



# Education and Inspections Act 2006

## 2006 CHAPTER 40

### PART 2

#### ESTABLISHMENT, DISCONTINUANCE OR ALTERATION OF SCHOOLS

##### *Establishment of new schools*

#### **7 Invitation for proposals for establishment of new schools**

- (1) A local education authority in England may publish a notice under this section inviting proposals from persons other than local education authorities for the establishment of any new school falling within subsection (2).
- (2) The schools falling within this subsection are—
  - (a) a foundation, voluntary or foundation special school, other than one providing education suitable only to the requirements of persons above compulsory school age, or
  - (b) an Academy.
- (3) A notice under this section must—
  - (a) identify a possible site for the school,
  - (b) state whether or not the proposed school is to be a special school,
  - (c) specify a date, being a date after the prescribed interval, by which proposals must be submitted,
  - (d) specify such other matters as may be prescribed, and
  - (e) be published in the prescribed manner.
- (4) Proposals made pursuant to a notice under this section must—
  - (a) contain the prescribed information, and
  - (b) be submitted to the local education authority before the date specified in the notice.

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- (5) After the date specified in a notice published by a local education authority under this section, the authority—
- (a) must publish under this section any proposals submitted pursuant to the notice in accordance with subsection (4), and
  - (b) may publish under this section—
    - (i) proposals of their own for the establishment of a foundation school or a foundation special school, or
    - (ii) if section 8 permits them to do so, proposals of their own for the establishment of a community or community special school.
- (6) Regulations may prescribe—
- (a) the time within which proposals under this section must be published,
  - (b) the manner in which they must be published, and
  - (c) the information which proposals within subsection (5)(b) must contain.
- (7) Schedule 2 has effect in relation to the consideration, approval and implementation of proposals under this section.

## **8 Proposals under section 7 relating to community or community special schools**

- (1) A local education authority may by virtue of subsection (5)(b)(ii) of section 7 publish proposals under that section for the establishment of a community or community special school—
- (a) only if at a prescribed time prescribed conditions are met in relation to the authority, and
  - (b) except where further prescribed conditions are also met in relation to the authority at that time, only with the consent of the Secretary of State.
- (2) The conditions prescribed for the purposes of subsection (1)(a) or (b) must include conditions relating to the standards achieved by the authority in performing the functions to which Chapter 4 of Part 8 (inspection and review of local authorities in England) applies.
- (3) The other conditions that may be prescribed for those purposes are conditions relating to either or both of the following—
- (a) the standards of performance achieved by any relevant school, and
  - (b) the extent of diversity among relevant schools.
- (4) The matters to which the Secretary of State is to have regard in determining whether to give consent under subsection (1)(b) include prescribed matters.
- (5) The power by virtue of subsection (2) or (3)(a) to prescribe standards includes power to prescribe them by reference to the opinion of the Chief Inspector or by reference to any rating awarded by the Chief Inspector following an inspection or review under any enactment.
- (6) In this section—
- “Chief Inspector” means Her Majesty’s Chief Inspector of Education, Children’s Services and Skills;
  - “maintained school” does not include a maintained nursery school;
  - “relevant school”, in relation to a local education authority, means a maintained school maintained by the authority or an Academy, city

technology college or city college for the technology of the arts in the area of the authority.

## **9 Consultation and publicity in relation to notice and proposals under section 7**

- (1) Before publishing a notice under section 7, the local education authority must consult such persons as appear to the authority to be appropriate; and in discharging their duty under this subsection the authority must have regard to any guidance given from time to time by the Secretary of State.
- (2) Regulations may require the local education authority to take prescribed steps for the purpose of promoting public awareness of any proposals published by them under section 7.

