

SCHEDULE 1

FOUNDATION PROPOSALS

PART 2

Publication, determination and implementation of foundation proposals

Consultation on proposals

5.—(1) The governing body must, before they publish any proposals, consult the following persons—

- (a) any local education authority likely to be affected by the proposals, in particular neighbouring local education authorities where there may be significant cross-border movement of pupils;
 - (b) families, teachers, and other staff at the school;
 - (c) the governing body, teachers and other staff of any other school that may be affected by the proposals;
 - (d) families at any other school that may be affected by the proposals including where appropriate parents of pupils at feeder primary schools;
 - (e) any trade unions who represent staff at the school and representatives of any trade union of any other staff at schools that may be affected by the proposals;
 - (f) if proposals involve, or are likely to affect a school which has a religious character—
 - (i) 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;
 - (ii) the bishop of a diocese of the Roman Catholic Church any part of which is comprised in the area of the local education authority; or
 - (iii) the relevant faith group in relation to the school as appropriate;
 - (g) if the proposals affect the provision of full-time 14-19 education, the Learning and Skills Council for England;
 - (h) Members of Parliament whose constituencies include the school that is the subject of the proposals, or whose constituents are likely to be affected by the proposals;
 - (i) the local district or parish council where the school is situated;
 - (j) where proposals affect early years provision, the Early Years Development and Child Care Partnership⁽¹⁾, or those who benefit from a contractual arrangement giving them the use of the premises;
 - (k) where the proposal is one that is a relevant change, the existing trustees;
 - (l) any other interested party; and
 - (m) any other persons whom the governing body thinks appropriate.
- (2) Where the proposals relate to a special school, the governing body must also consult—
- (a) the relevant Primary Care Trust for the area in which the school is situated; and

(1) Early Years Development and Child Care Partnerships are required to be established by section 119 of SSFA which is prospectively amended so as not to apply in England by paragraph 32 of Schedule 2 to the Childcare Act 2006 (c.21).

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- (b) any NHS trust or NHS foundation trust responsible for a hospital or other provision in the area in which the school is situated.

Manner of publication of proposals

- 6.—(1) The governing body must publish—
- (a) the information contained in paragraph 1 of Part 1, except the information relating to consultation prescribed in paragraph 1(d);
 - (b) where the proposals include the acquisition of a foundation, or a relevant change—
 - (i) the name or proposed name of the foundation;
 - (ii) whether the foundation already acts as a foundation for any foundation or voluntary school; and
 - (iii) details of the membership of the foundation, including the names of the members;
 - (c) a summary of the rationale for the alterations proposed, the particular contribution they will make, and the direction they will provide to the school; and
 - (d) details of how complete copies of the proposals can be obtained.
- (2) The governing body must publish the information in sub-paragraph (1)—
- (a) by posting it in a conspicuous place in the area served by the school and at or near the main entrance to the school or, if there is more than one main entrance, all of them; and
 - (b) by publishing it in at least one newspaper circulating in the area served by the school.
- (3) The governing body must send a complete set of the proposals to—
- (a) the local education authority within 1 week of the date of publication;
 - (b) the Secretary of State within 1 week of the date of publication; and
 - (c) anyone who requests a copy of the proposals within 1 week of the date of the request.
7. Where the proposals relate to a special school, the governing body must also send a complete set of the proposals to—
- (a) the relevant Primary Care Trust for the area in which the school is situated;
 - (b) any NHS trust or NHS foundation trust responsible for a hospital or other provision in the area in which the school is situated;
 - (c) any local education authority who maintain a statement of special needs in respect of a registered pupil at the school;
 - (d) any local education authority which might be affected by the proposals; and
 - (e) parents of children who attend the special school.

Objections and comments

- 8.—(1) Except where sub-paragraph (2) applies, any person may send objections or comments in relation to any proposals to the governing body within 4 weeks from the date of the publication of the proposals.
- (2) Where proposals have been referred to the adjudicator in accordance with paragraph 10 the governing body must forward any objections or comments they have received under sub-paragraph 1 to the adjudicator within 1 week from the end of the representation period.

