

## SCHEDULES

### SCHEDULE 4

Section 36

#### DISPOSALS AND CHANGES OF USE OF LAND

#### PART 1

##### AMENDMENTS TO SCHEDULE 22 TO SSFA 1998

- 1 Schedule 22 to SSFA 1998 (disposal of land by foundation, voluntary or foundation special schools and disposals on discontinuance) is amended as follows.
- 2 Before Part 1 of the Schedule insert—

#### “PART A1

##### FOUNDATION, VOLUNTARY AND FOUNDATION SPECIAL SCHOOLS IN ENGLAND: DISPOSALS OF LAND

#### **Disposal of land by governing body of foundation, voluntary or foundation special school**

- A1 (1) This paragraph applies to any disposal by the governing body of a foundation, voluntary or foundation special school in England of—
- (a) any land acquired under a transfer under section 201(1)(a) of the Education Act 1996,
  - (b) any land acquired under any of the following—
    - paragraph 2 of Schedule 3;
    - paragraph 16 of Schedule 6 (including that provision as applied by any enactment);
    - paragraph 5(4)(c), 5(4B)(d) or 8A of this Schedule;
    - any regulations made under paragraph 5 of Schedule 8;
    - paragraph 28(2) of Schedule 2 to the Education and Inspections Act 2006 (including that provision as applied by any enactment),
  - (c) any land acquired under any regulations made under—
    - section 24 of the Education and Inspections Act 2006 by virtue of subsection (3)(b) of that section, or
    - section 27 of that Act by virtue of subsection (2)(b) of that section,
  - (d) any land acquired from a foundation body,
  - (e) any land acquired from the Funding Agency for Schools,
  - (f) any land acquired, or enhanced in value, wholly or partly by means of any maintenance, special purpose or capital grant

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(within the meaning of Chapter 6 of Part 3 of the Education Act 1996),

- (g) any land acquired, or enhanced in value, wholly or partly by means of any grant made on or after 1st April 2007 by the Secretary of State under paragraph 5 of Schedule 3 (including that provision as applied by any enactment) in relation to which notice is given in accordance with paragraph A27,
- (h) any land acquired, or enhanced in value, wholly or partly by means of expenditure incurred for the purposes of the school and treated by the local education authority as expenditure of a capital nature, or
- (i) any land acquired, or enhanced in value, wholly or partly with the proceeds of disposal of any land acquired or enhanced in value as mentioned in any of paragraphs (a) to (h).

- (2) But this paragraph does not apply to any disposal which—
  - (a) is made by the governing body of a foundation or foundation special school after the commencement of this sub-paragraph, and
  - (b) is a disposal to the trustees of the school made on the school becoming a school with a foundation established otherwise than under this Act.

- (3) Sub-paragraph (1)(h) does not apply in the case of any expenditure incurred on or after the appointed day unless the authority—
  - (a) prepared an appropriate statement in relation to the expenditure, and
  - (b) sent a copy of the statement to the governing body either before, or no later than 12 months after, the expenditure was incurred.

- (4) An “appropriate statement” in relation to expenditure is a statement in writing which—
  - (a) contains details of the amount of the expenditure, the acquisition or works funded (or to be funded) by such expenditure, and the total cost (or estimated total cost) of that acquisition or those works, and
  - (b) indicates that the expenditure was being treated by the authority as expenditure of a capital nature.

- A2 (1) This paragraph applies to a disposal of land to which paragraph A1 applies if, or to the extent that, it comprises a disposal of non-playing field land.
- (2) “Non-playing field land” means land which does not include playing fields within the meaning of section 77.
- (3) Accordingly, in this paragraph, paragraphs A3 to A5 and paragraph A19—
  - (a) references to the disposal are to the disposal by the governing body of the non-playing field land, and
  - (b) references to the land are to that non-playing field land.

