

2007 No. 3475

EDUCATION, ENGLAND

The School Organisation (Removal of Foundation, Reduction in Number of Foundation Governors and Ability of Foundation to Pay Debts) (England) Regulations 2007

Made - - - - *7th December 2007*

Laid before Parliament *17th December 2007*

Coming into force - - *21st January 2008*

The Secretary of State for Children, Schools and Families makes the following Regulations in exercise of the powers conferred by paragraph 8A(2)(d) and (3) of Schedule 22 to, and section 138 of, the School Standards and Framework Act 1998(a), sections 19(3) and 210(7) of the Education Act 2002(b) and sections 25(5) and (6), 26, 27 and 181 of the Education and Inspections Act 2006(c):

Citation, commencement and application

1.—(1) These Regulations may be cited as the School Organisation (Removal of Foundation, Reduction in Number of Foundation Governors and Ability of Foundation to Pay Debts) (England) Regulations 2007 and come into force on 21st January 2008.

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

Interpretation

2. In these Regulations—

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

“EIA 2006” means the Education and Inspections Act 2006;

“the Charities Act” means the Charities Act 1993(d);

“the Constitution Regulations” means the School Governance (Constitution) (England) Regulations 2007(e);

“foundation governor” has the same meaning as in regulation 8 of the Constitution Regulations;

“the Insolvency Act” means the Insolvency Act 1986(f);

(a) 1998 c.31. Paragraph 8A of Schedule 22 is inserted by paragraph 13 of Schedule 4 to the Education and Inspections Act c. 40 (“EIA 2006”). See section 142 of the School Standards and Framework Act 1998, for definitions of “prescribed” and “regulations”.

(b) 2002 c.32; see section 212 for the definition of “regulations”.

(c) 2006 c.40; see section 32 for definitions of “prescribed” and “regulations”.

(d) 1993 c.10; as amended by the Charities Act 2006 c.50.

(e) S.I. 2007/957.

(f) 1986 c.45.

“the Procedures Regulations” means the School Governance (Procedures) (England) Regulations 2003^(a);

“reconstitution of governing body proposals” means proposals published under section 25(4)(b) or section 25(5) of EIA 2006 for the alteration of the instrument of government in such a way that foundation governors will cease to constitute the majority of governors;

“removal of foundation proposals” means proposals published under section 25(4)(a) or section 25(5) of EIA 2006 for the removal of the foundation;

“trustees” means the trustees of the school’s foundation; and

“working day” means a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971^(b) in England.

Part 1

Removal of Foundation and Reduction in Number of Foundation Governors

Interpretation and application of Part 1

3. In this Part—

- (a) any reference to the governing body is a reference to the governing body of any school to which section 25 of EIA 2006 applies,
- (b) any reference to a governor or governors is a reference to a member of a governing body of any school to which section 25 of EIA 2006 applies, and
- (c) any reference to a proportion of the governors is a reference to a proportion of the total membership of the governing body, excluding any vacancies.

Decision of governing body to publish proposals

4. A decision to publish proposals to—

- (a) remove the school’s foundation, or
- (b) alter the instrument of government so that the foundation governors will cease to constitute the majority of governors,

under section 25(4) of EIA 2006, whether taken by the governing body or by a committee of the governing body, must be confirmed by the whole governing body at a meeting held not less than 28 days after the meeting at which the initial decision was made.

Requirement to publish proposals in certain circumstances

5.—(1) This regulation applies where—

- (a) the school’s instrument of government provides for the majority of governors to be foundation governors, and
- (b) the governing body has not made a decision to publish proposals under section 25(4) of EIA 2006.

(2) Subject to paragraph (4), where at least one third of the governors give notice in writing to the clerk of the governing body that they require the publication of proposals for either or both of the following alterations to the school—

- (a) the removal of the foundation, or

^(a) S.I. 2003/1377 to which there are amendments not relevant to these Regulations.

^(b) 1971 c.80.

- (b) the alteration of the instrument of government in such a way that foundation governors will cease to constitute the majority of governors,

the governing body must publish proposals for such alteration or alterations (as the case may be) under section 25 of EIA 2006 and in accordance with this Part.

