeks of the initial determination of the revocation proposals by the local authority.

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

### **Modification post-determination**

**21.—**(1) Where the local authority have determined the proposals, the local authority may at the request of the governing body which made the proposals, modify the proposals or, where there has been a conditional approval, specify a later date, after determination but before implementation, by which the event specified in the approval must occur.

(2) Where the adjudicator has determined the proposals, the adjudicator may, at the request of the governing body which made the proposals and after consulting the local authority, modify the proposals or, where there has been a conditional approval, specify a later date, after determination but before implementation, by which the event specified in the approval must occur.

(3) Details of the modification must be published on the website where the original proposals were published.

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

**22.**—(1) Where by virtue of paragraph 20(1), paragraph 13 (duty to implement) ceases to apply to any proposals, those proposals are to be treated for the purposes of this Schedule as if they had been rejected.

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

- (a) paragraph 13 ceases to apply to the proposals; and
- (b) the proposals must be considered afresh by the local authority or adjudicator (as the case may be) and paragraphs 3 to 21 apply accordingly.

## SCHEDULE 4

Regulation 6

### PROVISIONS RELATING TO FOUNDATION PROPOSALS AND OTHER CHANGES OF CATEGORY

#### **Unimplemented statutory proposals**

**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 to a voluntary controlled, foundation or foundation special school, the proposals must to the extent that they have not been implemented, be implemented by the local 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 authority (as the case may be) as if the school had remained a foundation or voluntary controlled school;
- (c) in the case of a school which has changed category from a community school to a voluntary aided school the proposals must continue to be implemented by the local authority as if the school had remained a community school.

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

**2.**—(1) The governing body and the local 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 5 or 6 of Schedule 3 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**

**3.**—(1) The governing body and the local authority must secure that as soon as reasonably practicable after the commencement of the implementation period (and in any event within a period

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of three 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 local authority to fulfil their duties under sub-paragraph (1).

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

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

(2) Subject to paragraph 5 a governor to whom this paragraph applies is to continue from the implementation date (or the making of the new instrument of government if later) as a governor of the corresponding category required by the new instrument of government (if any such category exists).

(3) A member of a current governing body who continues as a governor under sub-paragraph (2) holds office for the remainder of the term for which the governor 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 5.

#### **Surplus governors**

5.—(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 juniority, 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 who must cease to hold office.

(3) Where governors have held office for an equal length of time, the selection of those who must cease to hold office 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**

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

- (a) the contract of employment between a person to whom this paragraph applies and the governing body has effect from the implementation date as if originally made between that person and the local authority;
- (b) all the governing body's rights, powers, duties and liabilities under or in connection with the contract of employment transfer by virtue of this paragraph to the local authority on the implementation date; and



- (c) anything done before that date by, or in relation to, the governing body in respect of that contract or the employee, is deemed from that date to have been done by or in relation to the local authority.

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

(2) Paragraph 6 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 local authority to work at the school solely in connection with the provision of meals.

**8.** Any person who before the implementation date has been appointed by the governing body to work at the school as from the implementation date or a date thereafter is to be treated for the purposes of paragraph 6 as if the person had been employed by the governing body immediately before the implementation date to do such work at the school as that person would have been required to do on or after the date under that person's contract of employment with the governing body.

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

- (a) the contract of employment between a person to whom this paragraph applies and the local authority has effect from the implementation date as if originally made between that person and the governing body;
- (b) all the local 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 local 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.

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

(2) Paragraph 9 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 local authority to work at the school solely in connection with the provision of meals.

**11.** Any person who before the implementation date has been appointed by the local authority to work at the school as from the implementation date or a date thereafter is to be treated for the purposes of paragraph 9 as if the person had been employed by the local authority immediately before the implementation date to do such work at the school as that person would have been required to do on or after the date under that person's contract of employment with the local authority.

**12.** Paragraphs 9 to 11 are without prejudice to any right of an employee to terminate their contract if a substantial change is made to that employee's detriment in their working conditions, but no such right arises by reason only of the change in employer effected by these Regulations.

**13.—(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 the teacher on or after the implementation date by section 60 as a teacher at a voluntary aided school, that teacher must continue to enjoy those rights until they cease to be employed as a teacher at the voluntary aided school.

