
STATUTORY INSTRUMENTS

2007 No. 1355

The School Organisation (Transitional Provisions) (England) Regulations 2007

PART 4

Savings and transitional provisions relating to proposals for the making of prescribed alterations to maintained schools and to changes of category where the proposals have been published under SSFA 1998 and are undetermined

Undetermined Proposals published under SSFA 1998 Act: general

24.—(1) The following provisions of this regulation apply to proposals which were published before 25th May 2007 and which remain undetermined by that date.

(2) Where proposals to make any prescribed alteration to a maintained school have been published under section 28 of SSFA 1998(1), regulations 1, 2, 4, 5 and 7(1) and (2) of and paragraphs 1, 2, 3, 11, 12 and 13 of Schedule 1 to the School Organisation Proposals Regulations continue to apply in relation to the proposals.

(3) Where proposals to make any prescribed alteration to a special school have been published under section 31 of SSFA 1998, regulations 1, 2, 4, 5 and 8(1) and (2) of the Special Schools Regulations continue to apply to in relation to the proposals.

(4) Where proposals for changing the category of a maintained school have been published under paragraph 2 or 3 of Schedule 8 to SSFA 1998(2), regulations 1, 2 and 4 of the Change of Category Regulations and paragraph 2 of Schedule 6 to SSFA 1998(3) continue to apply in relation to the proposals.

(5) Sections 28(6) and 31(5) of SSFA 1998, regulation 6 of the School Organisation Proposals Regulations, and regulation 6 of the Special Schools Regulations 1999 continue to apply in relation to information to be sent to the school organisation committee.

(6) Where the provisions for making objections and comments continue in accordance with the regulations referred to in regulation 26 as applicable, the school organisation committee must send copies of the proposals referred to in paragraphs (2) to (4) respectively (together with any objections or comments and other information received by it in accordance with the regulations referred to in paragraph 5 as applicable) to the relevant authority within 1 week of the end of the representation period, being in each case the period prescribed by the regulations referred to in regulation 26 which apply to those proposals.

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- (1) Section 28 of SSFA 1998 ceased to apply to England by virtue of its being amended by section 30 of, and paragraph 18 of Schedule 3 to the Act.
- (2) Section 35 of and Schedule 8 to SSFA 1998 ceased to apply to England by virtue of being amended by section 30 of, and paragraph 26 of Schedule 3 to the Act.
- (3) Paragraph 2 of Schedule 6 to SSFA 1998 (as modified by Schedule 1 and 2A to the Education (Change of Category of Maintained Schools) (England) Regulations 2000 (S.I. 2000/2195)) is otherwise repealed by section 30 of, and paragraph 33 of Schedule 3 to the Act, subject to the saving provisions in regulation 25.

(7) Copies of any proposals that have been published under section 28 or 31 of, or paragraph 2 or 3 of Schedule 8 to, SSFA 1998 and which relate to—

- (a) making a prescribed alteration to a maintained school, or
- (b) changing the category of a maintained school

must be sent by the school organisation committee (together with any objections or comments and other relevant information it has received) to the adjudicator by 1st June 2007 in any case where the school organisation committee have failed to reach a decision on the proposals by 25th May 2007 in accordance with paragraph 3(6) of Schedule 6 to SSFA 1998.

(8) Except as provided for in paragraphs (6) and (7), copies of any other proposals which were published under section 28 or 31 of, or paragraph 2 or 3 of Schedule 8 to, SSFA 1998 before 25th May 2007 must be sent by the school organisation committee to the relevant authority by 1st June 2007 for determination in accordance with this Part of these Regulations.

(9) Proposals which are sent to the adjudicator pursuant to paragraph (7) must be determined by him afresh under regulation 27.

(10) Where any proposals that have been published under section 28 or 31 of SSFA 1998 or paragraph 2 or 3 of Schedule 8 to SSFA 1998 have been sent to the adjudicator pursuant to paragraph 3(5), 3(6), 3(6A) or 3(6D) of Schedule 6 to SSFA 1998(4) before 25th May 2007, they must be determined by the adjudicator afresh under regulation 27.

