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STATUTORY INSTRUMENTS

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**1999 No. 2259**

**EDUCATION, ENGLAND**

**The Education (Change of Category of  
Maintained Schools) (England) Regulations 1999**

<i>Made</i>	- - - -	<i>6th August 1999</i>
<i>Laid before Parliament</i>		<i>11th August 1999</i>
<i>Coming into force</i>	- -	<i>1st September 1999</i>

In exercise of the powers conferred by sections 35(2) and 138(7) and (8) of, and paragraph 5 of Schedule 4, paragraphs 2, 3 and 5 of Schedule 8 and paragraph 1(5) of Schedule 12 to, the School Standards and Framework Act 1998<sup>(1)</sup> the Secretary of State for Education and Employment hereby makes the following Regulations:

**Citation, commencement and application**

1.—(1) These Regulations may be cited as the Education (Change of Category of Maintained Schools) (England) Regulations 1999 and shall come into force on 1st September 1999.

(2) These Regulations apply in relation to local education authorities and schools in England.

**Interpretation**

2.—(1) In these Regulations:

“the Act” means the School Standards and Framework Act 1998;

“the main school government regulations” means the Education (School Government) (England) Regulations 1999<sup>(2)</sup>;

“the governing body” means the governing body of the school in respect of which a change of category is proposed or, as the case may be, takes place;

“the implementation date” means the date specified in the proposals as the date on which it is intended that the change of category should take place;

“the proposals” means the proposals published under paragraph 3 of Schedule 8 to the Act with any modifications made by the school organisation committee or adjudicator under paragraph 3 or 5 of Schedule 6 to the Act (as those paragraphs have effect with modifications by virtue of Schedule 1).

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(1) 1998 c. 31.

(2) S.I.1999/2163.

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(2) Expressions used in these Regulations set out in the first column of the table below have the meaning given by, or (as the case may be) are to be interpreted in accordance with, the provisions referred to in the second column of that table—

“Education Act Forum”	section 11(2) of the Act;
“education action zone”	section 10(1) of the Act;
“instrument of government”	section 37(1) of the Act;
“sponsor”	paragraph 1 of Schedule 1 to the main school government regulations.

### **Prescribed period for the purpose of section 35 of the Act**

3. For the purposes of section 35(2) of the Act (which provides that, except in relation to a change of category from voluntary aided to voluntary controlled school for which proposals are required to be published by virtue of paragraph 3 of Schedule 8 to the Act, that Schedule does not apply at any time before the end of such period as may be prescribed) the prescribed period is the period starting on 1st September 1999 and ending on 31st August 2000.

### **Application of regulations 5 to 11**

4. Regulations 5 to 11 shall apply in relation to proposals published under paragraph 3 of Schedule 8 to the Act (during the period prescribed in regulation 3) for a voluntary aided school to become a voluntary controlled school and in relation to the implementation of such proposals.

### **Application of section 28 of and Schedule 6 to the 1998 Act**

5.—(1) Schedule 1 has effect (subject to regulation 10) for applying with modifications provisions of section 28 of, and Part I of Schedule 6 to, the Act in relation to proposals such as are mentioned in regulation 4.

(2) The provisions of section 28 of, and Part I of Schedule 6 to, the Act so applied are set out as modified in Schedule 2.

### **Voting of members of School Organisation Committee on proposals**

6.—(1) In this regulation references to a group of members of a school organisation committee shall be construed in accordance with the Education (School Organisation Committees) (England) Regulations 1999(3).

(2) Each group of members shall collectively have a single vote in relation to any decision of the committee as to whether or not—

- (a) to give any approval under paragraph 3 of the modified Schedule 6 to the Act;
- (b) to modify any proposals or specify a later date under paragraph 5(2)(a) or (b) of the modified Schedule 6 to the Act;
- (c) to consent under paragraph 8 of the modified Schedule 6 to the Act to the withdrawal of proposals; or
- (d) to defer consideration of whether to take any decision on either of the matters referred to in sub-paragraphs (a) to (c).

(3) All decisions on questions referred to in paragraph (2) shall be unanimous decisions of those voting.

(4) In this regulation any reference to the modified Schedule 6 to the Act is a reference to that Schedule as it has effect with modifications by virtue of Schedule 1 to these Regulations.