(3) Unless matters are referred to the adjudicator under regulation 6 (*determination of land issues*) (in which case the governing body must publish proposals within 1 month of receipt of the adjudicator's determination), the governing body must publish such proposals within 3 months of the receipt of notice by the clerk under paragraph (2).

(4) Paragraph (2) does not require the governing body to publish proposals under section 25 of EIA 2006—

- (a) at any time within a 5 year period beginning with the date on which—
 - (i) proposals for the establishment of the school were implemented under Schedule 2 to EIA 2006, or
 - (ii) proposals for the acquisition of a foundation, for a relevant change(a) in the instrument of government or for a change of category to foundation or foundation special school were implemented under the School Organisation (Prescribed Alterations to Maintained Schools)(England) Regulations 2007(b), or
- (b) at any time within a 5 year period beginning with the date on which previous proposals published under section 25 of EIA 2006 in pursuance of paragraph (2) of this regulation (governing body required to publish proposals) were rejected by the governing body in accordance with regulation 11.

Determination of land issues

6.—(1) Before publishing proposals to remove the school's foundation, the governing body must agree with the trustees and the local education authority all matters relating to—

- (a) the land to be transferred under regulation 17, including, where appropriate, the terms of any transfer agreement to be made for the purposes of regulation 17(3), and
- (b) any payment to be made under regulation 18(1) or (2),

which would arise as a result of the governing body's approval of the proposals (with or without modification).

(2) Where the governing body has not reached agreement with the trustees and the local education authority as to any of the matters set out in paragraph (1) within 3 months of—

- (a) the initial decision to publish proposals under regulation 4, or
- (b) receipt of notice by the clerk under regulation 5(2),

such matters must be referred to the adjudicator for his determination.

Consultation on proposals

7.—(1) Subject to paragraph (2), before publishing proposals to remove the school's foundation or to alter the school's instrument of government, the governing body must consult—

- (a) families of pupils at the school,
- (b) teachers and other staff at the school,
- (c) the trustees and, if different, the person or persons by whom the foundation governors are appointed,
- (d) the local education authority,
- (e) the governing bodies of any other foundation or foundation special schools maintained by the same local education authority for which the foundation acts as a foundation,

(a) As defined in section 25(7) of EIA 2006.

(b) S.I. 2007/1289.

- (f) any trade unions who represent staff at the school,
- (g) if the school has a religious character the appropriate diocesan authority (as defined in section 142(1) and (4) of SSFA 1998) or other relevant faith group in relation to the school,
- (h) if the proposals affect the provision of full-time education suitable to the requirements of persons during the period beginning with the start of the academic year in which they attain the age of 15 and ending when they attain the age of 19, the Learning and Skills Council for England, and
- (i) such other persons as the governing body consider appropriate.

(2) The requirement to consult before publishing proposals does not apply where the governing body is required to publish proposals under regulation 5(2).

Information to be included in proposals

- 8.**—(1) Removal of foundation proposals must include the information set out in Schedule 1.
- (2) Reconstitution of governing body proposals must include the information set out in Schedule 2.

Manner of publication of proposals

- 9.**—(1) The governing body must publish the information contained in paragraphs 1 to 4 of Schedule 1, or Schedule 2 as the case may be, together with details of how complete copies of the proposals may be obtained.
- (2) The governing body must publish the information in paragraph (1)—
- (a) by posting it—
 - (i) at or near the main entrance to the school or, if there is more than one main entrance, all of them, and
 - (ii) in a conspicuous place in the area served by the school, and
 - (b) by publishing it in at least one local newspaper circulating in that area, and
- (3) The governing body at the same time as publishing the information in paragraph (1), must send copies of the proposals to—
- (a) the trustees,
 - (b) the Secretary of State, and
 - (c) the local education authority.

Objections and Comments

10. Any person may object to or comment on proposals published in accordance with regulation 9 provided that such objections or comments must be sent to the governing body within six weeks after the date of publication of the proposals.

