

2003 No. 2136

EDUCATION, ENGLAND

The Education (Change of Category of Maintained Schools) (Amendment) (England) Regulations 2003

Made - - - - - *15th August 2003*

Laid before Parliament *21st August 2003*

Coming into force - - *15th September 2003*

In the exercise of the powers conferred upon the Secretary of State by sections 138(7) and 144 of, and paragraphs 2 and 5 of Schedule 8 to, the School Standards and Framework Act 1998(a) and sections 19, 20, 210(7) and 214 of the Education Act 2002(b) the Secretary of State for Education and Skills hereby makes the following Regulations:

Citation, commencement, interpretation and application

1.—(1) These Regulations may be cited as the Education (Change of Category of Maintained Schools) (Amendment) (England) Regulations 2003, and shall come into force on 15th September 2003.

(2) In these Regulations—

“the 1998 Act” shall mean the School Standards and Framework Act 1998;

“the 2003 Regulations” shall mean the School Governance (Constitution) (England) Regulations 2003(c);

“the Principal Regulations” shall mean the Education (Change of Category of Maintained Schools) (England) Regulations 2000(d).

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

Amendment of the Principal Regulations

2. The Principal Regulations shall be amended as follows.

3. In regulation 2(1)—

(a) after the words “In these Regulations” there shall be inserted the words ““the 2003 Regulations” means the “School Governance (Constitution) (England) Regulations 2003””; and

(a) 1998 c. 31; by virtue of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) the powers conferred by section 138(7) of and paragraphs 2 and 5 of Schedule 8 to the 1998 Act are exercisable by the Secretary of State only in relation to England.

(b) 2002 c. 32; by virtue of the definition of “regulations” in section 212(1), these Regulations made by the Secretary of State apply only in relation to England.

(c) S.I. 2003/348 as amended by S.I. 2003/1916.

(d) S.I. 2000/2195.

(b) the words ““the modified 2003 Regulations” means those Regulations as they have effect with modifications by virtue of Schedule 4 to these Regulations” shall be substituted for the words ““the modified Schedule 12” to the Act means that Schedule as it has effect with modifications by virtue of Schedule 4 to these Regulations”.

4. In regulation 11(1), the words “2003 Regulations” shall be substituted for the words “Schedule 12 to the Act”.

5. For regulation 12 there shall be substituted—

“12. The new instrument of government shall be made in accordance with, and conform to, the requirements of Part 5 of the modified 2003 Regulations.”.

6. For regulation 13 there shall be substituted—

“13. The 2003 Regulations shall apply to the new instrument of government referred to in regulation 12 with the modifications set out in Schedule 4.”.

7. In regulation 14(1), the words “2003 Regulations” shall be substituted for the words “Schedule 12 to the Act”.

8. In regulation 16(4), the words “sponsor governors” shall be substituted for the words “additional co-opted governors”.

9. After regulation 16, there shall be inserted—

“16A. For the purposes of regulations 15 and 16, where the local education authority has not made an instrument of government for the current governing body in accordance with the 2003 Regulations, the corresponding categories of governor shall be as follows—

<i>Category of current governor</i>	<i>Category of governor under the 2003 Regulations</i>
Co-opted governor	Community governor
Representative governor	Community governor appointed in accordance with regulation 7(2) of the 2003 Regulations
Foundation governor (including ex officio foundation governor)	Foundation governor
LEA governor	LEA governor
Parent governor	Parent governor
Partnership governor	Partnership governor
Staff governor	Staff governor
Teacher governor	Staff governor
Head teacher (ex officio governor)	Staff governor

”

10. In Schedule 1 (Provisions of Section 28 of, and Schedule 6 to, the 1998 Act having effect in relation to Proposals mentioned in Regulation 4)—

(a) in the modification of paragraph 2 of Schedule 6 to the 1998 Act the following shall be substituted for modification (b)—

“(b) for sub-paragraph (2) there were substituted—

“(2) Where the proposals were published by the local education authority any objections or comments under this paragraph shall be sent to the local education authority within—

(a) six weeks from the date of the publication of the proposals, except where sub-paragraph (b) applies; and

(b) one month from the date of publication of the proposals where the proposals are in respect of a school to which section 15 applies.

