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STATUTORY INSTRUMENTS

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**2007 No. 1288**

**The School Organisation (Establishment and Discontinuance of Schools) (England) Regulations 2007**

**PART 5**

**Consideration of Proposals by Local Education Authority or by the Adjudicator**

**Objections and Comments**

**16.**—(1) Any person may send objections or comments in relation to proposals published in accordance with sections 7, 10, 11 or 15 to the local education authority within 6 weeks from the date of publication of the proposals.

(2) In cases where proposals have been referred to the adjudicator in accordance with paragraph 10 or 11 of Schedule 2 to the Act, the local education authority must forward any objections or comments which they have received under paragraph (1) to the adjudicator within 2 weeks of the end of the representation period.

(3) In cases where proposals have been referred to the adjudicator in accordance with paragraph 10 of Schedule 2 to the Act, the local education authority may forward any objections of their own in relation to any of the proposals to the adjudicator within 2 weeks from the end of the representation period.

**Approval of proposals with modifications after consultation**

**17.** The persons or bodies with whom the local education authority or the adjudicator (as the case may be) must consult before approving proposals with modifications are—

- (a) the proposers or the local education authority who made the proposals;
- (b) where the proposals are to establish a new foundation, foundation special or voluntary school, the local education authority who it is proposed should maintain the school;
- (c) where the proposals were published by the governing body of a school, the local education authority who maintain the school; and
- (d) where the proposals were published by the local education authority to discontinue a school, the governing body of the school.

**Local education authority determination under paragraph 8 (3) or 8 (4) of Schedule 2 to the Act**

**18.** The period within which the local education authority must determine whether to give approval under paragraph 8(3) or 8(4) of Schedule 2 to the Act is 2 months from the end of the representation period.

### **Local education authority determination under paragraph 19 of Schedule 2 to the Act**

**19.** In cases where the local education authority determine discontinuance proposals under paragraph 19(1) of Schedule 2 to the Act, any determination must be made within 2 months from the end of the representation period.

### **Conditional approvals**

**20.** The following events are prescribed as specified events which (if the approval is expressed to take effect only if they occur) must occur by the date specified in the approval—

- (a) the grant of planning permission under Part 3 of the Town and Country Planning Act 1990 **(1)**;
- (b) the acquisition of the site on which a new school is to be constructed;
- (c) the acquisition of playing fields to be provided for the school;
- (d) the securing of any necessary access to a site referred to in sub-paragraph (b) or playing fields referred to in sub-paragraph (c);
- (e) the private finance credit approval given by the Department for Education and Skills following the entering into of a private finance contract by a local education authority or the approval by the Department for Education and Skills of capital grant in an equivalent arrangement for voluntary aided schools;
- (f) the entering into an agreement for any necessary building project supported by the Department for Education and Skills in connection with the programme known as “Building Schools for the Future”;
- (g) the making of any scheme relating to any charity connected with the school;
- (h) the formation of any federation (within the meaning of section 24(2) of EA 2002) of which it is intended that the proposed school should form part, or the fulfilling of any other condition relating to the proposed school forming part of a federation;
- (i) the Secretary of State giving approval under regulation 5(4) of the Education (Foundation Body) (England) Regulations 2000**(2)** to an application that a foundation body shall be established and that the school shall form part of a group for which a foundation body shall act;
- (j) the Secretary of State making a declaration under regulation 22(3) of the Education (Foundation Body) (England) Regulations 2000 that the school should form part of a group for which a foundation body acts;
- (k) in the case of mainstream schools, the agreement to any change to admission arrangements of any other school or schools specified in the approval;
- (l) the establishment of any foundation meeting the requirements of section 23A of SSFA 1998**(3)**;
- (m) in the case of proposals published under section 7 or 15, the making of any agreement under section 482 of EA 1996**(4)** for the establishment of an Academy;
- (n) in the case of proposals to establish a maintained school in place of an existing independent school, the securing of approval by the Secretary of State to relax the requirements of the Education (School Premises) Regulations 1999**(5)** as provided for by section 543 (1) of EA 1996;

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(1) 1990 c.8.

(2) S.I. 2000/2872.

(3) Section 23A of SSFA 1998 was inserted by section 33.

(4) Section 482 of EA 1996 was inserted by section 65 of EA 2002 (c.32).

(5) S.I. 1999/2.