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- (4) The governing body must give the local education authority notice of their intention to dispose of the land.
- (5) That notification must specify—
  - (a) the relevant capital expenditure upon which it is proposed the publicly funded proceeds of disposal are to be used, and
  - (b) the estimated amount of the proceeds of disposal.
- (6) For the purposes of this paragraph and paragraphs A3 and A4, the “publicly funded proceeds of disposal” means the proceeds of disposal which are attributable to the land having been acquired or enhanced in value, or both, as the case may be, as mentioned in the relevant paragraph or paragraphs of sub-paragraph (1) of paragraph A1.
- (7) The authority may, within the requisite period, give the governing body any or all of the following—
  - (a) notice of their objection to the disposal, giving reasons for their objection;
  - (b) notice of their objection to the proposed use of the publicly funded proceeds of disposal, giving reasons for their objection;
  - (c) notice of their claim to the whole or a part of the publicly funded proceeds of disposal.
- (8) The “requisite period” means the period of 6 weeks beginning with the date upon which the governing body gave notification of the disposal to the authority under sub-paragraph (4).
- (9) A notice given under sub-paragraph (7) may be withdrawn at any time by the authority giving the governing body notice to that effect.
- (10) The governing body may not make the disposal within the requisite period unless within that period—
  - (a) the authority give the governing body notice that they relinquish any right to give notice under sub-paragraph (7)(a) in relation to the disposal, or
  - (b) in a case where the authority give notice of their objection to the disposal in accordance with sub-paragraph (7)(a), the relevant requirements in relation to such a notice are met.
- (11) If the authority give notice of their objection to the disposal in accordance with sub-paragraph (7)(a), the governing body may not make the disposal on or after the expiry of the requisite period until the relevant requirements in relation to such a notice are met.
- (12) The “relevant requirements” in relation to a notice given under sub-paragraph (7)(a) are met if—
  - (a) the adjudicator has approved the disposal on a reference made under paragraph A3(1), or
  - (b) the authority have withdrawn notice of their objection to the disposal in accordance with sub-paragraph (9).
- (13) If the authority give either or both of the following notices in relation to the disposal in accordance with sub-paragraph (7)—

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- (a) notice of their objection to the proposed use of the publicly funded proceeds of disposal under sub-paragraph (7)(b);
  - (b) notice of their claim to the whole or a part of the publicly funded proceeds of disposal under sub-paragraph (7)(c),
- the governing body may not use the publicly funded proceeds of disposal until the relevant requirements in relation to each notice so given are met.
- (14) The “relevant requirements” in relation to a notice given under sub-paragraph (7)(b) are met if—
- (a) the relevant capital expenditure upon which the publicly funded proceeds of disposal are to be used has been determined in accordance with paragraph A3(2), or
  - (b) the authority have withdrawn notice of their objection to the proposed use of the publicly funded proceeds of disposal in accordance with sub-paragraph (9).
- (15) The “relevant requirements” in relation to a notice given under sub-paragraph (7)(c) are met if—
- (a) the “appropriate amount” has been determined in accordance with paragraph A3(3), or
  - (b) the authority have withdrawn notice of their claim in accordance with sub-paragraph (9).
- A3 (1) Where the authority give the governing body notice of their objection to the disposal in accordance with paragraph A2(7)(a), the governing body or the authority may refer the matter to the adjudicator for a determination by him as to whether he approves the disposal.
- (2) Where the authority give the governing body notice of their objection to the proposed use of the publicly funded proceeds of disposal in accordance with paragraph A2(7)(b), the relevant capital expenditure upon which those proceeds are to be used is to be determined—
- (a) by agreement between the governing body and the authority, or
  - (b) by the adjudicator where—
    - (i) the governing body or the authority refer the matter to him for determination, and
    - (ii) by the time of his determination the matter has not been determined by agreement between the governing body and the authority.
- (3) Where the authority give the governing body notice of their claim to the whole or a part of the publicly funded proceeds of disposal in accordance with paragraph A2(7)(c), the amount of those proceeds which it is appropriate for the governing body to pay to the authority (the “appropriate amount”) is to be determined—
- (a) by agreement between the governing body and the authority, or
  - (b) by the adjudicator where—
    - (i) the governing body or the authority refer the matter to him for determination, and
    - (ii) by the time of his determination the matter has not been determined by agreement between the governing body and the authority.