(11) In this regulation, references to paragraphs 3(5) and 3(6) of Schedule 6 to the SSFA 1998 include reference to those paragraphs as modified by Schedules 1 and 2 of the Change of Category Regulations.

Consideration of proposals published under SSFA 1998: general

25.—(1) Subject to paragraph (2), proposals published under section 28 or 31 of SSFA 1998 or paragraph 2 or 3 of Schedule 8 to SSFA 1998 for the making of a prescribed alteration to a maintained school or the changing of the category of a maintained school that are undetermined on 25th May 2007 must be determined by the local education authority or by the adjudicator in accordance with this Part of these Regulations.

(2) Proposals made by a governing body under paragraph 2 of Schedule 8 to SSFA 1998 that either a community or a voluntary controlled school should become a foundation school must be determined in accordance with the provisions of Part 1 of Schedule 6 to SSFA 1998 as modified by Schedule 2A to the Change of Category Regulations and for these purposes Part 1 of Schedule 6 to SSFA 1998 continues to apply.

(3) Insofar as proposals referred to in paragraph (2) are unimplemented, such proposals must be implemented in accordance with Schedules 3 and 4 to these Regulations.

(4) If at the time when the proposals were published, sections 15, 17 or 51 of, or Schedule 15 to, SSFA 1998(5) applied to the school or it was eligible for intervention under sections 60, 61 or 62 of the Act, paragraph (3) does not apply.

Objections and Comments

26.—(1) Paragraph 2 of Schedule 6 to SSFA 1998 continues to apply in relation to proposals which were published before 25th May 2007 and which remain undetermined on that date.

(4) Paragraph 3 of Schedule 6 to SSFA 1998 was amended by Schedule 12 to EA 2005 and is repealed by section 30 of and paragraph 33 of Schedule 3 to the Act, subject to the saving provisions in regulation 25.

(5) Sections 15 and 17 ceased to apply in England on 1st April 2007 by virtue of being amended by Schedule 7 to the Act.

(2) In relation to proposals published under section 28 of SSFA 1998 for the making of prescribed alterations, the periods prescribed by regulation 7(2) of the School Organisation Proposals Regulations for the making of objections to, or comments on, the proposals continue to apply.

(3) In relation to proposals published under section 31 of SSFA 1998 for the making of a prescribed alteration to a special school, the periods prescribed by regulation 8(2) of the Special Schools Regulations for the making of objections to, or comments on, the proposals continue to apply.

(4) In relation to proposals published under paragraph 2 or 3 of Schedule 8 to SSFA 1998 for changing the category of a maintained school, the periods prescribed by paragraph 2 of Schedule 6 to SSFA 1998 (as modified by Schedule 1 to the Change of Category Regulations) and paragraph 2 of Schedule 6 to SSFA 1998 (as modified by Schedule 2A of the Change of Category Regulations) for the making of objections to, or comments on, the proposals continue to apply.

Consideration and determination of proposals by the local education authority or the adjudicator

27.—(1) Where any proposals have been published by the governing body or a local education authority, the authority may —

- (a) reject the proposals;
- (b) approve the proposals without modification, or
- (c) approve the proposals with such modifications as the authority think desirable.

(2) Before approving any proposals with modifications under sub-paragraph (1)(c) the authority must consult the relevant governing body (unless the modifications are proposed by the governing body).

(3) Where proposals are approved by the authority (whether with or without modifications) the approval may be conditional on the occurrence of an event prescribed by regulation 33.

(4) Any determination under paragraph (1) must be made within the period of 2 months from the end of the period in which proposals, objections and comments must be forwarded to the local education authority, as provided by regulations 24(6) or 26(8), as applicable.

(5) Where the authority does not make a determination within the period specified in paragraph (4), the proposals must be referred to the adjudicator.

(6) Where any proposals have been referred to the adjudicator pursuant to paragraph (5) or regulations 24 (7), 24 (10) or 29, 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

(7) Before modifying and determining any proposal, the adjudicator must consult the relevant governing body and the local education authority (unless they proposed the modification).