(2A) The local education authority shall send to the relevant committee copies of all objections made (and not withdrawn in writing) and comments together with the authority’s observations on them within—

(a) one month from the end of the representation period, except where sub-paragraph (2)(b) applies; and

- (b) two weeks from the end of the representation period where the proposals fall within sub-paragraph (2)(b).
- (2B) Where the proposals were published by the governing body any objections or comments under this paragraph shall be sent to the relevant committee within—
- (a) six weeks from the date of the publication of the proposals, except where sub-paragraph (b) applies; and
- (b) one month from the date of publication of the proposals, where the proposals are in respect of a school to which section 15 applies.”;
- (b) in the modification of paragraph 3 of Schedule 6 to the 1998 Act—
- (i) after modification (c) there shall be inserted “(cc) in sub-paragraph (2)(d) for “regulations” there were inserted “regulation 10A of the Education (School Organisation Proposals) (England) Regulations 1999(a)””,
- (ii) for modification (d) there shall be substituted—
- “(d) for sub-paragraph (3) there were substituted—
- “(3) Any approval given under this paragraph may be expressed to take effect only if—
- (a) a scheme relating to any charity connected with the school is made by a date specified in the approval,
- (b) the Secretary of State gives notice under regulation 7(1) of the Education (Foundation Body) (England) Regulations 2000(b) (that a foundation body shall become operative and that the school shall form part of a group for which the foundation shall act) by a date specified in the approval,
- (c) the Secretary of State makes a declaration under regulation 22(3) of the Education (Foundation Body) (England) Regulations 2000 (that the school shall form part of a group for which a foundation body acts) by a date specified in the approval, or
- (d) the Secretary of State makes a declaration under regulation 23(1) of the Education (Foundation Body) (England) Regulations 2000 (that the school shall leave a group for which a foundation body acts) by a date specified in the approval.”;”,
- (iii) in modification (e), the words “or comments” shall be inserted after the word “objections” where it appears in the substituted sub-paragraph (5) (a)(i), and
- (iv) after modification (f), there shall be inserted “(ff) sub-paragraphs (6A), (6B) and (6C) were omitted”;
- (c) in the modification of paragraph 4 of Schedule 6 to the 1998 Act—
- (i) in modification (c), “(3)(h)” shall be substituted for “(3)(d)” and the inserted sub-paragraphs (e) and (f) shall be inserted as sub-paragraphs (i) and (j), and
- (ii) after modification (c) there shall be inserted “(d) in sub-paragraph (4A) for “regulations” there were substituted “regulation 10B of the Education (School Organisation Proposals) (England) Regulations 1999”; and
- (d) in the modification of paragraph 5 of Schedule 6 to the 1998 Act—
- (i) in modification (b) the words “At the request of the governing body or local education authority which published the proposals” were substituted for “In the case of proposals published by the governing body at the request of the governing body or in the case of proposals published by the local education authority at the request of the local education authority”, and
- (ii) after modification (e) there shall be inserted “(ee) in sub-paragraph (6A) for “regulations” there were substituted “regulation 10A of the Education (School Organisation Proposals) (England) Regulations 1999””, and

(a) S.I. 1999/2213 amended by S.I. 2000/2198, 2001/1405 and 2003/1229.

(b) S.I. 2000/2872.

(iii) in modification (g) “5A” were substituted for “6” and the words “or person who made comments” were inserted after “each objector” where they appear in the substituted sub-paragraph (2)(d).

11. For Schedule 2, there shall be substituted the revised Schedule 2 set out in Schedule 1 to these Regulations.

12. For Schedule 4, there shall be substituted the revised Schedule 4 set out in Schedule 2 to these Regulations.

13. Schedule 5 shall cease to have effect.

Transitional Provision

14. These regulations shall not have effect in relation to any proposals published under paragraph 2 or 3 of Schedule 8 to the 1998 Act before 15th September 2003.