### **Implementation of proposals**

7. On the implementation date the school shall become a voluntary controlled school.

### **Transfer of staff**

8.—(1) Subject to paragraph (2), this regulation shall apply to any person who immediately before the implementation date is employed by the governing body.

(2) This regulation shall not apply to any person whose contract of employment terminates on the day immediately preceding the implementation date.

(3) A 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 shall be treated for the purposes of this regulation as if he had been employed by the governing body immediately before the implementation date to do such work at the school as he would have been required to do on or after that date under his contract of employment with the governing body.

(4) The contract of employment between a person to whom this regulation applies and the governing body shall have effect from the implementation date as if originally made between him and the local education authority.

(5) Without prejudice to paragraph (4)—

(a) all the governing body's rights, powers, duties and liabilities under or in connection with the contract of employment shall by virtue of this regulation be transferred to the local education authority on the implementation date; and

(b) anything done before that date by or in relation to the governing body in respect of that contract or the employee shall be deemed from that date to have been done by or in relation to the local education authority.

(6) Paragraphs (4) and (5) are without prejudice to any right of an employee to terminate his contract if a substantial change is made to his detriment in his working conditions, but no such right shall arise by reason only of the change in employer effected by this regulation.

### **Instrument of government and reconstitution of governing body**

9.—(1) The governing body and the local education authority shall secure that, as soon as reasonably practicable after the implementation date (and in any event within three months after the implementation date)—

(a) a new instrument of government is made for the school in accordance with Schedule 12 to the Act and Part II of the main school government regulations; and

(b) the governing body are reconstituted in accordance with the new instrument of government and Part II of the main school government regulations(4).

(a) (2) (a) The instrument of government shall be made in the form and in accordance with the directions set out in Schedule 3.

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(4) Part II of the main school government regulations makes provision regarding contents of instruments of government, appointments and elections of governors, and the removal of surplus governors, other than surplus foundation governors. Provision for the removal of surplus foundation governors is in paragraph 11 of the pro-forma instrument of government set out in Schedule 3.

(b) It shall be a sufficient compliance with sub-paragraph (a) if the instrument of government is in a form substantially to the like effect to the form set out in Schedule 3.

(3) A failure by the governing body or local education authority to discharge the duty in paragraph (1) within the time limit prescribed in that paragraph shall not relieve the governing body or the local education authority of that duty.

### **Special provisions where Chapter II of Part II of the Act has effect with modifications**

**10.**—(1) In this regulation—

- (a) “the Transition Regulations” means the Education (Transition to New Framework) (School Organisation Proposals) Regulations 1999(5); and
- (b) “the transitional modifications” means the modifications to Chapter II of Part II of the Act contained in the Schedule to the Transition Regulations.

(2) Where Chapter II of Part II to the Act would have effect with the transitional modifications in relation to any proposals published under section 28 of the Act by the governing body of a school then, in relation to proposals published under paragraph 3 of Schedule 8 by the governing body of that school—

- (a) references (however expressed) in the modified section 28(3)(a)(iii) and (6) of, and the modified paragraphs 2(3), 3(8) and 5(2) of Schedule 6 to, the Act to a school organisation committee shall have effect as references to the Secretary of State;
- (b) paragraph 3(2) of Schedule 6 to the Act shall have effect with the modifications specified in the Transition Regulations as well as the modifications specified in the Schedule to these Regulations; and
- (c) paragraphs 1(2), 3(5) and 5(5) and (7) of Schedule 6 to the Act shall not have effect.

(3) In paragraph (2) references to the modified section 28 of, or Schedule 6 to, the 1998 Act are references to section 28 of, and Schedule 6 to, the Act as those provisions have effect with the modifications specified in Schedule 1 to these Regulations.

### **Transitional provisions**

**11.**—(1) Anything done by the governing body as admission authority before the implementation date under any provision in Chapter I of Part III of the Act (admission arrangements) shall from the implementation date have effect as if done by the local education authority.

(2) If on the implementation date proposals published by the governing body under section 28, 29 or 31 of the Act fall to be implemented under paragraph 5 of Schedule 6 to the Act they shall be implemented by the local education authority.