- (o) in the case of proposals to establish any other maintained school, the securing of approval by the Secretary of State to relax the requirements of the Education (School Premises) Regulations 1999 in respect of school playing fields as provided for by section 543 (1) of EA 1996;
- (p) in the case of proposals whose funding is dependent upon capital receipts from the disposal of any school land or buildings, the securing of consent from the Secretary of State for the disposal as provided for by paragraph 2 of Schedule 35A to EA 1996 or section 77 of SSFA 1998, or determination in accordance with Schedule 22 to the SSFA 1998 as applicable; and
- (q) where the proposals in question depend upon any of the events specified in paragraphs (a) to (p) occurring by a specified date in relation to proposals relating to any other school or proposed school, the occurrence of such an event.

#### **Time limits for local education authority referrals to adjudicator prior to determination**

**21.**—(1) The local education authority must refer any proposals under paragraph 10 of Schedule 2 to the Act to the adjudicator within 2 weeks from the end of the representation period.

(2) In cases where the authority are required to refer proposals to the adjudicator under paragraph 13 of Schedule 2 to the Act (duty to refer where determination delayed), they must do so within 1 week from the end of the 2 month period referred to in regulation 18.

#### **References to the adjudicator at request of an aggrieved person after determination under paragraph 8 (4) of Schedule 2 to the Act**

**22.**—(1) Where a person requests under paragraph 14 (1) of Schedule 2 to the Act that proposals be referred to the adjudicator, they must do so within 4 weeks from the date of the notification of the determination pursuant to regulation 25.

(2) References by the authority under paragraph 14 of Schedule 2 to the Act must be made within 1 week from the date on which they receive notice of a request for a referral.

(3) Where a reference is made under paragraph 14 of Schedule 2 to the Act, the authority must send to the adjudicator within the time specified by paragraph (2), any objections or comments in relation to the proposals together with minutes of the meeting at which the proposals were considered and any papers considered by the authority at that meeting.

#### **Duty to refer related proposals**

**23.**—(1) Subject to paragraph (2), where the authority makes a reference under paragraph 15 of Schedule 2 to the Act (duty to refer related proposals), they must do so within the same period referred to in paragraph (1) or (2) of regulation 21 as appropriate.

(2) Where the periods for referring proposals under paragraph 15 of Schedule 2 to the Act (duty to refer related proposals) are different, the period for referring the proposals is the latest period for referring any of the proposals as referred to in paragraph (1) or (2) of regulation 21 as applicable.

#### **Consultation with Secretary of State in respect of Academies**

**24.**—(1) Where proposals submitted to a local education authority in accordance with section 7 consist of or include proposals to establish an Academy, the authority must within 1 week of receiving those proposals consult the Secretary of State before taking any decision under paragraph 8 of Schedule 2 to the Act.

(2) Where proposals submitted to a local education authority in accordance with section 7 consist of or include proposals to establish an Academy, and—

- (a) the proposals have been referred to the adjudicator under paragraph 10, 11, 12, 13 or 15 of Schedule 2 to the Act, or
- (b) a direction under paragraph 12 (1) of Schedule 2 to the Act is in force in relation to the authority and the case does not fall within paragraph 12 (2) of Schedule 2 to the Act,

the adjudicator must within 1 week of receiving those proposals consult the Secretary of State before taking any decision under paragraph 8 of Schedule 2 to the Act.

(3) The Secretary of State must (on being consulted pursuant to paragraph (1) or (2)) indicate in writing to the authority or the adjudicator as the case may be whether, if the proposals were approved, he would be willing to commence negotiations with a view to entering into an agreement under section 482 of EA 1996 for the establishment of an Academy.

### **Provision for notification of decisions**

**25.**—(1) The local education authority must notify the following persons of each decision under paragraph 8 of Schedule 2 to the Act, or determination under paragraph 21(3) of that Schedule, together with their reasons—

- (a) the proposers;
- (b) subject to paragraph (5), each objector;
- (c) the Secretary of State;
- (d) where proposals include provision for 14-16 education or sixth form education, the Learning and Skills Council for England;
- (e) the Diocesan Board of Education for any diocese of the Church of England any part of which is comprised in the area of the local education authority;
- (f) the bishop of a diocese of the Roman Catholic Church any part of which is comprised in the area of the local education authority;
- (g) where the proposals concern a special school—
  - (i) the relevant Primary Care Trust for the area in which the school is situated, and
  - (ii) the NHS trust or NHS foundation trust responsible for hospital or other provision in the area in which the school is situated; and
- (h) the adjudicator.