Determination of proposals

- 11.**—(1) The governing body must within 3 months after the publication of the proposals under regulation 9 determine whether to—
- (a) approve the proposals without modification,
 - (b) approve the proposals in accordance with regulation 12 (*modification of proposals*), or
 - (c) subject to paragraph (2), reject the proposals.
- (2) Despite regulations 12(1) and (2) of the Procedures Regulations, the governing body may not reject proposals published pursuant to regulation 5(2) above, unless two thirds or more of the governors indicate that they are in favour of such rejection either by—

- (a) being present and voting at the meeting of the governing body at which the proposals are to be determined, or
 - (b) if a governor is unable to attend such meeting, notifying the clerk in writing of their vote before the date of the meeting.
- (3) The governing body must notify the Secretary of State, the trustees and the local education authority of their determination made under paragraph (1).

Modification of proposals

12.—(1) Subject to paragraph (2), the governing body may approve the proposals with either or both of the following modifications—

- (a) a modification to the date on which the proposals will take effect (“the implementation date”),
- (b) a modification to the proposed constitution of the governing body.

(2) Where proposals have been published pursuant to regulation 5(2) above, the governing body may only modify the proposals in accordance with paragraph (1) where, despite regulations 12(1) and (2) of the Procedures Regulations, two thirds or more of the governors indicate that they are in favour of such modification either by—

- (a) being present and voting at the meeting of the governing body at which the proposals are to be determined, or
- (b) if a governor is unable to attend such meeting, notifying the clerk in writing of their vote before the date of the meeting.

Implementation of proposals published under section 25

13.—(1) Regulations 14 to 18 apply where the governing body have, in accordance with regulation 11(1)(a) or (b), approved removal of foundation proposals.

(2) Regulations 14 to 16 apply where the governing body have, in accordance with regulation 11(1)(a) or (b), approved reconstitution of governing body proposals.

New governing body

14.—(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 procedure for review under regulation 32 of the Constitution Regulations.

(2) The implementation period is the period commencing on the date a proposal is approved under regulation 11(1)(a) or (b) and ending on the implementation date.

(3) 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.

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

(5) The governing body must exercise their functions in a manner calculated to enable the local education authority to fulfil their duties under paragraph (1).

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

Governors continuing in office

15.—(1) Paragraph (2) applies to any member of a governing body in post before a new instrument of government has been made under these Regulations.

(2) Subject to regulation 16 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 governor who continues in office under paragraph (2) is to hold office for the remainder of the term for which he was 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 regulation 16.

Surplus governors

16.—(1) Where—

- (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 of the appropriate category resigning,

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

(2) The governors who are to cease to hold office are to be determined on the basis of length of service, 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 with equal length of service, it must be done by drawing lots.

(4) For the purposes of these Regulations, 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 land

17.—(1) Subject to paragraph (2) any publicly provided land which, immediately before the implementation date, was held by the trustees for the purposes of the school transfers on that date to, and by virtue of this regulation vests in, the governing body.

(2) But, where, in connection with the acquisition of the publicly provided land or the provision of buildings on that land, the trustees had paid any sum representing proceeds of sale of other premises, that land does not transfer under paragraph (1), but transfers to and vests in the governing body in accordance with a transfer agreement under paragraph (3).

(3) Any other land which, immediately before the implementation date, was held by the trustees for the purposes of the school transfers to and vests in the governing body in accordance with a transfer agreement.

(4) Where any land is transferred to and vests in the governing body in accordance with this regulation, any rights or liabilities—

- (a) enjoyed or incurred by the trustees in connection with the land, and
- (b) subsisting immediately before the implementation date,

also transfer to, and by virtue of this regulation, vest in, the governing body.

(5) This regulation is subject to Schedule 3 (which makes further provision in relation to transfers of property, rights and liabilities).

(6) In this regulation—

- (a) “publicly provided land” means any land of the kind referred to in sub-paragraph (1) or (2) of paragraph A26 of Schedule 22 to SSFA 1998(a), and
- (b) “transfer agreement” means an agreement made for the purposes of paragraph (3) between the governing body and the trustees, and providing for the land in question to be transferred to, and vest in, the governing body on the implementation date, whether or not in consideration of any payment by the governing body.