6th August 1999

*Estelle Morris*  
Minister of State,  
Department for Education and Employment

SCHEDULE 1

Regulation 5(1)

PROVISIONS OF SECTION 28 OF, AND SCHEDULE 6 TO THE ACT HAVING EFFECT IN RELATION TO PROPOSALS MENTIONED IN REGULATION 4

The subsections of section 28 of, and the paragraphs in Part I of Schedule 6 to, the Act specified in the left hand column of the table mentioned below shall have effect in relation to proposals such as are mentioned in regulation 4 and, where modifications are specified in the right hand column of the table shall have effect with those modifications.

TABLE

Provision	Modification
Section 28(3)	<p>That subsection shall have effect as if—</p> <p>(a) for “under this section” there were substituted “under paragraph 3 of Schedule 8”; and</p> <p>(b) for paragraph (a) and (b) and the words “as may be prescribed” these were substituted—</p> <p style="padding-left: 40px;">“(a) contain the following information—</p> <p style="padding-left: 80px;">(i) the name of the governing body publishing the proposals,</p> <p style="padding-left: 80px;">(ii) the date on which it is proposed that the change of category should take place,</p> <p style="padding-left: 80px;">(iii) a statement explaining the effect of paragraph 2 of Schedule 6 including the date by which objections should be sent to the relevant school organisation committee and the address of that school organisation committee,</p> <p style="padding-left: 80px;">(iv) a statement that it is proposed to change the category of the school from voluntary aided to voluntary controlled,</p> <p style="padding-left: 80px;">(v) a statement that after the change of category has taken place, the local education authority will be the admission authority for the school; and</p>

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Provision	Modification
	<p>(b) shall be published–</p> <ul style="list-style-type: none"> <li>(i) by being posted in a conspicuous place in the area served by the school,</li> <li>(ii) in at least one newspaper circulating in the area served by the school, and</li> <li>(iii) by being posted at or near the main entrance to the school or, if there is more than one main entrance, all of them.”.</li> </ul>
Section 28(5)	<p>That subsection shall have effect as if for “under this section” there were substituted “under paragraph 3 of Schedule 8”, and for “the relevant body or promoters” in both places where that expression occurs there were substituted “the governing body”.</p>
Section 28(6)	<p>That subsection shall have effect as if–</p> <ul style="list-style-type: none"> <li>(a) for “under this section” there were substituted “under paragraph 3 of Schedule 8”;</li> <li>(b) for “the relevant body or promoters” there were substituted “the governing body”; and</li> <li>(c) for sub-paragraph (b) and the words following that sub-paragraph there were substituted– <ul style="list-style-type: none"> <li>“(b) the information specified in subsection (6A), to the school organisation committee for the area of the local education authority who maintain the school.</li> </ul> </li> </ul> <p>(6A) The information referred to in subsection (6) is–</p> <ul style="list-style-type: none"> <li>(a) the objectives of the proposals;</li> <li>(b) evidence of consultation before the proposals were published including– <ul style="list-style-type: none"> <li>(i) copies of the consultation documents, and</li> <li>(ii) the views and responses from the persons consulted;</li> </ul> </li> </ul>

Provision	Modification
	<ul style="list-style-type: none"><li data-bbox="935 383 1343 667">(c) a map showing the location of the school and all other community, voluntary and foundation schools within a radius of 3.218688 kilometres (2 miles), where the school is a primary school and 4.828032 kilometres (3 miles) where the school is a secondary school;</li><li data-bbox="935 678 1343 1328">(d) the following information relating to the school for the school year in which the proposals were published and (except for the information specified in sub-paragraph (iv)), the previous school year—<ul style="list-style-type: none"><li data-bbox="1010 913 1343 981">(i) the standard number for each relevant age group,</li><li data-bbox="1010 992 1343 1059">(ii) the number of year groups,</li><li data-bbox="1010 1070 1343 1137">(iii) the capacity of the school, and</li><li data-bbox="1010 1149 1343 1216">(iv) the number of pupils at the school</li></ul>and a forecast of the matters specified in sub-paragraphs (ii) to (iv) for each of the subsequent five years;</li><li data-bbox="935 1339 1343 1624">(e) a list of all the schools within the radius of the school mentioned in paragraph (c) above stating which schools are maintained by different local education authorities together with the information referred to in paragraph (d) in respect of each such school;</li><li data-bbox="935 1635 1343 1984">(f) the following information relating to the accommodation at the school—<ul style="list-style-type: none"><li data-bbox="1010 1747 1343 1814">(i) the location of the accommodation,</li><li data-bbox="1010 1825 1343 1915">(ii) whether the school occupies a single or split site,</li><li data-bbox="1010 1926 1343 1984">(iii) how accessible the accommodation is,</li></ul></li></ul>