## **10 Publication of proposals with consent of Secretary of State**

- (1) A local education authority in England may with the consent of the Secretary of State publish under this section their proposals to establish (otherwise than pursuant to a notice under section 7)—
  - (a) a new community or community special school, or
  - (b) a new foundation or foundation special school, other than one providing education suitable only to the requirements of persons above compulsory school age.
- (2) Any persons (“proposers”) may with the consent of the Secretary of State publish under this section their proposals to establish (otherwise than pursuant to a notice under section 7) a new foundation, voluntary or foundation special school in England other than—
  - (a) one providing education suitable only to the requirements of persons above compulsory school age, or
  - (b) one in relation to which proposals fall to be published under section 11 by virtue of subsection (2)(b) or (c) of that section.
- (3) Proposals under this section must—
  - (a) contain such information, and
  - (b) be published in such manner,as may be prescribed.
- (4) Before publishing any proposals under this section, the local education authority or proposers (as the case may be) must consult such persons as appear to them to be appropriate; and in discharging their duty under this subsection the authority or proposers must have regard to any guidance given from time to time by the Secretary of State.
- (5) Where any proposals are published under subsection (2), the proposers must submit the proposals in accordance with regulations to the local education authority who it is proposed should maintain the school.
- (6) Schedule 2 has effect in relation to the consideration, approval and implementation of proposals under this section.

## **11 Publication of proposals to establish maintained schools: special cases**

- (1) Where a local education authority in England propose to establish—
  - (a) a new maintained nursery school, or
  - (b) a new foundation or foundation special school providing education suitable only to the requirements of persons above compulsory school age,the authority must publish their proposals under this section.
- (2) Where any persons (“proposers”) propose to establish a new foundation, voluntary or foundation special school in England which—
  - (a) is to provide education suitable only to the requirements of persons above compulsory school age,
  - (b) is to replace an independent school that is not an Academy, a city technology college or a city college for the technology of the arts, or
  - (c) in the case of a new foundation special school, is to replace a non-maintained special school,they must publish their proposals under this section.
- (3) A new foundation, voluntary or foundation special school is not to be regarded for the purposes of subsection (2)(b) as replacing an independent school unless—
  - (a) the independent school has been registered under Chapter 1 of Part 10 of EA 2002 (regulation of independent schools) for a continuous period of at least two years ending with the date of the publication of the proposals under this section, and
  - (b) it is proposed that the independent school should continue in existence but should then close as an independent school immediately before the proposals are implemented.
- (4) A new foundation special school is not to be regarded for the purposes of subsection (2) (c) as replacing a non-maintained special school unless—
  - (a) the non-maintained special school has been approved under section 342 of EA 1996 (approval of non-maintained special schools) for a continuous period of at least two years ending with the date of the publication of the proposals, and
  - (b) it is proposed that the non-maintained special school should continue in existence but should then close as a non-maintained special school immediately before the proposals are implemented.
- (5) Proposals under this section must—
  - (a) contain such information, and
  - (b) be published in such manner,as may be prescribed.
- (6) Before publishing any proposals under this section, the authority or proposers (as the case may be) must consult such persons as appear to them to be appropriate; and in discharging their duty under this subsection the authority or proposers must have regard to any guidance given from time to time by the Secretary of State.
- (7) Where any proposals are published under subsection (2), the proposers must submit the proposals in accordance with regulations to the local education authority who it is proposed should maintain the school.
- (8) Schedule 2 has effect in relation to the consideration, approval and implementation of proposals under this section.

- (9) In this section “non-maintained special school” means a school which is approved by the Secretary of State under section 342 of EA 1996.

## **12 Establishment of school as federated school**

- (1) Proposals under—
- (a) section 7, 10 or 11, or
  - (b) section 113A of the Learning and Skills Act 2000 (c. 21),
- for the establishment of a new school in England may relate to the establishment of the school as a federated school.
- (2) In this section “federated school” has the meaning given by section 24(2) of EA 2002.

## **13 Schools established outside area of relevant LEA**

Regulations may modify the provisions of sections 7 to 12 and Schedule 2 in their application to cases where—

- (a) in the case of proposals published under section 7, the school is proposed to be established in an area in England other than that of the local education authority who published the notice under that section, or
- (b) in the case of proposals published under section 10 or 11, the school is proposed to be established in an area in England other than that of the local education authority who it is proposed should maintain the school.

## **14 LEA in England not to establish school in Wales**

No proposals may be published under this Part or any other enactment for the establishment of a school in Wales which is proposed to be maintained by a local education authority in England.