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- (4) Before making a reference to the adjudicator under sub-paragraph (1), (2)(b) or (3)(b), the governing body or, as the case may be, the authority, must give the other notice of their intention to make the reference.
  - (5) On a reference under sub-paragraph (1), (2)(b) or (3)(b), the adjudicator may determine the proportion (if any) of the proceeds of disposal that are or will be the publicly funded proceeds of disposal.
- A4
- (1) This paragraph applies where the disposal is made.
  - (2) The governing body must notify the authority that the disposal has been made and of the amount of the proceeds of disposal.
  - (3) Where—
    - (a) the authority gave notice of their claim to the whole or a part of the publicly funded proceeds of disposal in accordance with paragraph A2(7)(c), and
    - (b) the “appropriate amount” has been determined in accordance with paragraph A3(3) to be an amount greater than zero,the governing body must pay the “appropriate amount” to the authority.
  - (4) The governing body must ensure that the remaining publicly funded proceeds of disposal are used on the agreed relevant capital expenditure.
  - (5) If the amount of the remaining publicly funded proceeds of disposal exceeds the amount of the agreed relevant capital expenditure, then the governing body must ensure that the surplus amount is used on relevant capital expenditure.
  - (6) The “agreed relevant capital expenditure” means—
    - (a) in a case where—
      - (i) no notice of objection to the proposed use of the publicly funded proceeds of disposal was given by the authority in accordance with paragraph A2(7)(b), or
      - (ii) such a notice was so given and was then withdrawn in accordance with paragraph A2(9),the relevant capital expenditure specified in the notification of the disposal given to the authority under paragraph A2(4), and
    - (b) in a case where such notice of objection was so given and was not withdrawn, the relevant capital expenditure upon which the publicly funded proceeds of disposal are to be used as determined in accordance with paragraph A3(2).
  - (7) The “remaining publicly funded proceeds of disposal” means the amount of the publicly funded proceeds of disposal which remains after deducting the “appropriate amount” (if any) determined in accordance with paragraph A3(3).
  - (8) Sub-paragraphs (3), (4) and (5) are subject to paragraph A2(13) (restriction on use of publicly funded proceeds of disposal where notices given under paragraph A2(7)(b) or (c)).
- A5
- (1) This paragraph applies where—

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- (a) the authority gave notice of their objection to the disposal in accordance with paragraph A2(7)(a), and
  - (b) the adjudicator has determined that he does not approve the disposal.
- (2) The governing body may apply to the adjudicator for an order to be made by him requiring the land or any part of the land to be transferred to such local authority as he may specify subject to the payment by that authority of such sum by way of consideration (if any) as he determines to be appropriate.
- (3) Before making an application under sub-paragraph (2), the governing body must give the local education authority notice of their intention to make the application.
- A6 (1) For the purposes of paragraphs A2 to A4, “relevant capital expenditure”, in relation to a disposal of land by the governing body of a foundation, voluntary or foundation special school, means capital expenditure in relation to the premises of—
- (a) the school,
  - (b) any existing foundation, voluntary or foundation special school, city technology college, city college for the technology of the arts, or Academy, or
  - (c) any proposed foundation, voluntary or foundation special school, or Academy.
- (2) For the purposes of sub-paragraph (1)(c) it is irrelevant whether proposals have yet been published under any enactment in respect of the proposed school or Academy in question.