Compensation where capital expenditure incurred

18.—(1) Where the trustees have incurred capital expenditure in relation to—

- (a) land transferred under regulation 17(1) or (3) (“the transferred land”), or
- (b) other land, the proceeds of the disposal of which were used to acquire or enhance the value of the transferred land,

the governing body must pay to the trustees such sum representing the value of the transferred land as may be agreed between them or determined by the adjudicator under regulation 6.

(2) Where the governing body or the local education authority have incurred capital expenditure in relation to—

- (a) any land held by the trustees for the purposes of the school which is not transferred land (“the excluded land”), or
- (b) other land, the proceeds of the disposal of which were used to acquire or enhance the value of the excluded land,

the trustees must pay to the governing body or the local education authority (as the case may be) such sum representing the value of the excluded land as may be agreed between the trustees and the governing body or the local education authority (as the case may be) or determined by the adjudicator under regulation 6.

Duty to have regard to guidance issued by the Secretary of State

19. In exercising their functions under this Part, the following persons must have regard to any guidance given from time to time by the Secretary of State—

- (a) the governing body,
- (b) the trustees,
- (c) the local education authority, and
- (d) the adjudicator.

Part 2

Ability of Foundation to Pay Debts

Interpretation and application of Part 2

20. In this Part any reference to a foundation is a reference to the trustee of a school to which paragraph 8A of Schedule 22 to SSFA 1998 applies.

(a) Paragraph A26 is inserted by paragraph 2 of Schedule 4 to EIA 2006.

Conditions relating to the ability of a foundation to pay its debts

21. The conditions prescribed for the purposes of paragraph 8A(2)(d) of Schedule 22 to SSFA 1998 are that—

- (a) the foundation is unable to pay its debts within the meaning of section 123 of the Insolvency Act, provided that for the purposes of this regulation section 123(1)(a) of the Insolvency Act has effect as if—
 - (i) the amount of £10,000 was substituted for £750, and
 - (ii) there was an additional condition that it cannot be shown to the satisfaction of the Secretary of State that such demand as is mentioned in that paragraph is being contested in good faith by the foundation;
- (b) the foundation has a receiver (and manager, with the exception of a receiver and manager appointed by the Charity Commission under the Charities Act^(a)), administrator or administrative receiver appointed over all or any part of its undertakings,
- (c) any restraint, execution or other process is levied or enforced on any of the land held by the foundation (other than for the purposes of the school) and is not paid out, withdrawn or discharged within 15 working days,
- (d) the foundation calls a meeting of its creditors (whether formal or informal) or enters into any composition or arrangement (whether formal or informal) with its creditors, or
- (e) the foundation proposes a voluntary arrangement within section 1 of the Insolvency Act.

7th December 2007

Andrew Adonis
Parliamentary Under Secretary of State
Department for Children, Schools and Families

SCHEDULE 1

Regulation 8(1)

Information to be included in proposals to remove foundation

1. All proposals must include the following information—

(a) School Details

The name, address and category of the school for which the governing body are publishing the proposals,

(b) Date

The proposed implementation date (“implementation date”),

(c) Objections and comments

A statement explaining that any person may object to, or comment on, the proposals and the procedure for making such representations, including—

- (i) the date pursuant to regulation 10 by which objections or comments should be sent to the governing body, and
- (ii) the address to which objections or comments should be sent.

2. Whether proposals are to be published as required by regulation 4 or under regulation 5(2).

3. Information on why it is proposed to remove the school’s foundation.

^(a) Section 18(1)(vii).

4. Where proposals are to be published pursuant to a decision of the governing body under regulation 4, a summary of any responses to the consultation on removing the school's foundation.

5. Information about the transfer of land held on trust for the purposes of the school should the proposals be approved (with or without modification), including—

- (a) the proposed terms of any transfer agreement to be entered into in relation to the land, and
- (b) details of any payments which will fall to be made in relation to the land—
 - (i) by the governing body or the local education authority to the trustees, or
 - (ii) by the trustees to the governing body or the local education authority.