### *Discontinuance of schools*

## **15 Proposals for discontinuance of schools maintained by local education authority**

- (1) Where a local education authority in England propose to discontinue—
- (a) a community, foundation or voluntary school,
  - (b) a community or foundation special school, or
  - (c) a maintained nursery school,
- the authority must publish their proposals under this section.
- (2) Where the governing body of—
- (a) a foundation or voluntary school in England, or
  - (b) a foundation special school in England,
- propose to discontinue the school, the governing body must publish their proposals under this section.
- (3) Proposals under this section must—
- (a) contain such information, and
  - (b) be published in such manner,

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as may be prescribed.

- (4) The matters to which the relevant body must have regard in formulating any proposals under this section in relation to a rural primary school include—
- (a) the likely effect of the discontinuance of the school on the local community,
  - (b) the availability, and likely cost to the local education authority, of transport to other schools,
  - (c) any increase in the use of motor vehicles which is likely to result from the discontinuance of the school, and the likely effects of any such increase, and
  - (d) any alternatives to the discontinuance of the school;
- and in considering these matters the relevant body must have regard to any guidance given from time to time by the Secretary of State.
- (5) Where any proposals are published under subsection (2), the persons making the proposals must submit the proposals in accordance with regulations to the local education authority.
- (6) Schedule 2 has effect in relation to the consideration, approval and implementation of proposals published under this section.
- (7) In this section—
- (a) “the relevant body” means the local education authority mentioned in subsection (1) or the governing body mentioned in subsection (2) (as the case may be);
  - (b) “rural primary school” means a primary school designated as such for the purposes of this section by an order made by the Secretary of State.
- (8) In this Part any reference to a local education authority—
- (a) discontinuing a school, or
  - (b) implementing proposals to discontinue a school (whether published by the authority or the governing body),
- is a reference to the authority ceasing to maintain the school.

## **16 Consultation in relation to proposals under section 15**

- (1) Before publishing any proposals under section 15 which relate to a school which is a rural primary school or a community or foundation special school, the relevant body must consult—
- (a) the registered parents of registered pupils at the school,
  - (b) in the case of the rural primary school—
    - (i) the local education authority (where they are not the relevant body),
    - (ii) where the local education authority are a county council, any district council for the area in which the school is situated, and
    - (iii) any parish council for the area in which the school is situated,
  - (c) in the case of a community or foundation special school, any local education authority which maintain a statement under section 324 of EA 1996 (statement of special educational needs) in respect of a registered pupil at the school, and
  - (d) such other persons as appear to the relevant body to be appropriate.
- (2) Before publishing any other proposals under section 15, the relevant body must consult such persons as appear to them to be appropriate.

- (3) In discharging their duty under subsection (1) or (2) the relevant body must have regard to any guidance given from time to time by the Secretary of State.
- (4) In this section “the relevant body” and “rural primary school” have the same meaning as in section 15.

## **17 Direction requiring discontinuance of community or foundation special school**

- (1) The Secretary of State may, if he considers it expedient to do so in the interests of the health, safety or welfare of pupils at a community or foundation special school in England, give a direction to the local education authority by whom the school is maintained requiring the school to be discontinued on a date specified in the direction.
- (2) A direction under subsection (1) may require the local education authority to notify any persons or class of persons specified in the direction.
- (3) Before giving a direction under subsection (1), the Secretary of State must consult—
  - (a) the local education authority,
  - (b) any other local education authority who would in his opinion be affected by the discontinuance of the school,
  - (c) in the case of a foundation special school which has a foundation, the person who appoints the foundation governors, and
  - (d) such other persons as the Secretary of State considers appropriate.
- (4) On giving a direction under subsection (1), the Secretary of State must give notice in writing of the direction to the governing body of the school and its head teacher.
- (5) Where a local education authority are given a direction under subsection (1), they must discontinue the school in question on the date specified in the direction; and nothing in section 15 or 28 applies to any such discontinuance of the school under this section.

### *Alterations to schools*

## **18 Alterations that may be made under section 19**

- (1) Regulations may prescribe alterations to maintained schools that may be implemented in pursuance of proposals published under section 19.
- (2) The prescribed alterations must include any alteration that involves one or more of the following—
  - (a) in the case of a school falling within any of the categories set out in section 20(1) of SSFA 1998, any change in the category within which the school falls (other than a change prevented by subsection (4)(c) to (f) of this section),
  - (b) the acquisition by a foundation or foundation special school of a foundation established otherwise than under SSFA 1998, and
  - (c) in the case of a school whose instrument of government does not provide for a majority of the governing body to be foundation governors, any change in the instrument of government which results in the majority of governors being foundation governors.