**Disposal of land by foundation body**

- A7 (1) This paragraph applies to any disposal by a foundation body in England of—
- (a) any land acquired under any of the following—
    - paragraph 2, 4 or 9 of Schedule 3;
    - paragraph 16 or 20 of Schedule 6 (including that provision as applied by any enactment);
    - paragraph 5 or 6 of Schedule 21;
    - paragraph 5(4B)(d) of this Schedule;
    - any regulations made under paragraph 5 of Schedule 8,
  - (b) any land acquired under any of the following—
    - paragraph 8(5) of Schedule 8 to the Education Act 2002;
    - paragraph 14(5) of Schedule 10 to the Education Act 2005;
    - paragraph 28(2) or 31(1) of Schedule 2 to the Education and Inspections Act 2006 (including that provision as applied by any enactment);
    - any regulations made under section 24 of that Act by virtue of subsection (3)(b) of that section;
    - any regulations made under section 27 of that Act by virtue of subsection (2)(b) of that section,

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- (c) any land acquired from the governing body of a maintained school,
  - (d) any land acquired from another foundation body,
  - (e) any land acquired, or enhanced in value, wholly or partly by means of any grant provided by the Secretary of State on or after the appointed day other than a grant made on or after 1st April 2007 under paragraph 5 of Schedule 3 (including that provision as applied by any enactment),
  - (f) any land acquired, or enhanced in value, wholly or partly by means of any grant made on or after 1st April 2007 by the Secretary of State under paragraph 5 of Schedule 3 (including that provision as applied by any enactment) in relation to which notice is given in accordance with paragraph A27,
  - (g) any land acquired, or enhanced in value, wholly or partly by means of expenditure incurred for the purposes of any of the schools comprising the group for which the body acts and treated by the local education authority as expenditure of a capital nature, or
  - (h) any land acquired, or enhanced in value, wholly or partly with the proceeds of disposal of any land acquired or enhanced in value as mentioned in any of paragraphs (a) to (g).
- (2) A “foundation body in England” means a foundation body where each of the schools comprising the group of schools for which the foundation body acts is maintained by a local education authority in England.
- (3) But this paragraph does not apply to any disposal which—
- (a) is made by a foundation body after the commencement of this sub-paragraph, and
  - (b) is a disposal to the trustees of a foundation or foundation special school made on the school leaving the group for which the foundation body acts and becoming a school with a foundation established otherwise than under this Act.
- (4) Sub-paragraph (1)(g) does not apply in the case of any expenditure incurred on or after the appointed day unless the authority—
- (a) prepared an appropriate statement in relation to the expenditure, and
  - (b) sent a copy of the statement to the foundation body either before, or no later than 12 months after, the expenditure was incurred.
- (5) An “appropriate statement” in relation to expenditure is a statement in writing which—
- (a) contains details of the amount of the expenditure, the acquisition or works funded (or to be funded) by such expenditure, and the total cost (or estimated total cost) of that acquisition or those works, and
  - (b) indicates that the expenditure was being treated by the authority as expenditure of a capital nature.
- A8 (1) This paragraph applies to a disposal of land to which paragraph A7 applies if, or to the extent that, it comprises a disposal of non-playing field land.