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Provision	Modification
	<ul style="list-style-type: none"> <li>(iv) details of the general and specialist accommodation (both teaching and non-teaching), and</li> <li>(v) (where relevant) details of accommodation for nursery education;</li> <li>(g) a breakdown of any costs involved in the change of category;</li> <li>(h) details of the policy of the school relating to the education of pupils with special educational needs;</li> <li>(i) a statement as to whether the school has been inspected under section 10 of the School Inspections Act 1996(6) during the period starting three years before the date of the notice of the proposals and, where the school has been inspected during that period, the date of the inspection and details of the outcome of the inspection;</li> <li>(j) details of the tenure (freehold or leasehold) on which the site of the school is held and, if the premises are held on a lease, details of the lease, and</li> <li>(k) details of the trusts on which the site of the school is held.”.</li> </ul>
Section 28(11)(b)	This subsection shall have effect as if paragraph (a) were omitted.
Schedule 6	
Paragraph 1	<p>This paragraph shall have effect as if–</p> <ul style="list-style-type: none"> <li>(a) in sub-paragraph (1) for “section 28, 29 or 31” there were substituted “paragraph 3 of Schedule 8” and the words “or proposed school” were omitted;</li> <li>(b) in sub-paragraph (2) the words “or (in the case of a new school) who it is proposed should maintain the school” were omitted.</li> </ul>
Paragraph 2	This paragraph shall have effect as if–

(6) 1996 c. 57. Subsection (3) of section 10 is amended and subsections (4A) and (4B) inserted by paragraph 6 of Schedule 6 to the Education Act 1997 (c. 44) and the section is prospectively amended by paragraph 191 of Schedule 30 to the Act.



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Provision	Modification
	<p>(a) in sub-paragraph (1) for “section 28, 29 or 31” there were substituted “paragraph 3 of Schedule 8”;</p> <p>(b) sub-paragraph (2) were omitted; and</p> <p>(c) for sub-paragraph (3) there were substituted—</p> <p>“(3) Any objections under this paragraph shall be sent to the relevant committee—</p> <p>(a) within two months after the date of publication of the proposals, except where paragraph (b) of this sub-paragraph applies; and</p> <p>(b) within one month after the date of publication of the proposals, where the school is one to which section 15 applies.”.</p>
Paragraph 3	<p>This paragraph shall have effect as if—</p> <p>(a) for sub-paragraph (1) there were substituted—</p> <p>“(1) Proposals published under paragraph 3 of Schedule 8 require approval under this paragraph.”;</p> <p>(b) in sub-paragraph (2)(c) for “such persons or bodies as may be prescribed” there were substituted “the local education authority and the governing body”;</p> <p>(c) for sub-paragraph (3) there were substituted—</p> <p>“(3) Any approval given under this paragraph may be expressed to take effect only if a scheme relating to any charity connected with the school is made by a date specified in the approval.”;</p> <p>(d) in sub-paragraph (4) the words from “and the committee shall not give any such approval” to the end were omitted;</p> <p>(e) for sub-paragraph (5) there were substituted—</p> <p>“(5) If—</p> <p>(a) after two months from –</p> <p>(i) the end of the period within which objections may be sent to the committee in accordance with paragraph 2, or</p>

