

SCHEDULE 5

Regulation 15(2) and (4)

OTHER MODIFICATIONS TO SECTION 28, SECTION 29 AND SCHEDULES 6 AND 23 IN SPECIAL CASES

PART I

MODIFICATIONS TO SECTIONS 28 AND 29 AND SCHEDULE 6

1.—(1) In relation to proposals published under section 28 of the Act for the transfer of a school to a site in a different area section 28(6) shall have effect as if for “or (in the case of a new school) who it is proposed should maintain the school” there were substituted—

“and to the school organisation committee for the area of the other relevant local education authority and in this subsection the other relevant local education authority is—

- (i) where the existing site of the school is in the area of the local education authority who maintain the school, the local education authority in the area of which the proposed new site of the school is to be situated,
- (ii) where the proposed new site of the school is in the area of the local education authority who maintain the school, the local education authority for the area in which the existing site of the school is situated, and
- (iii) where neither the existing site, nor the proposed new site of the school are in the area of the local education authority who maintain the school, the local education authority for the area in which the existing site of the school is situated.”.

2. In relation to proposals (other than those mentioned in paragraph 1) published under section 28 or 29 of the Act which relate to a school which is or (in the case of a new school) is proposed to be, situated in an area other than that of the local education authority who maintain or (as the case may be) who it is proposed should maintain the school,

- (a) section 28(6) shall have effect as if at the end there were added “and to the school organisation committee for the area of the local education authority in which the school is, or (in the case of a new school) is proposed to be, situated”; and
- (b) section 29(5) shall have effect as if at the end there were added “and to the school organisation committee for the area of the local education authority in which the school is situated”.

3. In relation to proposals described in paragraphs 1 and 2 above, paragraph 3 of Schedule 6 shall have effect as if—

- (a) for sub-paragraph (2) there were substituted the following sub-paragraph—

“(2) Where are proposals require approval under this paragraph, they shall be considered in the first instance by the relevant committee (“committee A”) who, subject to subparagraph (6)(b) and (c), may, after seeking and, unless the other committee to whom the proposals were sent under section 28(6) (“committee B”) have failed to reach a decision on what recommendation to give, obtaining the recommendation of committee B—

- (a) reject the proposals;
- (b) approve them without modification; or
- (c) approve them with such modifications as the committee think desirable after consulting the body who published the proposals and, where the proposals were published to establish a new foundation or voluntary school or were published

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by the governing body of a school, the local education authority who maintain or who it is proposed should maintain, the school.”.

- (b) after sub-paragraph (3) there were inserted the following sub-paragraphs—
  - “(3A) Where under sub-paragraph (2) the recommendation of committee B is sought, that committee, in deciding what recommendation to give, shall have regard to—
    - (a) any guidance given from time to time by the Secretary of State, and
    - (b) the school organisation plan for the committee’s area.
  - (3B) Where—
    - (a) under sub-paragraph (2) the recommendation of committee B is sought; and
    - (b) in accordance with regulations under paragraph 5 of Schedule 4 the question of what recommendation to give to committee A falls to be decided by a unanimous decision; but
    - (c) committee B have failed to reach a decision on what recommendation to give, committee B shall inform committee A of that fact.”;
- (c) for sub-paragraph (6) there were substituted the following sub-paragraph—
  - “(6) If committee A—
    - (a) have voted on any matter which (in accordance with regulations under paragraph 5 of Schedule 4) falls to be decided by them under this paragraph by a unanimous decision but have failed to reach a decision on that matter;
    - (b) have voted not to accept the recommendation of committee B; or
    - (c) have been informed by committee B under sub-paragraph (3B) that committee B is unable to reach a decision on what recommendation to give, they shall refer the proposals to the adjudicator.”; and
- (d) for sub-paragraph (7) there were substituted the following sub-paragraph—
  - “(7) where any proposals are referred to the adjudicator under sub-paragraph (5) or (6)—
    - (a) he shall consider the matter afresh;
    - (b) he may—
      - (i) reject the proposals;
      - (ii) approval them without modification, or
      - (iii) approve them with such modifications as the adjudicator may think desirable after consulting the body who published the proposals and, where the proposals were published to establish a new foundation or voluntary school or were published by the governing body of a school, the local education authority who maintain or who it is proposed maintain, the school;
    - (c) sub-paragraph (3) shall apply to the adjudicator in connection with his decision on the proposals as it applies to the relevant committee; and
    - (d) when deciding whether or not to give any approval under this paragraph the adjudicator shall have regard to—
      - (i) any guidance given from time to time by the Secretary of State; and
      - (ii) the school organisation plans for the area of the areas of the relevant committee and the other committee to whom the proposals were sent under Section 28(6); and the adjudicator shall not give any such approval until he is satisfied that adequate financial resources will be available to enable the proposals to be implemented.”.