Governing body as decision maker

9. For the purpose of section 21(2)(f), the governing body of the school to which the proposals relate is prescribed as the person who (subject to paragraph 10) must consider and determine the proposals.

Referrals to adjudicator for consideration and determination

10.—(1) The local education authority may⁽²⁾, subject to paragraphs 11 and 12, require the governing body to refer proposals falling within sub-paragraph (2) to the adjudicator.

(2) Proposals fall within this sub-paragraph if the proposed alteration would result in a community, foundation, or voluntary controlled school, or community or foundation special school becoming either or both of the following—

- (a) a foundation or foundation special school having a foundation established otherwise than under SSFA 1998;
- (b) a foundation or foundation special school whose instrument of government provides for the majority of governors to be foundation governors.

11. Where the local education authority exercise their right to require a referral to the adjudicator under paragraph 10 they must do so in writing within 4 weeks of the date of the publication of the proposals.

12. The local education authority may only require that the proposals specified in paragraph 10 be referred to the adjudicator if they consider that—

- (a) the governing body have failed adequately to fulfil the requirements for consultation set out in these Regulations;
- (b) the governing body have failed adequately to have regard to any guidance given by the Secretary of State relating to consultation;
- (c) the governing body have failed to have regard to the responses to the consultation; or
- (d) the local education authority consider that the proposals will have a negative impact on standards at the school.

13. Where the governing body is required (under paragraph 10) to refer proposals to the adjudicator, they must also send to the adjudicator within 1 week of the end of the representation period, a copy of the proposals and any objections or comments received.

Withdrawal of proposals

14. Proposals may be withdrawn by the governing body which published the proposals provided that—

- (a) such proposals are withdrawn before any determination is made;
- (b) written notice is given to—
 - (i) the local education authority;
 - (ii) in cases where the proposals have been referred to the adjudicator, the adjudicator and the Secretary of State; and
- (c) written notice is placed at the entrance to the school, or if there is more than one entrance, all of them.

(2) As required by section 23(1) of the Act.

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Consideration and determination by governing body or adjudicator

15.—(1) Where any proposals are to be determined by a governing body they may—

- (a) reject the proposals;
- (b) approve the proposals without modifications; or
- (c) approve the proposals with such modifications as the governing body thinks desirable.

(2) Where proposals are approved by the governing body (whether with or without modifications), the approval may be conditional on the occurrence of an event prescribed in paragraph 19.

(3) Any determination under sub-paragraph (1) must be made within the period of 6 months from the date of publication of the proposals.

16.—(1) Where proposals have been referred to the adjudicator for determination pursuant to paragraph 10, the adjudicator may—

- (a) reject the proposals;
- (b) approve the proposals without modifications; or
- (c) approve the proposals with such modifications as the adjudicator thinks desirable.

(2) Where proposals are approved by the adjudicator (whether with or without modifications), the approval may be conditional on the occurrence of an event prescribed in paragraph 19.

Referral to the adjudicator post determination

17.—(1) Sub-paragraph (2) applies to proposals which relate to—

- (a) a change of category from voluntary aided to foundation school, without the acquisition of a foundation or a relevant change in the instrument of government; or
- (b) a change of category from voluntary aided to foundation school, together with the acquisition of a foundation or a relevant change in the instrument of government (or both).

(2) For the purpose of section 21(2)(h) the prescribed persons at whose request proposals to which this paragraph applies, (after their initial determination by the governing body) must be referred to the adjudicator, are—

- (a) the local education authority;
- (b) the Diocesan Board of Education for any diocese of the Church of England any part of which is comprised in the area of the authority;
- (c) the bishop of a diocese of the Roman Catholic Church any part of which is comprised in the area of the authority; and
- (d) where proposals relate to a school providing, or proposing to provide education for pupils aged 14 or over, the Learning and Skills Council for England.

(3) A request under sub-paragraph (1) must be made within 4 weeks of the initial determination by the governing body.

Provision for notification of decisions

18.—(1) The governing body must notify the local education authority and the Secretary of State of their decision together with their reasons.

(2) In the case of any determination made by the adjudicator pursuant to paragraph 16 or 17 the adjudicator must notify the governing body, authority and the Secretary of State of his decision together with his reasons.