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Provision	Modification
	<ul style="list-style-type: none"> <li>(ii) if later, the date on which the committee receive the information specified in section 28(6A), the committee have not voted on the question whether to give any approval under this paragraph; and</li> <li>(b) the governing body request the committee to refer the proposals to the adjudicator, they shall refer the proposals to the adjudicator.”; and</li> </ul>
	<ul style="list-style-type: none"> <li>(f) for sub-paragraph (8) there were substituted–                             <ul style="list-style-type: none"> <li>“(8) Proposals published under paragraph 3 of Schedule 8 may only be withdrawn with the consent in writing of the relevant committee.”.</li> </ul> </li> </ul>
Paragraph 5	<p>This paragraph shall have effect as if–</p> <ul style="list-style-type: none"> <li>(a) for sub-paragraph (1) there were substituted                             <ul style="list-style-type: none"> <li>“(1) Where any proposals published under paragraph 3 of Schedule 8 have been approved under paragraph 3 then (subject to the following provisions of this paragraph) the proposals shall be implemented in the form in which they were so approved in accordance with regulations made under paragraph 5 of Schedule 8.”;</li> </ul> </li> <li>(b) for sub-paragraph (2) there were substituted–                             <ul style="list-style-type: none"> <li>“(2) At the request of the governing body or the local education authority, the relevant committee–                                     <ul style="list-style-type: none"> <li>(a) may modify the proposals after consulting the governing body and the local education authority; and</li> <li>(b) where any approval under paragraph 3 was given in accordance with sub-paragraph (3) of that paragraph, may specify a later date by which the scheme in question must be made.”;</li> </ul> </li> </ul> </li> <li>(c) sub-paragraphs (3) and (4) were omitted;</li> </ul>

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Provision	Modification
	(d) for sub-paragraph (5) there were substituted— “(5) If— (a) the matter to be determined is a request for a modification of proposals under sub-paragraph (2)(a) and after one month from the date which the committee notify bodies whom they consult (pursuant to sub-paragraph (2)(a)) is to be the date by which responses to consultation must be received, the committee have not voted on the matter; or (b) the matter to be determined is a request to specify a later date under sub-paragraph (2)(b) and after one month from the date of the request the committee have not voted on the matter; and (c) (in either case) the governing body request the committee to refer that matter to the adjudicator, they shall refer the matter to the adjudicator.”; (e) in sub-paragraph (7)(b) for “sub-paragraphs (2) to (4)” there were substituted “sub-paragraph (2)”; and (f) sub-paragraphs (8) and (9) were omitted.

SCHEDULE 2

Regulation 5(2)

PROVISIONS OF SECTION 28 OF, AND PART I OF SCHEDULE 6 TO THE ACT APPLIED BY SCHEDULE 1, AS MODIFIED

PROVISIONS OF SECTION 28

... ..

- (3) Proposals under paragraph 3 of Schedule 8 shall—
- (a) contain the following information—
    - (i) the name of the governing body publishing the proposals,
    - (ii) the date on which it is proposed that the change of category should take place,

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- (iii) a statement explaining the effect of paragraph 2 of Schedule 6 including the date by which objections should be sent to the relevant school organisation committee and the address of that school organisation committee,
  - (iv) a statement that it is proposed to change the category of the school from voluntary aided to voluntary controlled,
  - (v) a statement that after the change of category has taken place, the local education authority will be the admission authority for the school; and
- (b) shall be published–
- (i) by being posted in a conspicuous place in the area served by the school,
  - (ii) in at least one newspaper circulating in the area served by the school, and
  - (iii) by being posted at or near the main entrance to the school or, if there is more than one main entrance, all of them.

... ..

(5) Before publishing any proposals under paragraph 3 of Schedule 8, the governing body shall consult such persons as appear to them to be appropriate; and in discharging their duty under this subsection the governing body shall have regard to any guidance given from time to time by the Secretary of State.

(6) Where any proposals published under paragraph 3 of Schedule 8 relate to a school or proposed school in England, the governing body shall send–

- (a) a copy of the published proposals, and
- (b) the information specified in subsection (6A),

to the school organisation committee for the area of the local education authority who maintain the school.

(6A) The information referred to in subsection (6) is–

- (a) the objectives of the proposals;
- (b) evidence of consultation before the proposals were published including–
  - (i) copies of the consultation documents, and
  - (ii) the views and responses from the persons consulted;
- (c) a map showing the location of the school and all other community, voluntary and foundation schools within a radius of 3.218688 kilometres (2 miles), where the school is a primary school and 4.828032 kilometres (3 miles) where the school is a secondary school;
- (d) the following information relating to the school for the school year in which the proposals were published and (except for the information specified in sub-paragraph (iv)), the previous school year–
  - (i) the standard number for each relevant age group,
  - (ii) the number of year groups,
  - (iii) the capacity of the school, and
  - (iv) the number of pupils at the school

and a forecast of the matters specified in sub-paragraphs (ii) to (iv) for each of the subsequent five years;