## PART II

### MODIFICATIONS TO SCHEDULE 23

4. In relation to proposals published under paragraph 5 of Schedule 23 which relate to a school which is situated in an area other than that of the local education authority who maintain the school, paragraph 5 of Schedule 23 shall have effect as if—

- (a) at the end of sub-paragraph (1)(b) there were added “for the area of the local education authority which maintains the school (“committee A”) and to the school organisation committee for the area of the local education authority in which the school is situated (“committee B”)”;
- (b) for sub-paragraph (2) there were substituted the following sub-paragraphs—
  - “(2) Before the local education authority makes such an application they shall consult the local education authority in whose area the school is situated and the governing body.
  - (2A) Before the governing body makes such an application they shall consult the local education authority who maintain the school and the local education authority in whose area the school is situated.”;
- (c) in sub-paragraph (3) after “(2)” there were inserted “or (2A)”;
- (d) in sub-paragraph (5) for “the school organisation committee” there were substituted “committee A”.

5. In relation to proposals described in paragraph 4 above, paragraph 6 of Schedule 23 shall have effect as if—

- (a) in sub-paragraph (1) for “the school organisation committee may” there were substituted “committee A, subject to sub-paragraph (8)(b) and (c) may, after seeking, and, unless committee B have failed to reach a decision on what recommendation to give, obtaining the recommendation of committee B”;
- (b) after sub-paragraph (1) there were inserted the following sub-paragraphs—
  - “(1A) Where under sub-paragraph (1) the recommendation of committee B is sought, that committee, in deciding what recommendation to give, shall have regard to—
    - (a) any guidance given from time to time by the Secretary of State;
    - (b) the school organisation plan for the area in which the school is situated; and
    - (c) where the application is for the reduction of a standard number at a primary school, any limit imposed under section 1 which applies to that school and to any other school which is likely to be affected if any reduction of that number were to be made.
  - (1B) Subject to sub-paragraph (1C), committee B shall not make a recommendation that the standard number be reduced unless they are satisfied that the reduction is necessary having regard to the school’s capacity to accommodate pupils.
  - (1C) Where—
    - (a) an application is for a reduction of any standard number applicable to admissions to an infant class (as defined by section 4); and
    - (b) committee B are satisfied that the admission to the school in any school year of a number of children in any relevant age group equal to the relevant standard number would cause prejudice of the kind referred to in section 86(3)(a) by reason of measures required to be taken as mentioned in subsection (4) of that section, committee B shall make a recommendation that the standard number

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be reduced by the smallest number which they consider sufficient to avoid such prejudice arising.

(1D) Where—

- (a) under sub-paragraph (1) the recommendation of committee B is sought; and
  - (b) in accordance with regulations under paragraph 5 of Schedule 4 the question of what recommendation to give to committee A falls to be decided by a unanimous decision; but
  - (c) committee B have failed to reach a decision on what recommendation to give, committee B shall inform committee A of that fact.”;
- (c) in sub-paragraph (2) after “the local education authority” there were inserted “who maintain the school”;
- (d) in sub-paragraph (3)(b) for “the area in which the school is situated” there were substituted “the area of the local education authority who maintain the school”;
- (e) for sub-paragraph (8) there were substituted the following sub-paragraph—
- “(8) If committee A—
- (a) have voted on any matter which (in accordance with regulations under paragraph 5 of Schedule 4) falls to be decided by them under sub-paragraph (1) by a unanimous decision but have failed to reach a unanimous decision on that matter;
  - (b) have voted not to accept the recommendation of committee B; or
  - (c) have been informed by committee B under sub-paragraph (1D) that committee B is unable to reach a decision on what recommendation to give, they shall refer the application to the adjudicator.”; and
- (f) for sub-paragraph (9) there were substituted—
- “(9) Where any application is referred to the adjudicator under sub-paragraph (7) or (8)—
- (a) he shall consider the application afresh; and
  - (b) sub-paragraphs (1) (without the reference to seeking and obtaining the recommendation of committee B), (2), (3)(a) and (c), and (4) to (6) shall apply to him in connection with his decision on the application as they apply to the committee; and
  - (c) when making any decision in accordance with sub-paragraph (1) the adjudicator shall have regard to the school organisation plan for the area of committee A and committee B”.