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- (3) The prescribed alterations may include other alterations of any nature (other than those prevented by subsection (4)).
- (4) None of the following alterations may be made to a maintained school—
- (a) any change in the religious character of the school;
  - (b) any change whereby the school would acquire or lose a religious character;
  - (c) any change of category from foundation or voluntary school to community school;
  - (d) any change of category from foundation special school to community special school;
  - (e) any change of category from mainstream school to community or foundation special school or from community or foundation special school to mainstream school;
  - (f) any change from maintained nursery school to any other kind of maintained school, or from any other kind of maintained school to maintained nursery school.
- (5) In subsection (4)(e) “mainstream school” means community, foundation or voluntary school.

## **19 Publication of proposals for alteration of school**

- (1) Where—
- (a) the local education authority propose to make a prescribed alteration to a maintained school, and
  - (b) the prescribed alteration is one that under subsection (2) is capable of being proposed by a local education authority,
- the authority must publish their proposals under this section.
- (2) A prescribed alteration is capable of being proposed by a local education authority if—
- (a) in the case of a community school, a community special school or a maintained nursery school, it is an alteration designated by regulations under this subsection as one capable of being proposed by the local education authority,
  - (b) in the case of a foundation or voluntary school, it consists of any one or more of the following—
    - (i) an enlargement of the premises,
    - (ii) an increase in the number of pupils in any relevant age group,
    - (iii) the establishment or discontinuance of educational provision for pupils with special educational needs, and
    - (iv) the establishment of educational provision suitable to the requirements of pupils over compulsory school age, and
  - (c) in the case of a foundation special school, it consists of any one or more of the following—
    - (i) an enlargement of the premises,
    - (ii) an increase in the number of pupils for whom the school is organised to make provision, and
    - (iii) a change in the type of special educational needs for which the school is organised to make provision.
- (3) Where—



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- (a) the governing body of a maintained school propose to make a prescribed alteration to the school, and
  - (b) in the case of a community school, a community special school or a maintained nursery school, the prescribed alteration is designated by regulations under this subsection as one capable of being proposed by the governing body,
- the governing body must publish their proposals under this section.
- (4) If at any time the governing body of a voluntary aided school are unable or unwilling to carry out their obligations under Schedule 3 to SSFA 1998 (funding of foundation, voluntary and foundation special schools), they must publish proposals under this section for the school to become either a voluntary controlled school or a foundation school, as the governing body may determine.
- (5) This section has effect subject to section 20.
- (6) In this section—
- “prescribed alteration”, in relation to a maintained school, means an alteration prescribed under section 18;
  - “relevant age group” has the same meaning as in SSFA 1998.

## **20 Restriction on power of governing body to publish foundation proposals**

- (1) The governing body of a school specified in the first column of the Table below may not publish proposals under section 19 for a prescribed alteration of a kind specified in the second column, except with the consent of—
- (a) the trustees of the school, and
  - (b) the person or persons by whom the foundation governors are appointed.

TABLE

<i>School</i>	<i>Prescribed alteration</i>
1. A foundation school which, immediately before the commencement date, was a foundation school having a foundation.	A relevant change in the instrument of government.
2. A voluntary school.	A change of category from voluntary controlled school or voluntary aided school to foundation school.
3. A foundation school which, having been a voluntary school immediately before the commencement date, changed category to foundation school on or after that date.	A relevant change in the instrument of government.

- (2) For the purposes of this section, a “relevant change” in the instrument of government of a school is a change which results in the majority of governors being foundation governors.
- (3) In this section—

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“the commencement date” means the day on which this Part comes into force, otherwise than merely for the purpose of enabling orders or regulations to be made;

“prescribed alteration”, in relation to a maintained school, means an alteration prescribed under section 18.