15th August 2003

David Miliband
Minister of State
Department for Education and Skills

“SCHEDULE 2

Provisions of section 28 of, and Part 1 of Schedule 6 to, the 1998 Act applied by Schedule 1, as modified(a)**Section 28**

- (3) Proposals under paragraph 2 or paragraph 3 of Schedule 8 shall—
- (a) contain the following information—
- (i) the name of the relevant body publishing the proposal;
 - (ii) the date on which it is proposed that the change of category should take place;
 - (iii) a statement explaining the effect of paragraph 2 of Schedule 6 including the date by which objections or comments should be sent to the local education authority and the address of that authority or to the relevant school organisation committee and the address of that committee;
 - (iv) a statement that it is proposed to change the category of the school stating the current category of school and the proposed new category of school;
 - (v) the rationale of the proposal;
 - (vi) a statement identifying the admission authority for the school after the change of category has taken place and stating the proposed change (if any) in admission authority;
- (if the new category of school is a voluntary school)*
- (vii) a statement that it is proposed that the school will—
 - (a) have or continue to have a foundation established otherwise than under this Act; or
 - (b) belong or continue to belong to a group of schools for which a foundation body acts;
- (if the new category of school is a foundation school)*
- (viii) a statement that the school will—
 - (a) have or continue to have a foundation established otherwise than under this Act; or
 - (b) belong or continue to belong to a group of schools for which a foundation body acts; or
 - (c) be a foundation school not falling within either of sub-paragraphs (a) or (b);
- (if the new category of school is a foundation special school)*
- (ix) a statement that it is proposed the school will have a foundation established otherwise than under this Act;
- (if it is proposed that the school will have or continue to have a foundation other than by belonging to a group of schools for which a foundation body acts)*
- (x) the identity of that foundation;
- (if it is proposed that the school will belong or continue to belong to a group of schools for which a foundation body acts)*
- (xi) the identity of that body and the identity of the other schools in the group for which the foundation body performs the functions set out in section 21(4);
- (if at the time the proposal is published section 15 applies to the school)*
- (xii) a statement that section 15 applies to the school by virtue of section 15(1), 15(4) or 15(6) as the case may be; and
- (if at the time the proposal is published Schedule 15 applies to the governing body)*
- (xiii) a statement that the local education authority have given notice of their intention to suspend, or have suspended, the governing body’s right to a delegated budget, by virtue of Schedule 15, 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.

(a) Section 28 was amended by sections 73, 154 and 215(1) of, and paragraph 97 of Schedule 21 to, the Education Act 2002. Schedule 6 was amended by sections 149 and 153 of, and Schedules 9 and 11 to, the Learning and Skills Act 2000 and by sections 75 and 215 of, and Schedules 10, 21 and 22 to, the Education Act 2002.

(5) Before publishing any proposals under paragraph 2 or 3 of Schedule 8, the relevant body shall consult such persons as appear to them to be appropriate; and in discharging their duty under this subsection the relevant body shall have regard to any guidance given from time to time by the Secretary of State.

(6) Where any proposals published under paragraph 2 or 3 of Schedule 8 relate to a school in England, the relevant 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)(b) is—

- (a) 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;
- (b) a map showing the location of the school and all other maintained 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;
- (c) 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 (i)), the previous school year—
 - (i) the lower and upper age limits of the pupils attending the school;
 - (ii) the capacity of the school or, in the case of a special school the number of pupils for whom the school is organised to make provision;
 - (iii) the number of pupils at the school,and a forecast of the matters specified in sub-paragraphs (ii) and (iii) for each of the subsequent five years;
- (d) a list of all the maintained schools within the radius of the school mentioned in paragraph (b) stating which schools are maintained by different local education authorities together with the information referred to in paragraph (c) in respect of each such school;

(where the school is a community special school or a foundation special school)

- (e)
 - (i) details of the special educational needs of pupils for whom the school is organised to make provision;
 - (ii) details of the information referred to in sub-paragraph (i) in respect of each community special or foundation special school within the radius of the school mentioned in paragraph (b), and
 - (iii) details of all local education authorities which maintain statements of special educational need for pupils at the school;
- (f) a breakdown of any costs involved in the change of category;
- (g) whether the school is a day or boarding school or a school taking both day and boarding pupils;
- (h) a statement as to whether the school has been inspected under section 10 of the School Inspections Act 1996^(a) during the period starting three years before the date of the publication 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;