(3) Where any determination relates to proposals to which paragraph 17(1) applies the adjudicator must also notify the prescribed persons in paragraph 17(2) of his decision together with his reasons.

Conditional approval

19. 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 making of any scheme relating to any charity connected with the school; and
- (b) the establishment of a foundation within the meaning of section 23A of SSFA 1998(3).

Duty to implement proposals

20. Subject to the following provisions of this Schedule, foundation proposals must be implemented by the governing body in the form in which they were approved.

Revocation of proposals (after approval)

21.—(1) If the governing body are satisfied that—

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

the governing body may determine at any time before implementation that paragraph 20 (duty to implement) is to cease to apply to the proposals.

(2) The governing body may only make a determination under sub-paragraph (1) where proposals that they should do so have been published by the governing body under sub-paragraph (3) (“revocation proposals”).

(3) Revocation proposals must contain—

- (a) a description of the original proposals as published in accordance with section 19 (3);
- (b) the date of publication of the original proposals;
- (c) a statement as to why it is proposed that, in accordance with sub-paragraph (1), paragraph 20 should not apply in relation to the original proposals; and
- (d) details of how copies of the original proposals can be obtained.

(4) Revocation proposals must be—

- (a) posted at or near the main entrance to the school or, if there is more than one entrance, all of them; and
- (b) published in at least one newspaper circulating in the area to be served by the school.

(5) Any person may object to or comment on revocation proposals, and such objections and comments must be sent to the governing body within 4 weeks of the date of publication of the proposals.

(6) The governing body must determine the revocation proposals within a period ending 2 months after the end of the representation period.

(7) If the governing body does not make a determination within the period specified in sub-paragraph (6) they must refer the proposals to the adjudicator within 1 week from the end of that period.

(3) Section 23A was inserted by section 33(1) of the Act.

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(8) Where the original proposals involve a change of category to a foundation school, before determining proposals under sub-paragraph (1) the governing body must consult the local education authority.

(9) Sub-paragraphs (10) to (12) apply where paragraph 17(2) applies to the proposals (voluntary aided to foundation).

(10) The governing body must notify the following persons of each decision taken under sub-paragraph (1) together with their reasons—

- (a) the Diocesan Board of Education for any diocese of the Church of England any part of which is comprised in the area of the authority;
- (b) the bishop of a diocese of the Roman Catholic Church which is comprised in the area of the authority;
- (c) where proposals relate to a school providing or proposing to provide education for pupils aged 14 or over, the Learning and Skills Council for England; and
- (d) the trustees of the school (if any).

(11) The persons at whose request revocation proposals must after their determination by the governing body be referred to the adjudicator are—

- (a) 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;
- (b) the bishop of a diocese of the Roman Catholic Church any part of which is comprised in the area of the local education authority; and
- (c) where proposals relate to a school providing or proposing to provide education for pupils aged 14 or over, the Learning and Skills Council for England.

(12) A request under sub-paragraph (11) must be made within 4 weeks of the initial determination of the revocation proposals by the governing body.

(13) Where a request is made under sub-paragraph (11) the governing body must submit the proposals and any objections or comments relating to the revocation proposals to the adjudicator within 1 week of receiving the request.

Modification post determination

22.—(1) The governing body may make modifications to the proposals at any time after determination, but before implementation, and where there has been a conditional approval, specify a later date by which the event in question must occur.

(2) Before modifying proposals for a change of category to a foundation school, the governing body must consult the local education authority.

Proposals not falling to be implemented

23.—(1) Where by virtue of paragraph 21, paragraph 20 (duty to implement) ceases to apply to any proposals, those proposals are to be treated for the purposes of this Schedule as if under paragraph 15 or 16 it has been determined that the proposals should be rejected.

(2) Where—

- (a) any conditional approval is given to proposals; and
- (b) the event specified in paragraph 19 does not occur by the required date

paragraph 20 ceases to apply to the proposals, and these proposals must be considered afresh by the governing body or adjudicator (as the case may be) and paragraph 15 or 16 apply accordingly.