## **21 Proposals under section 19: procedure**

- (1) Regulations may make provision about the publication and determination of proposals under section 19 (“proposals”).
- (2) The provision that may be made includes provision—
  - (a) about the information to be included in, or provided in relation to, the proposals;
  - (b) about consultation on the proposals;
  - (c) about the manner in which proposals are to be published under section 19;
  - (d) for the making of objections to or comments on the proposals;
  - (e) requiring the proposals to be considered with related proposals published under section 19 or any other enactment;
  - (f) for the consideration and determination of the proposals by a prescribed person (who may be the person who published the proposals);
  - (g) for the referral of proposals to the adjudicator in prescribed cases for consideration and determination by him (instead of by a person prescribed by virtue of paragraph (f));
  - (h) for the referral of proposals to the adjudicator, at the request of a prescribed person, after their initial determination by a person other than the adjudicator;
  - (i) for the approval of proposals with or without modification;
  - (j) for the making in prescribed cases of a conditional approval;
  - (k) for the withdrawal of proposals;
  - (l) as to the manner in which, and time within which, anything required or authorised by the regulations must be done.
- (3) The regulations may confer functions on the local education authority, on any other local education authority affected by the proposals, on the governing body of the school concerned and on the adjudicator.
- (4) Regulations made by virtue of subsection (2)(g) may enable the Secretary of State by direction to require proposals to be referred to the adjudicator.
- (5) In relation to any proposals for a school to cease to be an establishment which admits pupils of one sex only, regulations under this section may enable the local education authority or the adjudicator to make a transitional exemption order for the purposes of section 27 of the Sex Discrimination Act 1975 (c. 65) (exception for single-sex establishments turning co-educational), and to vary or revoke any order so made.
- (6) The regulations may require any person exercising functions under the regulations to have regard to any guidance given from time to time by the Secretary of State.

## **22 Right of governing body to determine own foundation proposals**

- (1) Subsection (3) applies to proposals which are published under section 19 by the governing body of a community, voluntary controlled or community special school and relate only to—
  - (a) a change of category from community or voluntary controlled school 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 community special school to foundation special school, without the acquisition of a foundation.
- (2) For the purposes of this section a “relevant change” in the instrument of government of a school is a change which results in the majority of governors being foundation governors.
- (3) In relation to proposals to which this subsection applies, regulations under section 21—
  - (a) must provide for the proposals to be determined by the governing body, and
  - (b) may not make any provision under subsection (2)(g) or (h) of that section enabling the proposals to be referred to the adjudicator.
- (4) Subsection (5) applies to—
  - (a) proposals which are published under section 19 by the governing body of a community or voluntary controlled school and relate only to a change of category from community or voluntary controlled school to foundation school, together with the acquisition of a foundation or a relevant change in the instrument of government (or both),
  - (b) proposals which are published under that section by the governing body of a community special school and relate only to a change of category from community special school to foundation special school, together with the acquisition of a foundation or together with both the acquisition of a foundation and a relevant change in the instrument of government, and
  - (c) proposals which are published under that section by the governing body of a foundation or foundation special school and relate only to the acquisition of a foundation or a relevant change in the instrument of government (or both).
- (5) In relation to proposals to which this subsection applies, regulations under section 21—
  - (a) must provide for the proposals to be determined by the governing body unless the local education authority exercise the right conferred on them by regulations made by virtue of section 23(1), and
  - (b) may not make any provision under subsection (2)(g) or (h) of section 21 enabling a person other than the local education authority to require the proposals to be referred to the adjudicator.

## **23 Rights of interested bodies in relation to proposals under section 21**

- (1) Any regulations under section 21 which enable any proposals falling within subsection (2) which are published by the governing body of the school to which they relate to be determined by the governing body must include provision by virtue of subsection (2)(g) of that section enabling the local education authority to require the proposals to be referred to the adjudicator.