(8) Where the proposals are approved by the adjudicator (whether with or without modifications) the approval may be conditional on the occurrence of an event prescribed in regulation 33.

Provision for notification of decisions

28.—(1) The local education authority must notify the following persons of each decision under regulation 27, together with their reasons—

- (a) the governing body;
- (b) the trustees of the school (if any);

- (c) the Secretary of State;
 - (d) where proposals include provision for 14-16 education or sixth form education, the Learning 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 any diocese of the Roman Catholic Church any part of which is comprised in the area of the authority;
 - (g) where the proposals relate to a special school,
 - (i) the relevant Primary Care Trust, for the area in which the school is situated, and
 - (ii) any NHS trust or NHS foundation trust responsible for a hospital or other provision in the area in which the school is situated;
 - (h) subject to paragraph (3), each objector to the proposals; and
 - (i) the adjudicator.
- (2) The adjudicator must notify the persons referred to in sub-paragraphs (1) (a) to (h) and the local education authority of each decision together with his reasons.
- (3) 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 (h) 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
 - (b) if there is no such person, notifying the objector whose name first appears on the petition.
- (4) 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 to be related.

Appeals to adjudicator

- 29.**—(1) The persons at whose request proposals must, after their initial determination by the local education authority, 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 where the school is located;
 - (b) the local bishop of a diocese of the Roman Catholic Church any part of which is comprised in the area of the local education authority where the school is located;
 - (c) where proposals relate to a school providing or proposing to provide education for pupils aged 14 and over, the Learning and Skills Council for England;
 - (d) where proposals are made by a authority and relate to a foundation or voluntary school or a foundation special school—
 - (i) the governing body of the school to whom the proposal relates; and
 - (ii) the trustees of the school;
 - (e) where proposals are made by a authority and relate to a community school, and is an excepted expansion, the governing body of the school to whom the proposal relates.
- (2) A request under sub-paragraph (1) must be made within 4 weeks of the initial determination of the proposal by the authority.
- (3) Where a request is made under sub-paragraph (1) the authority must submit the proposals and any objections and comments made in relation to the proposals to the adjudicator within 1 week of receiving the request.

Related Proposals

30.—(1) Where proposals appear to be related to other proposals the local education authority or adjudicator must consider the related proposals together.

(2) Where the authority are required under regulation 27(5) to refer any proposals to the adjudicator, the authority must also within 1 week refer to the adjudicator any other proposals which appear to them to be related.

Determination of proposals where the school is transferring to a different local education authority

31.—(1) This regulation applies to the determination of any proposals for the transfer of the school to a new site where the new site is in an area other than that of the local education authority who it is proposed should maintain the school.

(2) The authority which maintains the school (“Local Education Authority A”) must send a copy of the proposals, together with all objections and comments received, to the local education authority for the area where it is proposed that the school will be situated (“Local Education Authority B”).

(3) Local Education Authority A must send the documents required under paragraph (2) within 1 week of the period in which proposals, objections and comments must be forwarded to them as provided by regulations 24 (6) and (8), as applicable.

(4) Before determining the proposals in accordance with regulation 27, Local Education Authority A must first seek the recommendation of Local Education Authority B on how the proposals should be determined.

(5) Any determination made under paragraph (1) must be made within the period of 2 months from the end of the periods referred to in regulations 24 (6) and (8) as applicable.

Transitional exemption orders under the Sex Discrimination Act 1975

32.—(1) This regulation applies to proposals for a school in England to cease to be an establishment which admits pupils of one sex only.

(2) Where proposals are published by a governing body, the sending of the published proposals to the local education authority is to be treated as an application for the making by the local education authority of a transitional exemption order under section 27 of the Sex Discrimination Act 1975(6), and the local education authority must make such an order accordingly.

(3) Where proposals are published by an authority, the authority must make a transitional exemption order under section 27 of the Sex Discrimination Act 1975.