(2) In the case of any determination made by an authority pursuant to paragraph 19 of Schedule 2 to the Act, the authority must notify the governing body of the school which is the subject of the proposals and the Secretary of State.

(3) The authority must notify the persons referred to in sub-paragraphs (a) to (c) of paragraph (1) if they refer any proposals or matter to the adjudicator under paragraph 10, 11 or 13 of Schedule 2 to the Act (or pursuant to a direction under paragraph 12 of that Schedule).

(4) The adjudicator must notify the persons referred to in sub-paragraphs (1)(a) to (g) and the local education authority of each decision, together with his reasons.

(5) 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 local education authority or the adjudicator as the case may be may comply with paragraph (1) (b) by—

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

(6) Where proposals have been sent to the authority or adjudicator as the case may be, they or he must notify the proposers or the local education authority, as the case may be, if any further

proposals sent to them or him appear to them or him, pursuant to paragraph 9 (2) of Schedule 2 to the Act, to be related.

### **Publication of revocation proposals**

**26.**—(1) Schedule 6 has effect for the purpose of applying, with modifications where specified, provisions of Part 1 of Schedule 2 to the Act in relation to proposals published under paragraph 21(4) of Schedule 2 to the Act (“revocation proposals”).

(2) Revocation proposals must contain—

- (a) a description of the original proposals as published in accordance with sections 7, 10, 11 or 15;
- (b) the date of publication of the original proposals;
- (c) details of who published the proposals; and
- (d) a statement as to why it is proposed that, in accordance with paragraph 21(3), paragraph 21(1) of Schedule 2 to the Act (duty to implement proposals) should not apply in relation to the original proposals.

(3) Revocation proposals must be published in at least one newspaper circulating in the area to be served by the school, posted in a conspicuous place in the area to be served by the school, and where the original proposals are discontinuance proposals, posted at or near the main entrance to the school, or if there is more than one entrance, all of them.

(4) The proposers must submit their revocation proposals within 1 week of the date of publication to the local education authority.

(5) Where the initial decision in relation to the original proposals was made by the adjudicator, the local education authority must refer the revocation proposals, together with any objections or comments in relation to them, to him, within 2 weeks of the end of the period for making objections and comments prescribed in paragraph 5 of Schedule 2 to the Act as modified by Schedule 6 to these Regulations.

### **Modifying proposals or specifying a later date for a conditional approval**

**27.**—(1) In relation to paragraph 21 (2) of Schedule 2 to the Act (power to modify proposals or specify a later date in respect of a conditional approval), the local education authority must refer to the adjudicator cases where the initial decision in relation to the original proposals was made by him within 2 weeks of the request from the proposers, or the decision of the authority, as the case may be.

(2) Before modifying proposals under paragraph 21 (2) (a) of Schedule 2 to the Act the local education authority (or the adjudicator in cases where the local authority has referred the proposals to the adjudicator pursuant to paragraph (1)) must consult—

- (a) the proposers or the local education authority who made the proposals;
- (b) where the proposals are to establish a new foundation, foundation special or voluntary school, the local education authority who it is proposed should maintain the school;
- (c) where the proposals were published by the governing body of a school, the local education authority who maintain the school; and
- (d) where the proposals were published by the local education authority to discontinue a school, the governing body of the school.

**Reference to adjudicator at the request of aggrieved person after determination under paragraph 21 (4) of Schedule 2 to the Act**

28. Where a reference is made under paragraph 14 of Schedule 2 to the Act as modified by Schedule 6 to these Regulations, the local education authority must send to the adjudicator within the time specified by paragraph 14 (1) of Schedule 2 as modified by Schedule 6 to these Regulations, any objections or comments in relation to the proposals together with minutes of the meeting at which the proposals published under paragraph 21 (4) of Schedule 2 to the Act were considered, and any papers considered by the authority at that meeting.

**Schools established outside the area of relevant local education authority**

29.—(1) Part 1 of Schedule 7 has effect for specifying the modifications to which section 7 and Schedule 2 to the Act are to be subject where proposals published under section 7 relate to a school which is proposed to be situated in an area other than that of the local education authority who published the notice.

(2) Part 2 of Schedule 7 has effect for specifying the modifications to which section 10 and 11 and Schedule 2 to the Act are to be subject where proposals published under section 10 or 11 relate to a school which it is proposed be established in an area other than that of the local education authority who it is proposed should maintain the school.