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- (2) Proposals fall within this section if the proposed alteration would result in a community, voluntary controlled or foundation school or community or foundation special school becoming either or both of the following—
- (a) a foundation or foundation special school having a foundation established otherwise than under SSFA 1998;
  - (b) a foundation or foundation special school whose instrument of government provides for the majority of governors to be foundation governors.
- (3) Regulations under section 21 may restrict the matters to which a local education authority may have regard in deciding whether to require proposals to be referred to the adjudicator in accordance with provision included in the regulations by virtue of subsection (1).
- (4) If regulations under section 21 provide for any proposals, other than proposals to which section 22(3) or (5) applies, to be determined by a person other than the adjudicator, the regulations must include provision by virtue of section 21(2)(h) enabling each of the following persons to require the proposals to be referred to the adjudicator after their initial determination by the other person—
- (a) the Diocesan Board of Education for any diocese of the Church of England any part of which is comprised in the area of the authority,
  - (b) the bishop of any diocese of the Roman Catholic Church any part of which is comprised in the area of the authority, and
  - (c) where the proposals relate to the provision of education for persons aged 14 or over, the Learning and Skills Council for England.
- (5) If regulations under section 21 provide for any proposals published by a local education authority in relation to a foundation or voluntary school or a foundation special school to be determined by the local education authority, the regulations must include provision by virtue of subsection (2)(h) of that section enabling each of the following persons to require the proposals to be referred to the adjudicator after their initial determination by the authority—
- (a) the governing body of the school, and
  - (b) the trustees of the school.
- (6) In this section “proposals” means proposals under section 19.

## **24 Proposals under section 19: implementation**

- (1) Regulations may make provision in connection with the implementation of—
- (a) proposals under section 19 which have been approved in accordance with regulations under section 21, or
  - (b) proposals under section 19 in respect of which approval in accordance with those regulations is not required, and which the person making the proposals has determined to implement.
- (2) Regulations under this section may, in particular—
- (a) enable a prescribed person to determine in prescribed cases that proposals are not to be implemented or are to be implemented with modifications,
  - (b) enable prescribed matters relating to the implementation of proposals to be referred to the adjudicator in prescribed cases, and
  - (c) make provision about the manner in which, and time within which, anything required or authorised by the regulations must be done.

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- (3) Regulations under this section relating to an alteration falling within subsection (2) (a), (b) or (c) of section 18 may include provision with respect to—
  - (a) the revision or replacement of the school’s instrument of government and the reconstitution of its governing body,
  - (b) the transfer of property, rights and liabilities (including such a transfer to or from a foundation body or trustees),
  - (c) the transfer of staff, and
  - (d) any transitional matters.
- (4) Regulations made under this section by virtue of subsection (3)(b) in relation to an alteration falling within section 18(2)(a) may, in particular, make provision with respect to—
  - (a) restricting the disposal by a local authority of land which is used or held for the purposes of a school in relation to which proposals to change category are, or may be, published under section 19, as from—
    - (i) the date of publication of such proposals, or
    - (ii) such other time as may be prescribed,
  - (b) restricting the taking of action by virtue of which any such land would cease to be so used or held to any extent,
  - (c) the consequences of any contravention of any such restriction as is mentioned in paragraph (a) or (b), and
  - (d) conferring on any prescribed body such functions as may be prescribed with respect to any such contravention.
- (5) Regulations made under this section by virtue of subsection (3)(b) in relation to an alteration falling within section 18(2)(a) may also make provision with respect to—
  - (a) the division and apportionment of property, rights and liabilities any part of which fall to be transferred by or under the regulations where the property has been used or held, or the rights or liabilities have been acquired or incurred, for the purposes of more than one school or for the purposes of one or more schools and for other purposes,
  - (b) excluding from transfer in certain circumstances property, rights and liabilities which would otherwise fall to be transferred under any such transfer,
  - (c) identifying and defining the property, rights and liabilities which fall to be transferred,
  - (d) requiring prescribed persons to enter into agreements and execute instruments,
  - (e) the resolution of disputes relating to a transfer,
  - (f) the construction of agreements,
  - (g) the position of third parties affected by a transfer,
  - (h) the production or delivery of documents, or the provision of information, by a prescribed person to another prescribed person, and
  - (i) enabling a certificate issued by a prescribed person to be conclusive evidence as to whether or not any property, rights or liabilities were transferred by virtue of the regulations.
- (6) Regulations under this section may require any prescribed person, in exercising functions under the regulations, to have regard to any guidance given from time to time by the Secretary of State.