(if the school is a voluntary or foundation school with a religious character)

- (i) a statement as to whether the school has been inspected under section 23 of the School Inspections Act 1996 during the period starting three years before the date of the publication of the proposals and, where the school has been so inspected during that period, the date of the inspection and details of the outcome of the inspection;

(if the proposal is that a school should become a voluntary aided school)

- (j)
 - (i) an estimate of the probable expenses of the school for the five years commencing on the implementation date for which the governing body will be liable under Schedule 3, and
 - (ii) a statement that the governing body for a period of at least five years commencing on the implementation date will be willing and able to carry out their obligations under Schedule 3;

(a) 1996 c. 57. Section 10 was amended by Section 42 of, and Schedule 6 to, the Education Act 1997 (c. 44), section 140 of, and Schedule 30 to, the 1998 Act, sections 153 and 149 of, and Schedules 9 and 11 to, the Learning and Skills Act 2000 (c. 21) and sections 65(3), 188 and 215 of, and Schedules 7, 16, 21 and 22 to, the Education Act 2002 (c. 32).

- (iii) for the purposes of the statement in sub-paragraph (ii) the governing body shall assume a grant will be made to them under paragraph 5 of Schedule 3 of 85 per cent of qualifying expenditure;
 - (k) details of the exercise in relation to the school of any power granted to the local education authority or to the Secretary of State under Part 1 Chapter IV, during the period starting three years before the date of the publication of the proposal;
 - (l) details of the exercise in relation to the governing body of any power granted to the local education authority or the Secretary of State under Schedule 15 during the period starting three years before the date of the publication of the proposal;
 - (m) 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;
 - (n) details of any trusts on which the school premises are held or it is proposed will be held or any proposed trusts on which it is proposed the school premises will be held;
 - (o) details of the body or authority to whom, on the date on which it is proposed that the school change category, it is proposed that land should be transferred in accordance with regulations.
- (8) Schedule 6 shall have effect in relation to the procedure for dealing with proposals under paragraph 2 or paragraph 3 of Schedule 8.
- (10) In this section “the relevant body” means, in the case of proposals published by a local education authority, the authority and, in the case of proposals published by a governing body, the governing body.
- (11) In this Part “area” means a local education authority area.

Schedule 6: PART I

1.—(1) This Part of this Schedule applies to proposals published under paragraph 2 or 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.

Objections and Comments

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

(2) Where the proposals were published by the local education authority any objections or comments under this paragraph shall be sent to the local education authority within—

- (a) six weeks from the date of the publication of the proposals, except where sub-paragraph (b) applies; and
- (b) one month from the date of publication of the proposals where the proposals are in respect of a school to which section 15 applies.

(2A) The local education authority shall send to the relevant committee copies of all objections made (and not withdrawn in writing) and comments together with the authority’s observations on them within—

- (a) one month from the end of the representation period, except where sub-paragraph (2)(b) applies; and
- (b) two weeks from the end of the representation period where the proposals fall within sub-paragraph (2)(b).

(2B) Where the proposals were published by the governing body any objections or comments under this paragraph shall be sent to the relevant committee within—

- (a) six weeks from the date of the publication of the proposals, except where sub-paragraph (b) applies; and
- (b) one month from the date of publication of the proposals, where the proposals are in respect of a school to which section 15 applies.

Approval of proposals

3.—(1) Proposals published under paragraph 2 or paragraph 3 of Schedule 8 require approval under this paragraph if—

- (a) the proposals were published by a local education authority and either—
 - (i) objections to the proposals have been made in accordance with paragraph 2 and any of them have not been withdrawn in writing within the representation period; or
 - (ii) such approval is required by virtue of paragraph 4(5); or
- (b) the proposals were published by a governing body.