Unimplemented statutory proposals

24. Where a school changes category in accordance with this Schedule and there are other proposals for prescribed alterations falling to be implemented in respect of that school which have not been implemented—

- (a) in the case of a school which has changed category from a community or community special school, the proposals must to the extent they have not been implemented, be implemented by the local education authority;
- (b) in the case of a school which has changed category from a voluntary aided school, the proposals must to the extent that they have not been implemented, be implemented by the local education authority.

Revision or replacement of the school's instrument of government

25.—(1) The governing body and the local education authority must secure that by the end of the implementation period a new instrument of government is made for the school in accordance with the Constitution Regulations.

(2) The implementation period is the period commencing on the date a proposal is approved under paragraph 15 or 16 and ending on the implementation date.

(3) The new instrument of government is to take effect from the date of making for the purpose of reconstituting the governing body but does not affect the constitution of the governing body conducting the school pending the implementation date.

(4) For all other purposes, the new instrument of government is to take effect from the implementation date.

Reconstitution or replacement of the governing body

26.—(1) The governing body and the local education authority must secure that as soon as reasonably practicable after the commencement of the implementation period (and in any event within a period of 3 months beginning on the implementation date) the governing body are reconstituted in accordance with the new instrument of government, and the Constitution Regulations.

(2) The current governing body must exercise their functions under the Act and these Regulations in a manner calculated to enable the authority to fulfil their duties under sub-paragraph (1).

Current governors continuing in office

27.—(1) Sub-paragraph (2) applies to any member of a current governing body in respect of which a new instrument of government has been made under these Regulations.

(2) Subject to paragraph 28 a governor to whom this paragraph applies is to continue from the implementation date (or the making of the new instrument of government if later) as a governor of the corresponding category required by the new instrument of government (if any such category exists).

(3) A member of a current governing body who continues as a governor under sub-paragraph (2) holds office for the remainder of the term for which he is originally appointed or elected.

(4) The proceedings of the governing body are not invalidated by the school having more governors of a particular category than are provided for by the new instrument of government, pending removal of the surplus governors pursuant to paragraph 28.

Surplus governors

28.—(1) Where—

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- (a) on or after the implementation date a school has more governors of any of the categories of governors than are required as governors of the corresponding category by the new instrument of government; and
- (b) the excess is not eliminated by the required number of governors resigning

such number of that category as is required to eliminate the excess must cease to hold office in accordance with sub-paragraphs (2) and (3).

(2) The governors who are to cease to hold office are to be determined on the basis of seniority, the governor whose current period of continuous service (whether as a governor of one or more than one category) is the shortest being the first to cease to hold office.

(3) Where it is necessary for the purposes of paragraph (2) to select one or more governors from a group of equal seniority, it must be done by drawing lots.

(4) For the purposes of this paragraph, sponsor governors nominated by a particular category of person are treated as if they constituted a separate category of governor.

(5) Any procedure set out in the new instrument of government for the removal of excess foundation governors does not apply to the reconstitution of the governing body under these Regulations.

Transfer of staff for foundation change of category

29. Where a voluntary controlled or community school changes category to a foundation school, or from a community special school to a foundation special school—

- (a) the contract of employment between a person to whom this paragraph applies and the local education authority has effect from the implementation date as if originally made between him and the governing body;
- (b) all the authority's rights, powers, duties and liabilities under or in connection with the contract of employment transfer by virtue of this paragraph to the governing body on the implementation date; and
- (c) anything done before that date by, or in relation to, the authority in respect of that contract or the employee, is deemed from that date to have been done by or in relation to the governing body.

30.—(1) Subject to sub-paragraph (2), paragraph 29 applies to any person who immediately before the implementation date is employed by the authority to work solely at the school who is the subject of the proposals.

(2) Paragraph 29 does not apply to any person whose contract of employment terminates on the day immediately preceding the implementation date or to any person employed by the authority to work at the school solely in connection with the provision of meals.

31. Any person who before the implementation date has been appointed by the authority to work at the school as from the implementation date or a date thereafter is to be treated for the purpose of paragraph 29 as if he had been employed by the authority 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 authority.

32. Paragraphs 29 to 31 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 must arise by reason only of the change in employer effected by these Regulations.