6. Confirmation that after any land transfer, the requirements of the School Premises Regulations 1999(a) will continue to be satisfied.

7. The proposed constitution of the governing body after the foundation is removed (as will be set out in a revised draft instrument of government for the school), including an outline of the expected size and composition of the governing body after the removal of the foundation, and, where the school has a religious character, the body who it is proposed will nominate the partnership governors.

SCHEDULE 2

Regulation 8(2)

Information to be included in proposals to alter instrument of government so that foundation governors cease to be the majority of governors

1. All proposals must include the following information—

(a) **School Details**

The name, address and category of the school for which the governing body are publishing the proposals,

(b) **Date**

The proposed implementation date ("implementation date"),

(c) **Objections and comments**

A statement explaining that any person may object to, or comment on, the proposals and the procedure for making such representations, including—

- (i) the date pursuant to regulation 10 by which objections or comments should be sent to the governing body, and
- (ii) the address to which objections or comments should be sent.

2. Whether proposals are to be published as required by regulation 4 or under regulation 5(2).

3. Information on why it is proposed to alter the instrument of government so that the foundation governors cease to constitute the majority of governors.

4. Where proposals are to be published pursuant to a decision of the governing body under regulation 4, a summary of any responses to the consultation on altering the instrument of government so that the foundation governors will cease to constitute the majority.

5. The proposed constitution of the governing body following the reduction of the foundation governor majority, (as will be set out in a revised draft instrument of government for the school), including an outline of the expected size and composition of the governing body.

(a) S.I. 1999/2.

Supplementary Provisions with respect to land transfer

Provision of Information

1. The local education authority, governing body, and trustees must give the adjudicator such information as he may require for the purposes of the exercise of his functions under these Regulations.

Division and apportionment of Property

2.—(1) Any property, rights and liabilities of the trustees held or used or subsisting partly for the purposes of the school and partly for other purposes is, where the nature of the property, right or liability permits, to be divided or apportioned between the trustees and governing body in such proportions as may be appropriate.

(2) Where any estate or interest in land falls to be divided in accordance with sub-paragraph (1)—

- (a) any rent payable under a lease in respect of that estate or interest, and
- (b) any rent charged on that estate or interest

is to be correspondingly divided or apportioned so that each part is payable in respect of, or charged on, only one part of the estate or interest and the other part or parts are payable in respect of, or charged on, only the other part or parts of the estate or interest.

(3) Any such property, right or liability as is mentioned in sub-paragraph (1) the nature of which does not permit its division or apportionment as so mentioned is to be transferred or retained according to—

- (a) in the case of an estate or interest in land, whether on the implementation date the trustees or governing body appear to be in greater need of the security afforded by that estate or interest or, where neither of them appears to be in greater need of that security, which of them appears on that date to be likely to make use of the land to the greater extent, or
- (b) in the case of any other property or any right or liability, which of them appears on the implementation date to be likely to make use of the property or (as the case may be) to be affected by the right or liability to the greater extent

subject (in either case) to such arrangements for the protection of the other person or persons concerned as may be agreed between the trustees and governing body or determined by the adjudicator under regulation 6.

Identification of property, rights and liabilities

3.—(1) The trustees and governing body must in accordance with regulation 6 agree the form of such written agreements, and other instruments, as are necessary or expedient to identify or define the property, rights and liabilities to be transferred or retained, or for making any such arrangements as are mentioned in paragraph 2(3) above, and as will afford to the trustees and governing body as against one another such rights and safeguards as they may require for the proper discharge of their respective functions.

(2) Any such agreement is to provide, so far as it is expedient—

- (a) for the granting of leases and for the creation of other liabilities and rights over land whether amounting in law to interests in land or not, and whether involving the surrender of any existing interest or the creation of a new interest or not,
- (b) for the granting of indemnities in connection with the severance of leases and other matters,
- (c) for responsibility for registration of any matter in any description of statutory register.