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### **Transitional admission arrangements**

14.—(1) Where a community or voluntary controlled school changes category to become a foundation or voluntary aided school, anything done before the implementation date by the local authority as admission authority under any provision in Chapter 1 of Part 3 of the SSFA 1998 (admission arrangements) will, from the implementation date, have effect as if done by the governing body.

(2) Where a foundation or voluntary aided school changes category to become a voluntary controlled school, anything done before the implementation date by the governing body as admission authority under any provision in Chapter 1 of Part 3 of SSFA 1998 (admission arrangements) will, from the implementation date have effect as if done by the local authority.

## SCHEDULE 5

Regulation 6

### LAND TRANSFERS WHEN A SCHOOL CHANGES CATEGORY OR ACQUIRES A FOUNDATION

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

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

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

### **Rules relating to transfer**

2.—(1) This paragraph applies where any proposals that a community school should become a foundation school or 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 school or 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.

3.—(1) This paragraph applies where any proposals that a foundation school should acquire a foundation have been approved.

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

4.—(1) This paragraph applies where any proposals that a community school should become a voluntary aided or 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 or 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 aided or 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.

### **Outstanding transfers**

6. 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 5 are to apply to the school as if it had been so transferred by that time.

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

7. Where paragraph 2, 3 or 4 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**

8.—(1) Nothing in paragraphs 2 to 6 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 6 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.

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

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

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

**9.—**(1) For the purposes of paragraphs 9 to 11 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 the proposals in respect of which consultation was initiated are not published;
- (d) if the proposals are rejected by the governing body, the local authority or the adjudicator, or withdrawn before implementation;
- (e) if the governing body decide not to implement the proposals; or
- (f) if revocation proposals are approved.

**10.—**(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 14 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.

**11.**—(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 local 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 becomes 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 local 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**

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

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

**13.**—(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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(33) 1972 c.70.

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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 15.

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

**14.**—(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 13 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 the adjudicator 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**

**15.**—(1) In the case of any matter on which agreement is required to be reached under paragraph 13 or 14, if such an agreement has not been reached within a period of six months of 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 13 or 14.

(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**

**16.**—(1) Where a transfer to which this Schedule applies relates to registered land, the transferor must execute any instrument under the Land Registration Acts 1925 to 2002<sup>(34)</sup>, deliver any certificate under those Acts, and do such other things under those Acts as the transferor would be required to execute, deliver or do in the case of a transfer by agreement between the transferor and the transferee.

(2) Where on any transfer to which this Schedule applies the transferor is entitled to retain possession of any documents relating in part to the title to any land or other property transferred to the transferee, the transferor must be treated as having given to the transferee an acknowledgment in writing of the right of the transferee to production of that document and to delivery of copies of it; and section 64 of the Law of Property Act 1925<sup>(35)</sup> has effect accordingly, and on the basis that the acknowledgment did not contain any such expression of contrary intention as is mentioned in that section.

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

**17.** 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**

**18.**—(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.

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<sup>(34)</sup> 1925 c.21, 1987 c.2, and 2002 c.9.

<sup>(35)</sup> 1925 c.20.

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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.

**19.**—(1) Without prejudice to the generality of paragraph 18, 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 local 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 local 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**

**20.**—(1) Without prejudice to the generality of paragraphs 18 to 19, any transaction effected between a transferor and a transferee in pursuance of paragraph 13 or of a direction under paragraph 15 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 the that person by the transferor, the transferee or both.

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

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## **EXPLANATORY NOTE**

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

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

Regulation 3 with Schedule 1 provides that governing bodies of maintained schools can publish and determine their own 'foundation proposals' with rights of referral to the adjudicator in certain



circumstances. Foundation proposals are defined in regulation 3 as a change of category from a community school, voluntary aided or voluntary controlled school to a foundation school, or from a community special school to a foundation special school; for foundation and foundation special schools only the acquisition of a foundation, and a change in the instrument of government so that the majority of governors may be foundation governors.

Regulation 4 with Schedule 2 prescribes other alterations capable of being published by the governing body of a maintained school.

Regulation 5 with Schedule 2 prescribes the alterations capable of being published by a local authority to maintained schools.

Regulation 6(1)-(3) with Schedules 1 and 3 provides for the information to be provided in relation to published proposals and prescribes the manner of their publication, determination and implementation.

Regulation 6(4) and Schedule 4 prescribe certain provisions relating to foundation proposals and other changes of category.

Regulation 6(5) and Schedule 5 provide for land transfers when a school changes category or acquires a foundation.