(4) Where—

(a) the authority have failed to make a transitional exemption order; or

(b) the authority refer the proposals to the adjudicator under regulation 29,

they must refer the question whether to make a transitional exemption order to the adjudicator.

(5) Where that question is referred to the adjudicator—

(a) he must consider the matter afresh, and

(b) he may make a transitional exemption order accordingly.

(6) In this paragraph—

“make”, in relation to the transitional exemption order, includes (so far as context permits) vary or revoke.

(6) 1975 c.65. Section 27 is amended by paragraph 3 of Schedule 3 to the Act.

Conditional approvals

33.—(1) The following events are 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⁽⁷⁾;
 - (b) the acquisition of any site required for the implementation of the proposals;
 - (c) the acquisition of playing fields required for the implementation of the proposals;
 - (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;
 - (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) in the case of mainstream schools, the agreement to any change to the admission arrangements of any other school or schools, as specified in the approval;
 - (h) the making of any scheme relating to any charity connected with the school;
 - (i) 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 of, or the fulfilling of any other condition relating to the proposed school forming part of a federation;
 - (j) the Secretary of State giving approval under regulation 5(4) of the Education (Foundation Body)(England) Regulations 2000⁽⁸⁾ to an application that a foundation body must be established and that the school must form part of a group for which a foundation must act;
 - (k) 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; and
 - (l) where the proposals in question depend upon any of the events specified in paragraphs (a) to (g) occurring by a specified date in relation to proposals relating to any other school or proposed school, the occurrence of such an event.
- (2) For the purposes of paragraph (g) above a change to the admission arrangements is agreed—
- (a) in the case where the change arises from the admission arrangements for the school year in question being different from the admission arrangements for the previous school year, if the admission arrangements are determined under section 89(4) of SSFA 1998 and either—
 - (i) no objection is made to the change in accordance with section 90 of SSFA 1998, or
 - (ii) if an objection to the change is made and referred to the adjudicator in accordance with section 90 of SSFA 1998, the objection is not upheld;
 - (b) in a case where the change arises from a variation made under section 89(5) of SSFA 1998 or made under The School Admissions (Alteration and Variation of, and Objections to, Arrangements) (England) Regulations 2007⁽⁹⁾ where the variation is required to be referred to the adjudicator, if the adjudicator determines that the variation should have effect without modifications; and
 - (c) in a case where the change arises from a variation made under those regulations where the variation is not required to be referred to the adjudicator, when the variation is made.

⁽⁷⁾ 1990 c.8.

⁽⁸⁾ S.I. 2000/2872.

⁽⁹⁾ S.I. 2007/496.

Withdrawal of Proposals

34. Proposals may be withdrawn by the governing body or local education authority which published the proposals provided that—

- (a) such proposals are withdrawn before any determination is made,
- (b) written notice is given to the local education authority in cases where the proposals have been made by the governing body, and in cases where the proposals have been referred to the adjudicator, to 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 main entrance, all of them.

Requirement to Implement Proposals

35.—(1) Subject to the following provisions of this Part of these Regulations, the proposals must be implemented in the form in which they were approved.

(2) Where—

- (a) the local authority have approved any proposal; or
- (b) an adjudicator has approved any proposal

the proposal must be implemented by the governing body and the local authority, respectively, to such extent as the proposals provide for each of them to do so.

Revocation of Proposals (after approval)

36.—(1) If the authority or the adjudicator (where the original proposals were referred to him under regulation 27 (5) only, or a referral is made to him under paragraph (9)) are satisfied that—

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

the authority or the adjudicator may determine that regulation 35(2) (duty to implement) is to cease to apply to the proposals.

(2) The authority or the adjudicator (as the case may be) may only make a determination under paragraph (1) where proposals that they or he should do so have been published by the governing body or the local education authority under paragraph (3) (“revocation proposals”).

(3) Revocation proposals must contain—

- (a) a description of the original proposals as published in accordance with section 28 or 31 of SSFA 1998 or paragraph 2 or 3 of Schedule 8 to SSFA 1998;
- (b) the date of publication of the original proposals;
- (c) a statement as to why it is proposed that, in accordance with paragraph (1), regulation 35(2) (duty to implement proposals) should not apply in relation to the original proposals.