(3) Any transfer of any estate or interest in land under these Regulations (whether by virtue of an agreement or instrument entered into before or after the implementation date) is to be regarded as having taken place on the implementation date.

Right to production of documents of title

4.—(1) Where a transfer to which this Schedule applies relates to registered land, it is the duty of the trustees to execute any such instrument under the Land Registration Acts 1925 to 2002^(a), to deliver any such certificate under those Acts and to do such other things under those Acts as he would be required to execute, deliver or do in the case of a transfer by agreement.

(2) Where on any transfer to which this Schedule applies the trustees are entitled to retain possession of any documents relating in part to the title to any land or other property transferred to the governing body, the trustees are to be treated as having given to the governing body an acknowledgment in writing of their right to production of that document and to delivery of copies of it; and section 64 of the Law of Property Act 1925^(b) has effect accordingly, and on the basis that the acknowledgment did not contain any such expression of contrary intention as is mentioned in that section.

Proof of title by certificate

5. The adjudicator may issue a certificate stating that any property specified in the certificate, or any such interest in or right over any such property as may be so specified, or any right or liability so specified, was or was not transferred by virtue of these Regulations to any body corporate or persons so specified; and any such certificate is conclusive evidence for all purposes of that fact.

Construction of agreements

6.—(1) Where in the case of any transfer to which this Schedule applies any rights or liabilities transferred are rights or liabilities under an agreement to which the trustees were a party immediately before the implementation date, the agreement, unless the context otherwise requires, has effect on and after the implementation date as if—

- (a) the governing body had been a party to the agreement,
- (b) for any reference (whether express or implied and, if express, however worded) to the trustees or foundation there were substituted, as respects anything falling to be done on or after the implementation date, a reference to the governing body,
- (c) any reference (whether express or implied and, if express, however worded) to a specified officer of the trustees or foundation or a person employed by the trustees or foundation in a specified capacity were, as respects anything falling to be done on or after the implementation date, a reference to such person as the governing body may appoint or, in default of appointment, to a member or employee of the governing body who corresponds as closely as possible to the person referred to in the agreement,
- (d) where the agreement refers to property, rights or liabilities which fall to be apportioned or divided between the trustees and governing body, the agreement constituted two separate agreements separately enforceable by and against the trustees and governing body as regards the part of the property, rights or liabilities retained by the trustees or (as the case may be) the part vesting in the governing body, and not as regards the other part

and paragraph (d) applies in particular to the covenants, stipulations and conditions of any lease by or to the trustees.

(2) This paragraph applies to any agreement whether in writing or not and whether or not of such a nature that rights and liabilities under it could be assigned by the trustees.

^(a) 1925 c.21, 1987 c.2, and 2002 c.9.

^(b) 1925 c.20.

7.—(1) Without prejudice to paragraph 6, the governing body under a transfer to which this Schedule applies, and any other person, are, as from the implementation date, to have the same rights, powers and remedies (and in particular the same rights and powers as to the taking or resisting of legal proceedings or the making or resisting of applications to any authority) for ascertaining, perfecting or enforcing any right or liability transferred to and vested in the governing body by virtue of these Regulations as they would have had if that right or liability had at all times been a right or liability of the governing body.

(2) Any legal proceedings or applications to any authority pending on the implementation date by or against the trustees, in so far as they relate to any property, right or liability transferred to the governing body by virtue of these Regulations, or to any agreement relating to any such property, right or liability, must be continued by or against the governing body to the exclusion of the trustees.

Third Parties affected by vesting provisions

8.—(1) Without prejudice to the generality of paragraphs 6 and 7, any transaction effected between the trustees and a governing body in pursuance of paragraph 2(1) or of a determination under regulation 6 is to be binding on all other persons, even though it would, apart from this sub-paragraph, have required the consent or concurrence of any person other than the trustees and governing body.

(2) If as a result of any such transaction any person's rights or liabilities become enforceable as to part by or against the trustees and as to part by or against the governing body, the adjudicator must give that person written notification of that fact.