- (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,
 - (c) approve them with such modifications as the committee think desirable after consulting the local education authority and the governing body, or
 - (d) if the committee think it appropriate to do so, and subject to regulation 10A of the Education (School Organisation Proposals)(England) Regulations 1999, refer them to the adjudicator.
- (2A) The requirement to make a decision under sub-paragraph (2) in the case of proposals of a prescribed description only applies if, at the time when the decision falls to be made under that sub-paragraph, the committee are satisfied that the proposals do not relate to any relevant proposals.
- (2B) In sub-paragraph (2A), “relevant proposals” means proposals of a description prescribed for the purposes of this sub-paragraph.
- (2C) In deciding for the purposes of sub-paragraph (2A) whether any proposals are related the relevant committee shall have regard to any guidance given from time to time by the Secretary of State.
- (3) Any approval given under this paragraph may be expressed to take effect only if—
- (a) a scheme relating to any charity connected with the school is made by a date specified in the approval,
 - (b) the Secretary of State gives notice under regulation 7(1) of the Education (Foundation Body) (England) Regulations 2000(a) (that a foundation body shall become operative and that the school shall form part of a group for which the foundation shall act) by a date specified in the approval,
 - (c) the Secretary of State makes a declaration under regulation 22(3) of the Education (Foundation Body) (England) Regulations 2000 (that the school shall form part of a group for which a foundation body acts) by a date specified in the approval, or
 - (d) the Secretary of State makes a declaration under regulation 23(1) of the Education (Foundation Body) (England) Regulations 2000 (that the school shall leave a group for which a foundation body acts) 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;
- and the committee shall not give any such approval unless they are satisfied that adequate financial resources will be available to enable the proposals to be implemented.
- (5) If—
- (a) after two months from—
 - (i) the end of the period within which objections or comments must be sent to the relevant committee in accordance with paragraph 2(2A) or (2B), 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 either
 - (b) the local education authority have published the proposals and request the committee to refer the proposals to the adjudicator, or
 - (c) the governing body have published the proposals and 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 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 this paragraph—
 - (a) he shall consider the proposals afresh; and
 - (b) sub-paragraphs (2) to (4) (other than sub-paragraph (2)(d)) shall apply to him in connection with his decision on the proposals as they apply to the committee.

(a) S.I. 2000/2872.

(8) Sub-paragraph (1) does not prevent the governing body or local education authority by whom any proposals have been published under paragraph 2 of Schedule 8 from withdrawing those proposals by notice in writing given to the relevant committee at any time before the proposals are determined under this paragraph.

(9) Sub-paragraph (1) does not prevent the governing body by whom proposals have been published under paragraph 3 of Schedule 8 from withdrawing such proposals with the consent in writing of the relevant committee at any time before the proposals are determined under this paragraph.

Determination by LEA whether to implement proposals

4.—(1) Where any proposals have been published by a local education authority under paragraph 2 of Schedule 8 and either—

- (a) no objections were made in accordance with paragraph 2, or
- (b) all objections so made were withdrawn in writing within the representation period,

then (subject to the following provisions of this paragraph) the authority shall determine whether the proposals should be implemented.

(2) Any determination under sub-paragraph (1) must be made within the period of four months beginning with the date of publication of the proposals and the authority shall notify the relevant committee, the governing body of the school which is the subject of the proposal and the Secretary of State of any determination made by them under sub-paragraph (1).

(3) The requirement to make a determination under sub-paragraph (1) in the case of any proposals only applies if, at the time when the authority's determination falls to be made under that sub-paragraph, they are satisfied that the proposals are not related to any of the following, namely—

- (a) any undetermined proposals published under section 28(2) to establish a new foundation or voluntary school in the area of the authority;
- (b) any undetermined proposals published under section 28(2), 29(2) or 31(2) by the governing body of a foundation, voluntary or foundation special school in the area of the authority;
- (c) any undetermined proposals published by the authority which, by virtue of sub-paragraph (1)(a) of paragraph 3, require approval under that paragraph;
- (d) any order under paragraph 2(2) or 3(2) of Schedule 7;
- (e) any undetermined proposals published under Schedule 7 to the Learning and Skills Act 2000;
- (f) any undetermined proposals published under section 113A of the Learning and Skills Act 2000, if those proposals are relevant proposals for the purposes of paragraph 3(2A);
- (g) any undetermined proposals made under section 51 of the Further and Higher Education Act 1992, if those proposals are relevant proposals for those purposes;
- (h) any direction under section 71 of the Education Act 2002;
- (i) any undetermined proposals published under paragraph 2 or paragraph 3 of Schedule 8 to change the category of schools in the area of the local education authority, or
- (j) the establishment of a foundation body or the joining of a group of schools for which a foundation body performs the functions set out in section 21(4).