- (e) a list of all the schools within the radius of the school mentioned in paragraph (c) above stating which schools are maintained by different local education authorities together with the information referred to in paragraph (d) in respect of each such school;
- (f) the following information relating to the accommodation at the school–

- (i) the location of the accommodation,
  - (ii) whether the school occupies a single or split site,
  - (iii) how accessible the accommodation is,
  - (iv) details of the general and specialist accommodation (both teaching and non-teaching), and
  - (v) (where relevant) details of accommodation for nursery education;
- (g) a breakdown of any costs involved in the change of category;
- (h) details of the policy of the school relating to the education of pupils with special educational needs;
- (i) a statement as to whether the school has been inspected under section 10 of the School Inspections Act 1996 during the period starting three years before the date of the notice of the proposals and, where the school has been inspected during that period, the date of the inspection and details of the outcome of the inspection;
- (j) details of the tenure (freehold or leasehold) on which the site of the school is held and, if the premises are held on a lease, details of the lease; and
- (k) details of the trusts on which the site of the school is held.

... ..

(11) In this Part—

... ..

- (b) “area” (without more) means a local education authority area.

## PROVISIONS OF SCHEDULE 6

**1.—**(1) This Part of this Schedule applies to proposals published under paragraph 3 of Schedule 8 which relate to a school in England.

(2) In this Part of this Schedule “the relevant committee” means the school organisation committee for the area of the local education authority who maintain the school.

**2.—**(1) Any person may make objections to any proposals published under paragraph 3 of Schedule 8.

... ..

(3) Any objections under this paragraph shall be sent to the relevant committee—

- (a) within two months after the date of publication of the proposals, except where paragraph (b) of this sub-paragraph applies; and
- (b) within one month after the date of publication of the proposals, where the school is one to which section 15 applies.

**3.—**(1) Proposals published under paragraph 3 of Schedule 8 require approval under this paragraph.

(2) Where any proposals require approval under this paragraph, they shall be considered in the first instance by the relevant committee, who may—

- (a) reject the proposals,
- (b) approve them without modification, or

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- (c) approve them with such modifications as the committee think desirable after consulting the local education authority and the governing body.
- (3) Any approval given under this paragraph may be expressed to take effect only if a scheme relating to any charity connected with the school is made by a date specified in the approval.
- (4) When deciding whether or not to give any approval under this paragraph the committee 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.
- (5) If—
  - (a) after two months from—
    - (i) the end of the period within which objections may be sent to the committee in accordance with paragraph 2, or
    - (ii) if later, the date on which the committee receive the information specified in section 28(6A),the committee have not voted on the question whether to give any approval under this paragraph; and
  - (b) the governing body request the committee to refer the proposals to the adjudicator,they shall refer the proposals to the adjudicator.
- (6) If the committee—
  - (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
  - (b) have failed to reach such a decision on that matter,they shall refer the proposals to the adjudicator.
- (7) Where any proposals are referred to the adjudicator under sub-paragraph (5) or (6)—
  - (a) he shall consider the proposals afresh; and
  - (b) sub-paragraphs (2) to (4) shall apply to him in connection with his decision on the proposals as they apply to the committee.
- (8) Proposals published under paragraph 3 of Schedule 8 may only be withdrawn with the consent in writing of the relevant committee.

... ..

**5.—(1)** Where any proposals published under paragraph 3 of Schedule 8 have been approved under paragraph 3 then (subject to the following provisions of this paragraph) the proposals shall be implemented in the form in which they were so approved in accordance with regulations made under paragraph 5 of Schedule 8.

- (2) At the request of the governing body or the local education authority, the relevant committee—
  - (a) may modify the proposals after consulting the governing body and the local education authority; and
  - (b) where any approval under paragraph 3 was given in accordance with sub-paragraph (3) of that paragraph, may specify a later date by which the scheme in question must be made.

... ..

- (5) If—
  - (a) the matter to be determined is a request for a modification of proposals under sub-paragraph (2)(a) and after one month from the date which the committee notify bodies

whom they consult (pursuant to sub-paragraph (2)(a), is to be the date by which responses to consultation must be received, the committee have not voted on the matter; or

- (b) the matter to be determined is a request to specify a later date under sub-paragraph (2) (b) and after one month from the date of the request the committee have not voted on the matter; and
- (c) (in either case) the governing body request the committee to refer that matter to the adjudicator,

they shall refer the matter to the adjudicator;

(6) If the committee—

- (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
- (b) have failed to reach such a decision on the matter,

they shall refer that matter to the adjudicator.