(3) If in consequence of a transfer to which this Schedule applies or of anything done in pursuance of the provisions of this Schedule—

- (a) the rights or liabilities of any person other than the trustees or the governing body which were enforceable against or by the trustees become enforceable as to part against or by the trustees and as to part against or by the governing body, and
- (b) the value of any property or interest of that person is thereby diminished

such compensation as may be just must be paid to that person by the trustees, the governing body or both.

(4) Any dispute as to whether and if so how much compensation is payable under sub-paragraph (3), or as to the person by whom or to whom it must be paid, must be referred to and determined by the adjudicator.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 1 of these Regulations prescribes various requirements to be met in relation to the publication by the governing body of a foundation or foundation special school to which section 25 of the Education and Inspections Act 2006 (“EIA 2006”) applies, of proposals to (a) remove the school’s foundation or (b) alter the instrument of government in such a way that the foundation governors will cease to constitute the majority of governors (together, “the relevant alterations”).

Regulation 4 provides that any decision by the governing body, or by a committee of the governing body, to publish proposals to make either of the relevant alterations must be confirmed in a second meeting of the governing body held not less than 28 days after the meeting at which the initial decision was made.

Regulation 5 provides for a specific procedure for the publication of proposals to make relevant alterations in cases where a school’s instrument of government provides for the majority of governors to be foundation governors and the governing body do not themselves resolve, in accordance with regulation 4 and the School Governance (Procedures) (England) Regulations 2003, to publish such proposals. In such cases, a third of the governors can require the governing body, by written notice to the clerk, to publish proposals to make either of the relevant alterations. Regulation 5(3) provides that unless regulation 6 (*determination of land issues*) applies, the governing body must publish proposals within 3 months of the receipt of notice by the clerk. Regulation 5(4) exempts the governing body from the requirement to publish proposals, as required by a third of the governing body pursuant to regulation 5(2), where proposals for (i) the establishment of the school or (ii) any alteration prescribed under section 18 of EIA 2006 which consists of a change of category to foundation or foundation special school or the acquisition of a foundation or which results in the majority of governors being foundation governors, were implemented under the relevant provisions of EIA 2006 less than 5 years ago; or where less than 5 years ago the governing body rejected proposals, published at the request of a third of the governing body pursuant to regulation 5(2), to make either of the relevant alterations.

Regulations 6 to 12 provide for various aspects of the publication of the proposals, including the information to be included in the proposals, consultation on the proposals before publication, the requirement to determine issues relating to the transfer of the land before publication, the manner of publication, objections or representations to be made in relation to the proposals, the determination of the proposals by the governing body and the modifications which may be made to the proposals for them to be approved.

Regulations 13 to 19 provide for the implementation of the proposals, as approved (with or without modifications) by the governing body.

Regulation 14 deals with the making of a new instrument of government when either of the relevant alterations is made to a school, and regulations 15 and 16 provide for the reconstitution of the governing body in such cases. Certain governors are allowed to remain in office and provision is made for the removal of any governors who are surplus to the requirements of the new instrument of government.

Regulation 17 and Schedule 3 provide for the transfer of land where a school’s foundation is removed, and regulation 18 provides for the payment of compensation where land is transferred pursuant to regulation 17 and expenditure has been incurred.

Regulation 19 requires the governing body, the local education authority and the adjudicator to have regard to guidance issued by the Secretary of State in exercising their functions under Part 1 of the Regulations.

Part 2 of these Regulations prescribe conditions to be met in relation to the ability of certain foundations to pay their debts and to their continued existence as a body corporate for the purposes of paragraph 8A(2)(d) of Schedule 22 to the School Standards and Framework Act 1998.

Paragraph 8A of Schedule 22 enables the Secretary of State, where any of the conditions in paragraph 8A(2) are met, to make an order directing that any land falling within paragraph A13(1)(b) or (2) of Schedule 22 (broadly, publicly-funded land) held by a foundation for the purposes of a foundation or foundation special school to which paragraph 8A applies, is to be transferred to, and to vest in, the governing body of the school or, where the land is held on trust for two or more schools, such of the governing bodies of the schools as the Secretary of State thinks proper.

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