(4) For the purposes of sub-paragraph (3) proposals are “undetermined” if they have not been withdrawn and—

- (a) they have not been approved or rejected under paragraph 3 of this Schedule, under paragraph 8 or 9 of Schedule 7 or under Schedule 7 or 7A to the Learning and Skills Act 2000,
- (b) the authority have not determined under this paragraph whether to implement them, or
- (c) the Secretary of State has not made a decision as to whether or not to make an order under section 16 or 27 of the Further and Higher Education Act 1992,

as the case may be; and when deciding under sub-paragraph (3) whether any proposals are related to other proposals the authority shall have regard to any guidance given from time to time by the Secretary of State.

(4A) The authority may, if they think it appropriate to do so and subject to regulation 10B of the Education (School Organisation Proposals) (England) Regulations 1999, refer to the relevant committee any proposals which would otherwise fall to be determined by the authority under this paragraph.

(5) Where, in the case of any proposals within sub-paragraph (1)—

- (a) the authority fail to make a determination under that sub-paragraph within the period mentioned in sub-paragraph (2),
- (b) the requirement to make such a determination does not apply by virtue of sub-paragraph (3), or
- (c) the authority refer the proposals to the relevant committee,

the proposals require approval under paragraph 3.

Requirement to implement proposals

5.—(1) Where—

- (a) any proposals published under paragraph 2 or paragraph 3 of Schedule 8 have been approved under paragraph 3, or
- (b) a local education authority have determined under paragraph 4 to implement any such proposals,

then (subject to the following provisions of this paragraph) the proposals shall be implemented, in the form in which they were so approved or determined in accordance with regulations made under paragraph 5 of Schedule 8.

(2) At the request of the governing body or local education authority which published the proposals, the relevant committee

- (a) may modify the proposals after consulting—
 - (i) in the case of proposals made by the local education authority the governing body,
 - (ii) in the case of proposals made by the governing body 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 events in question must occur.

(3) If the relevant committee are satisfied—

- (a) that implementation of the proposals would be unreasonably difficult, or
- (b) that circumstances have so altered since approval was given under paragraph 3 that implementation of the proposals would be inappropriate,

the committee may determine that sub-paragraph (1) shall cease to apply to the proposals.

(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 body which published the proposal 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 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 that matter to the adjudicator.

(6A) The committee may, if they think it appropriate to do so and subject to regulation 10A of the Education (School Organisation Proposals) (England) Regulations 1999, refer to the adjudicator any matter which would otherwise fall to be determined by the committee under this paragraph.

(7) Where any matter is referred to the adjudicator under this paragraph—

- (a) he shall consider the matter afresh; and
- (b) such of the provisions of sub-paragraphs (2) and (3) as are relevant shall apply to him in connection with his decision on that matter as they apply to the committee.

(8) Where—

- (a) any approval under paragraph 3 was given in accordance with sub-paragraph (3) of that paragraph, and
- (b) the event specified in that sub-paragraph does not occur by the date in question (whether as specified under that sub-paragraph or as specified under sub-paragraph (2)(b) above),

sub-paragraph (1) above shall cease to apply to the proposals.

(9) Where, by virtue of sub-paragraph (3), sub-paragraph (1) ceases to apply to any proposals, those proposals shall be treated for the purposes of this Schedule as if they had been rejected under paragraph 3.

(10) Where, by virtue of sub-paragraph (8), sub-paragraph (1) ceases to apply to any proposals approved by the relevant committee under paragraph 3, those proposals shall be regarded as requiring fresh approval under that paragraph.