(7) Where any matter is referred to the adjudicator under sub-paragraph (5) or (6)—

- (a) he shall consider the matter afresh; and
- (b) such of the provisions of sub-paragraph (2) as are relevant shall apply to him in connection with his decision on that matter as they apply to the committee.

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SCHEDULE 3

Regulation 9

INSTRUMENT OF GOVERNMENT: VOLUNTARY CONTROLLED SCHOOLS

- 1. The name of the school is .....
- 2. The school is a voluntary controlled school.
- 3. The name of the governing body is "The governing body of ....." (*insert the name of the school as in paragraph 1 above*).
- 4. The governing body shall consist of
  - (a)  parent governors;
  - (b)  TFA governors;
  - (c)  teacher governors;
  - (if applicable*
    - (d) one staff governor;
    - (e)  foundation governors;
    - (f)  co-opted governors (*including any governors referred to in paragraph 6, 7 or 8 below*);
    - (g) the head teacher (except at any time when he has given written notice to the clerk to the governing body of the school that he chooses not to be a governor).
- 5. Total number of governors ..... (except any time when the head teacher has given notice as above that he chooses not to be a governor, when the total number of governors will be .....

*(If applicable*



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6. One co-opted governor will be governor for whose appointment nominations are to be sought from the minor authority or (as the case may be) from one or more of the minor authorities in relation to the school.)

*(If applicable)*

7. x co-opted governor[s] will be [a] governor[s] for whose appointment nominations are to be sought from the sponsor or from amongst the sponsors of the school )

*(If applicable)*

8. One co-opted governor will be a governor for whose appointment nominations are to be sought from the Education Action Forum for the education action zone in relation to which the school is a participating school.)

9. *Set out the name of any foundation body or person entitled to appoint foundation governors. If there is more than one such person, set out the basis on which such appointments are made.*

10. (a) The holder of the following office shall be a foundation governor ex-officio:

*name of office*

(b) .....[or ..... and ..... jointly] shall be entitled to appoint a foundation governor to act in the place of the ex officio foundation governor whose governorship derives from the office named in (a) above, in the event that that ex officio foundation governor is unable or unwilling to act as a foundation governor, or there is a vacancy in the office by virtue of which his governorship exists.

*Repeat 10(a) and (b) as necessary where there is more than one ex officio foundation governorship.)*

11. *Set out procedure for eliminating any excess in the number of foundation governors.*

12. *Where the school is a voluntary school with a religious character, describe the ethos of the school.*

13. This instrument comes into effect on the date of making.

14. This instrument was made by order of ..... Local Education Authority on .....

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## EXPLANATORY NOTE

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

These Regulations make provision relating to certain aspects of the change of category of schools. Section 35 of the School Standards and Framework Act 1998 provides, in effect, that except for a change of category from voluntary aided school to voluntary controlled school in limited circumstances schools cannot change their category before the end of a prescribed period (“the moratorium period”). Regulation 4 prescribes the moratorium period as the period from 1st September 1999 to 31st August 2000.

The remainder of the regulations make provision for changes of category from voluntary aided school to voluntary controlled school where in limited circumstances such changes are permitted during the moratorium period. Regulations 5 applies provisions of section 28 of, and Schedule 6 to, the Act with modifications in relation to proposals published to change the category of a school. The modifications are set out in Schedule 1 and the provisions as modified reproduced in Schedule 2. Regulation 6 provides that when considering matters relating to proposals for a change of category each group of members of the school organisation committee shall collectively have a single vote and that decisions must be unanimous.

Regulations 7 to 9 make provision for implementation of the proposals. Regulation 8 provides for the transfer of staff and regulation 9 with Schedule 3 makes provision for a new instrument of government to be made for the school and for the governing body to be reconstituted in accordance with that instrument.

Regulation 10 makes special provisions for a period before the school organisation plan for a local education authority has been approved (since during any such period proposals are decided by the Secretary of State rather than the school organisation committee or adjudicator) and regulation 11 makes transitional provisions.