These notes refer to the Education Act 2011 (c.21)
which received Royal Assent on 15 November 2011

EDUCATION ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5: Educational Institutions: Other Provisions

New schools

Schedule 11

189. *Paragraph 2* inserts new section 6A into EIA 2006, placing a duty on local authorities to seek proposals for the establishment of an Academy where they are of the view that there is a need for a new school in their area. The local authority must specify a date by which proposals must be submitted and after that date must notify the Secretary of State of the steps taken to satisfy this duty and the proposals that have been submitted (or that there have been no proposals). The notification to the Secretary of State must identify a site for the school and any other matters prescribed by regulations.

190. *Paragraph 3* amends section 7 of EIA 2006 so that before publishing proposals for a competition for the establishment of a new school the local authority must obtain the consent of the Secretary of State. In addition, section 7 is amended to remove the ability of the local authority to publish any of its own proposals for a new foundation or community school in a section 7 competition. In consequence, *paragraph 5* repeals section 8 of EIA 2006, which prescribed the circumstances in which the local authority could enter its own proposals for a new school in a competition.

191. *Paragraph 4* inserts new section 7A into EIA 2006 which provides for the local authority (with the consent of the Secretary of State) to withdraw, or for the Secretary of State to direct the withdrawal of, a section 7 notice at any time before the end of the period that proposals may be submitted. The effect of this new provision is that a competition can be halted at this early first stage.

192. *Paragraphs 6* and *7* make amendments to sections 10 and 11 of EIA 2006 which deal with publication of proposals outside a competition. The amendments to section 10 (publication of proposals that require the Secretary of State's consent) provide that the following proposals for a new school can be published with the consent of the Secretary of State:

- local authority proposals for a community or foundation school to replace one or more maintained schools (except infant and junior amalgamations, which do not now require consent), excluding those providing education suitable only for persons over compulsory school age;
- proposals for foundation, and voluntary controlled schools by other proposers (except those within section 11(2) as amended).

193. The amendments to section 11 of EIA 2006 mean that the following proposals will be able to be made without the Secretary of State's consent:

- local authority proposals for a new community or foundation primary school to replace a maintained infant and a maintained junior school;
- proposals for the establishment of a new voluntary aided school;
- proposals for a new foundation or voluntary controlled school resulting from an existing religious school changing or losing its religious designation;
- a new foundation or voluntary controlled school with a religious character replacing an existing religious school, resulting from the reorganisation of faith schools in an area; and
- local authority proposals for a new community or foundation school where following publication of a section 7 notice no proposals are approved by the local authority, no Academy arrangements are entered into, or no proposals are received.

194. *Paragraphs 10* to *17* make amendments to Schedule 2 to EIA 2006 which deals with the consideration and approval of proposals under Part 2 of EIA 2006 by the local authority or the adjudicator (in respect of local authority proposals). These amendments are consequential on the amendments made by paragraphs 3 to 9.

195. In addition, these paragraphs have the effect that Academy proposals are no longer submitted to local authorities for approval. Instead, any Academy proposals entered into a section 7 competition will be referred to the Secretary of State, for him to decide if he wishes to enter into Academy arrangements with the proposer. Where there are both Academy and non-Academy proposals in a competition, the Secretary of State must first decide the Academy proposals and notify the local authority if he enters into Academy arrangements as a result of the proposals. If the Secretary of State decides against entering into Academy arrangements in such a case, the non-Academy proposals will be considered by the local authority. Even if the Secretary of State approves the Academy proposals, new paragraph 7A of Schedule 2 also enables him to direct that all or any of the non-Academy proposals be considered by the local authority. In such a case, it would be possible for a section 7 competition to result in the approval of both Academy proposals (by the Secretary of State) and non-Academy proposals (by the local authority). This might happen, for example, where Academy proposals are for a small school but the local authority has identified a need for a larger school in its area.