(11) Where, by virtue of sub-paragraph (8), sub-paragraph (1) ceases to apply to any proposals approved by the adjudicator under paragraph 3, those proposals fall to be considered afresh by him under that paragraph (and sub-paragraph (7) of that paragraph shall accordingly apply).

5A.—(1) The school organisation committee shall, within two weeks of the date on which such proposals were sent to them, send to the Secretary of State a copy of all proposals published under paragraph 2 or 3 of Schedule 8 and sent to them under section 28.

(2) The school organisation committee shall notify the following persons of each decision taken under paragraph 3(2), 5(2) or (3)—

- (a) the body who published the proposals;
- (b) (if different) the local education authority who maintain the school;
- (c) (if different) the governing body of the school to whom the proposals relate;
- (d) subject to paragraph (7), each objector or person who made comments; and
- (e) the Secretary of State.

(3) The school organisation committee shall notify the persons referred to in sub-paragraphs (a) to (c) and (e) of sub-paragraph (2) if they refer any proposal to the adjudicator under paragraph 3(5) or (6) or paragraph 5(5) or (6).

(4) The adjudicator shall notify the persons referred to in sub-paragraph (2) of any decision taken under paragraph 3(2) or 5(2) or (3).

(5) Where, pursuant to sub-paragraph (2), the school organisation committee notify the persons referred to in sub-paragraphs (a) to (e) of sub-paragraph (2) of a decision they shall also give reasons for that decision.

(6) Where, pursuant to sub-paragraph (4) the adjudicator notifies the persons referred to in sub-paragraph (2) of a decision he shall also give reasons for that decision.

(7) Where objections to a proposal take the form of a petition (that is to say a document containing the text of one objection signed by more than one objector) the school organisation committee or adjudicator may comply with sub-paragraph (2) or (4) as the case may be by—

- (a) notifying the person (if any) who appears to them to have arranged for the petition to be sent to the local education authority or the school organisation committee; or
- (b) if there is no such person, notifying the objector whose name appears first on the petition.

(8) Where proposals (“proposals A”) have been sent to the school organisation committee under section 28(6), and subsequently further proposals are sent to the committee under that section or section 29(5) or 31(5) or paragraph 5(3) of Schedule 7, which in the opinion of the committee are related to proposals A, the school organisation committee shall notify the body who published proposals A of that fact.”

SCHEDULE 2

Regulation 12

“SCHEDULE 4

Regulation 13

Provisions of the 2003 Regulations having effect in relation to Instruments of Government as are mentioned in Regulations 11, 12 and 13 of the Principal Regulations

1. The regulations in the 2003 Regulations specified in the left hand column of the table mentioned below shall have effect in relation to instruments of government such as are mentioned in regulations 11, 12 and 13 and, where modifications are specified in the right hand column of the table, shall have effect with those modifications.