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- (7) Regulations under this section may, in particular, make provision corresponding to that made by, or that which may be made by regulations under, any provision of paragraphs 21 to 31 of Schedule 2 (implementation of proposals for establishment or discontinuance).
- (8) A school's change of category in pursuance of proposals published under section 19 is not to be taken as authorising any change in the religious character of the school, or the acquisition or loss of religious character.

*Removal of foundation or reduction in foundation governors*

**25 Proposals for removal of foundation or reduction in foundation governors**

- (1) This section applies to any foundation or foundation special school having a foundation if either or both of the following conditions is met.
- (2) Condition A is that the school was established (whether or not as a foundation or foundation special school) in pursuance of proposals falling to be implemented under Schedule 2.
- (3) Condition B is that the school acquired its foundation in pursuance of proposals falling to be implemented under regulations under section 24.
- (4) The governing body of any foundation or foundation special school to which this section applies may at any time publish proposals under this section for either or both of the following alterations to the school—
  - (a) the removal of the foundation, or
  - (b) the alteration of the instrument of government in such a way that foundation governors will cease to constitute the majority of governors.
- (5) A prescribed proportion of the governors of a foundation or foundation special school to which this section applies may in the prescribed manner require the governing body of the school to publish proposals under this section for either or both of the alterations mentioned in subsection (4).
- (6) Subsection (5) does not require the governing body of a foundation or foundation special school to publish proposals under this section—
  - (a) at any time within a prescribed period beginning with the date on which—
    - (i) proposals for the establishment of the school were implemented under Schedule 2, or
    - (ii) proposals for the acquisition of a foundation, for a relevant change in the instrument of government or for a change of category to foundation school or foundation special school were implemented under regulations under section 24, or
  - (b) at any time within a prescribed period beginning with the date on which previous proposals published under this section in pursuance of a requirement under subsection (5) were rejected by the governing body in accordance with regulations under section 26.
- (7) In subsection (6)(a)(ii) “relevant change”, in relation to the instrument of government of a school, is to be read in accordance with section 22(2).

- (8) In this section “foundation” means a foundation established otherwise than under SSFA 1998.

## **26 Proposals under section 25: procedure**

- (1) Regulations may make provision about the publication and determination of proposals under section 25.
- (2) The provision that may be made includes provision—
- (a) about the information to be included in, or provided in relation to, the proposals;
  - (b) about consultation on the proposals;
  - (c) about the manner in which proposals are to be published under section 25;
  - (d) for the making of objections to or comments on the proposals;
  - (e) for the withdrawal of proposals in prescribed cases;
  - (f) for the consideration of the proposals by the governing body;
  - (g) enabling the governing body to approve or reject the proposals;
  - (h) enabling the governing body to reject any proposals published in pursuance of a requirement under section 25(5) (“required proposals”) only by a decision made with the support of a prescribed proportion of the governors;
  - (i) for the approval of required proposals given in the prescribed manner by a prescribed proportion of the governors to be treated as approval by the governing body;
  - (j) for the approval of proposals either without modifications or in prescribed cases with modifications of a prescribed kind;
  - (k) as to the manner in which, and time within which, anything authorised or required by the regulations must be done.
- (3) Regulations under this section may in prescribed cases—
- (a) require the governing body to ensure that matters relating to—
    - (i) any transfer which may be required by virtue of subsection (2)(b) of section 27, or
    - (ii) any payment which might be required by virtue of subsection (4) or (5) of that section,are agreed or determined before the proposals are published, and
  - (b) enable or require any such matter to be referred to the adjudicator for determination before the proposals are published.
- (4) Regulations under this section may require any prescribed person, in exercising functions under the regulations, to have regard to any guidance given from time to time by the Secretary of State.