(4) Revocation proposals must be published by—

- (a) posting them 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) publishing them in at least one newspaper circulating in the area served by the school.

(5) The governing body must submit the revocation proposals within 1 week of the date of publication to the authority.

(6) Any person may object to or comment on revocation proposals and such objections and comments must be sent to the local education authority who published the proposals within 6 weeks of the date of publication of the proposals.

(7) Where the original proposals were decided by the adjudicator pursuant to a reference under regulation 27 (5), the authority must refer the revocation proposals, together with any objections or comments in relation to them, to the adjudicator within 2 weeks of the end of the representation period.

(8) Where the authority determine revocation proposals, any determination must be made within a period ending 2 months after the representation period.

(9) If the authority does not make a determination within the time specified in paragraph (8), they must refer the proposals to the adjudicator within 1 week from the end of that period.

(10) The authority must notify the following persons of each decision taken under 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 any part of 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 and over, the Learning and Skills Council for England;
- (d) where proposals are made by an authority and relate to a foundation or voluntary school or a foundation special school—
 - (i) the governing body ; and
 - (ii) the trustees of the school (if any); and
- (e) where the school is a community school and the proposal is made by the authority and is an excepted expansion, the governing body .

(11) The persons at whose request proposals must, after their determination by the authority pursuant to paragraph (1), 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 authority ;
- (b) the bishop of a diocese of the Roman Catholic Church any part of which is comprised in the area of the authority;
- (c) where proposals relate to a school providing education for pupils aged 14 and over, the Learning and Skills Council for England;
- (d) where proposals are made by a authority and relate to a foundation or voluntary school or a foundation special school—
 - (i) the governing body ; and
 - (ii) the trustees of the school (if any); and
- (e) where the school is a community school and the proposal is made by the authority and is an excepted expansion, the governing body .

(12) A request under paragraph (11) must be made within 4 weeks of determination of the revocation proposals.

(13) Where a request is made under paragraph (11) the local authority must submit the proposals and any comments and objections on the proposals to the adjudicator within 2 weeks of receiving the request.

Modification post determination

37.—(1) The authority or the adjudicator (where the adjudicator has determined the original proposals following a reference under regulation 27(5)) may, at the request of the governing body who published the proposals, or, where the proposals were published by the authority themselves, on their own initiative—

- (a) modify the proposals, and
- (b) where there has been a conditional approval, specify a later date by which the event in question must occur.

(2) Before modifying any proposals the authority or the adjudicator as the case may be must consult the relevant governing body and the adjudicator must consult the local education authority (unless they proposed the modification).

Proposals not falling to be implemented

38.—(1) Where by virtue of regulation 36(1), regulation 35(2) (duty to implement proposals) ceases to apply to any proposals, those proposals are to be treated as if they had been rejected.

(2) Where any approval under regulation 27 was given, and the event specified in regulation 33 does not occur by the date in question, regulation 35(2) ceases to apply to the proposals.

(3) Where by virtue of paragraph (2), regulation 35(2) ceases to apply to any proposals approved by the authority under regulation 27 and not referred to the adjudicator, those proposals must be considered afresh by the authority under that regulation.

(4) Where by virtue of paragraph (2), regulation 35(2) ceases to apply to any proposals approved by the adjudicator under regulation 27, those proposals must be considered afresh by the authority under that regulation.

Unimplemented statutory proposals

39.—(1) Where a school changes category 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 voluntary aided school to become a voluntary controlled school, the proposals must to the extent that 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 foundation or voluntary controlled school to become a voluntary aided school, the proposals must continue to be implemented by the governing body and local education authority (as the case may be) as if the school had remained a foundation or voluntary controlled school.

Provisions applicable to proposals relating to change of category only

40. Schedules 3 and 4 to these Regulations have effect for specifying the provisions applicable to proposals relating to a change of category published under paragraph 2 or 3 of Schedule 8 to SSFA 1998.