<i>Provision</i>	<i>Modification</i>
Regulation 29(1)(b)	That sub-paragraph shall have effect as if the words “or will belong” were inserted after “the school belongs”.
Regulation 29(1)	That sub-paragraph shall have effect as if the following were inserted after regulation 29(1)(h)— “(hh) where the school will become a foundation school or foundation special school, a voluntary aided school or a voluntary controlled school, subject to regulation 15 of the Education (Change of Category of Maintained Schools) (England) Regulations 2000, the name of any foundation body or person entitled to appoint foundation governors and, if there is more than one such person, the basis upon which such appointments are made both on the change of category and thereafter when there are vacancies to be filled;”.
Regulation 30	That regulation shall have effect as if that regulation were omitted and the following substituted— “30.—(1) This regulation applies in connection with the making of an instrument of government for a school changing its category in accordance with Schedule 8 to the 1998 Act. (2) The governing body must prepare a draft of the new instrument of government and submit it to the local education authority. (3) Where the school has foundation governors or it is proposed that the school will have foundation governors, the governing body must not submit the draft to the local education authority unless it has been approved by— (a) the existing foundation governors; (b) if there are no existing foundation governors, the persons whom it is proposed will be entitled to appoint foundation governors; (c) any trustees of any trust relating to the school; (d) in the case of a Church of England school or Roman Catholic Church school, the appropriate diocesan authority; and (e) in the case of any other school designated under section 69(3) of the 1998 Act as having a religious character, the appropriate religious body. (4) On receiving the draft the local education authority must consider whether it complies with all applicable statutory provisions, and if— (a) it is content that the draft so complies, or (b) there is agreement between it, the governing body and (if the school has foundation governors or it is proposed that the school will have foundation governors) the persons mentioned in paragraph (3) that the draft should be revised to any extent and the revised draft complies with all the applicable statutory provisions, the instrument of government must be made by it in the form of the draft or (as the case may be) in the form of the revised draft. (5) If, in the case of a school which has foundation governors or it is proposed should have foundation governors, at any time the persons listed in paragraph (3) disagree with the draft, any of those persons may refer it to the Secretary of State who will give such direction as he thinks fit having regard, in particular, to the category of school to which it is proposed the school should belong. (6) If neither of sub-paragraphs (a) and (b) of paragraph (4) applies in the case of a school which does not have foundation governors or it is not proposed should have foundation governors, the local education authority must— (a) inform the governing body of the reasons why it is not content with the draft instrument of government, and (b) give the governing body a reasonable opportunity to reach agreement with it on revising the draft; and the instrument of government must be made by it either in the form of a revised draft agreed between it and the governing body or (in the absence of such agreement) in such form as it thinks fit having regard, in particular, to the category of school to which it is proposed the school should belong. (7) When taking any decision as to the name of the school the governing body, the local education authority and (if the school has foundation governors or it is proposed should have foundation governors) the persons mentioned in paragraph (3), shall have regard to any guidance given from time to time by the Secretary of State.”.
Regulation 31(4)	That paragraph shall have effect as if for “regulation 30(2)” there were substituted “regulation 30(3) as modified”.
Regulation 31(5)(b)	That paragraph shall have effect as if for “regulation 30(2)” there were substituted “regulation 30(3) as modified”.
Regulation 31(6)	That paragraph shall have effect as if for “regulation 30(2)” there were substituted “regulation 30(3) as modified”.
Regulation 31(9)	That paragraph shall have effect as if for “regulation 30(3)” there were substituted “regulation 30(4) as modified”.
Regulation 33	Regulation 33 shall be omitted.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Education (Change of Category of Maintained Schools) (England) Regulations 2000 (S.I. 2000/2195) (the “Principal Regulations”) (which make provision for community, voluntary controlled, voluntary aided and foundation schools to become another category of school within those categories, and for a community special school to become a foundation special school and a foundation special school to become a community special school). They also modify the School Governance (Constitution) (England) Regulations 2003 (S.I. 2003/348) (the “2003 Regulations”).

These amendments and modifications are consequential on:

- (a) amendments made to the Education (School Organisation Proposals) (England) Regulations 1999 (S.I. 1999/2213) by the Education (School Organisation Proposals) (England) (Amendment) Regulations 2003 (S.I. 2003/1201) and
- (b) the repeal of Schedule 12 to the 1998 Act by the Education Act 2002 and the making of the 2003 Regulations.

Regulations 3 to 9 make minor amendments to the modifications in the Principal Regulations relating to the constitution of governing bodies of schools which change category.

Regulations 10 and 11 amend the modifications made in the Principal Regulations relating to proposals to change the category of a maintained school, the publication of those proposals and the period in which comments or objections should be made. Schedule 1 shows the effect of the modifications to Schedule 6 of the 1998 Act and substitutes a new Schedule 2 of the Principal Regulations.

Regulation 12 and Schedule 2 set out the modified provisions in the 2003 Regulations which relate to the making and the content of the Instruments of Government of schools which change category. Schedule 2 substitutes a new Schedule 4 to the Principal Regulations.

Regulation 13 provides that Schedule 5 of the Principal Regulations shall cease to have effect.

Regulation 14 makes transitional provision in respect of proposals for a change of category published under paragraph 2 or 3 of Schedule 8 to the 1998 Act before 15th September 2003.

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