## **27 Proposals under section 25: implementation**

- (1) Regulations may make provision in connection with the implementation of proposals under section 25 which have been approved in accordance with regulations under section 26.
- (2) Regulations under this section may, in particular—

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- (a) make provision for the revision or replacement of the school’s instrument of government and the reconstitution of its governing body;
  - (b) make provision for the transfer of property, rights and liabilities;
  - (c) make provision about the manner in which, and time within which, anything required or authorised by the regulations must be done.
- (3) Regulations made by virtue of subsection (2)(b) may make provision about any of the matters mentioned in section 24(5)(a) to (i).
- (4) Where—
- (a) any land forming part of the school premises (“the excluded land”) is not transferred to the governing body, and
  - (b) the governing body, a local education authority or a prescribed person has incurred capital expenditure in relation to the excluded land or in relation to other land the proceeds of the disposal of which were used to acquire or enhance the value of the excluded land,
- regulations under this section may authorise or require the foundation to pay any part of the value of the excluded land to the governing body, the local education authority or a prescribed person.
- (5) Where—
- (a) any land forming part of the school premises (“the transferred land”) is transferred to the governing body, and
  - (b) the foundation has incurred capital expenditure in relation to the transferred land or in relation to other land the proceeds of the disposal of which were used to acquire or enhance the value of the transferred land,
- regulations under this section may authorise or require the governing body to pay any part of the value of the transferred land to the foundation.
- (6) Regulations under this section may require any prescribed person, in exercising functions under the regulations, to have regard to any guidance given from time to time by the Secretary of State.
- (7) The implementation of proposals under section 25 is not to be taken as authorising any change in the religious character of the school or the loss of religious character.
- (8) In this section “foundation” means a foundation established otherwise than under SSFA 1998.

### *General*

## **28 Restriction on establishment, alteration or discontinuance of schools**

- (1) Except in pursuance of proposals falling to be implemented under this Part or Schedule 7 or 7A to the Learning and Skills Act 2000 (c. 21)—
- (a) no maintained school may be established or discontinued;
  - (b) no prescribed alteration may be made to a maintained school.
- (2) In subsection (1)(b) “prescribed alteration”, in relation to a maintained school, means an alteration prescribed under section 18.
- (3) Subsection (1) has effect subject to—



- (a) sections 17(5) and 68(4) (which relate to powers of the Secretary of State to require a maintained school to be discontinued), and
  - (b) section 30(9) of SSFA 1998 (notice by governing body to discontinue foundation or voluntary school).
- (4) Except in pursuance of proposals falling to be implemented under section 27, no alteration falling within section 25(4)(a) or (b) may be made to a foundation or foundation special school.

## **29 Abolition of school organisation committees**

Section 24 of, and Schedule 4 to, SSFA 1998 (which require local education authorities in England to establish a school organisation committee for their area) cease to have effect.

## **30 Amendments relating to school organisation**

Schedule 3 contains amendments relating to school organisation.

## **31 Transitional provisions**

- (1) The Secretary of State may by regulations make such transitional provision as he considers appropriate in connection with the commencement of this Part.
- (2) Regulations under this section may, in particular, make provision with respect to—
- (a) the determination or implementation of proposals made under the previous enactments,
  - (b) references made to school organisation committees or adjudicators under the previous enactments.
- (3) This section does not limit the powers conferred by section 183.
- (4) In this section “the previous enactments” means—
- (a) sections 28, 28A, 29, 31 and 35 of, and Schedules 6 and 8 to, SSFA 1998 (establishment, alteration, discontinuance or change of category of schools) so far as applying to England, and
  - (b) sections 66 and 67 of, and Schedules 10 and 11 to, EA 2005.

## **32 Interpretation of Part 2**

- (1) In this Part, except where the contrary intention appears—
- “adjudicator” is to be read in accordance with section 25(3) of SSFA 1998;
  - “discontinue”, in relation to a maintained school, is to be read in accordance with section 15(8);
  - “foundation”, in relation to a foundation or voluntary school, has (subject to sections 25(8) and 27(8)) the meaning given by section 21(3) of SSFA 1998;
  - “local education authority”, in relation to a school maintained (or proposed to be maintained) by a local education authority, means that authority;
  - “maintain”, in relation to a maintained school, has the same meaning as in SSFA 1998;
  - “maintained school” means any of the following schools in England—

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- (a) a community, foundation or voluntary school,
  - (b) a community or foundation special school, or
  - (c) a maintained nursery school;
- “prescribed” means prescribed by regulations;  
“regulations” means regulations made under this Part by the Secretary of State.
- (2) For the purposes of this Part, a foundation or voluntary school has a religious character if it is designated by order under section 69(3) of SSFA 1998 as a school having such a character.