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- (2) “Non-playing field land” means land which does not include playing fields within the meaning of section 77.
- (3) Accordingly, in this paragraph, paragraphs A9 to A11 and paragraph A19—
  - (a) references to the disposal are to the disposal by the foundation body of the non-playing field land, and
  - (b) references to the land are to that non-playing field land.
- (4) The foundation body must give the local education authority notice of its intention to dispose of the land.
- (5) That notification must specify—
  - (a) the relevant capital expenditure upon which it is proposed the publicly funded proceeds of disposal are to be used, and
  - (b) the estimated amount of the proceeds of disposal.
- (6) For the purposes of this paragraph and paragraphs A9 and A10, the “publicly funded proceeds of disposal” means the proceeds of disposal which are attributable to the land having been acquired or enhanced in value, or both, as the case may be, as mentioned in the relevant paragraph or paragraphs of sub-paragraph (1) of paragraph A7.
- (7) The authority may, within the requisite period, give the foundation body any or all of the following—
  - (a) notice of their objection to the disposal, giving reasons for their objection;
  - (b) notice of their objection to the proposed use of the publicly funded proceeds of disposal, giving reasons for their objection;
  - (c) notice of their claim to the whole or a part of the publicly funded proceeds of disposal.
- (8) The “requisite period” means the period of 6 weeks beginning with the date upon which the foundation body gave notification of the disposal to the authority under sub-paragraph (4).
- (9) A notice given under sub-paragraph (7) may be withdrawn at any time by the authority giving the foundation body notice to that effect.
- (10) The foundation body may not make the disposal within the requisite period unless within that period—
  - (a) the authority give the foundation body notice that they relinquish any right to give notice under sub-paragraph (7)(a) in relation to the disposal, or
  - (b) in a case where the authority give notice of their objection to the disposal in accordance with sub-paragraph (7)(a), the relevant requirements in relation to such a notice are met.
- (11) If the authority give notice of their objection to the disposal in accordance with sub-paragraph (7)(a), the foundation body may not make the disposal on or after the expiry of the requisite period until the relevant requirements in relation to such a notice are met.



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- (12) The “relevant requirements” in relation to a notice given under sub-paragraph (7)(a) are met if—
- (a) the adjudicator has approved the disposal on a reference made under paragraph A9(1), or
  - (b) the authority have withdrawn notice of their objection to the disposal in accordance with sub-paragraph (9).
- (13) If the authority give either or both of the following notices in relation to the disposal in accordance with sub-paragraph (7)—
- (a) notice of their objection to the proposed use of the publicly funded proceeds of disposal under sub-paragraph (7)(b);
  - (b) notice of their claim to the whole or a part of the publicly funded proceeds of disposal under sub-paragraph (7)(c),
- the foundation body may not use the publicly funded proceeds of disposal until the relevant requirements in relation to each notice so given are met.
- (14) The “relevant requirements” in relation to a notice given under sub-paragraph (7)(b) are met if—
- (a) the relevant capital expenditure upon which the publicly funded proceeds of disposal are to be used has been determined in accordance with paragraph A9(2), or
  - (b) the authority have withdrawn notice of their objection to the proposed use of the publicly funded proceeds of disposal in accordance with sub-paragraph (9).
- (15) The “relevant requirements” in relation to a notice given under sub-paragraph (7)(c) are met if—
- (a) the “appropriate amount” has been determined in accordance with paragraph A9(3), or
  - (b) the authority have withdrawn notice of their claim in accordance with sub-paragraph (9).
- A9 (1) Where the authority give the foundation body notice of their objection to the disposal in accordance with paragraph A8(7)(a), the foundation body or the authority may refer the matter to the adjudicator for a determination by him as to whether he approves the disposal.
- (2) Where the authority give the foundation body notice of their objection to the proposed use of the publicly funded proceeds of disposal in accordance with paragraph A8(7)(b), the relevant capital expenditure upon which those proceeds are to be used is to be determined—
- (a) by agreement between the foundation body and the authority, or
  - (b) by the adjudicator where—
    - (i) the foundation body refers or the authority refer the matter to him for determination, and
    - (ii) by the time of his determination the matter has not been determined by agreement between the foundation body and the authority.
- (3) Where the authority give the foundation body notice of their claim to the whole or a part of the publicly funded proceeds of disposal

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in accordance with paragraph A8(7)(c), the amount of those proceeds which it is appropriate for the foundation body to pay to the authority (the “appropriate amount”) is to be determined—

- (a) by agreement between the foundation body and the authority, or
- (b) by the adjudicator where—
  - (i) the foundation body refers or the authority refer the matter to him for determination, and
  - (ii) by the time of his determination the matter has not been determined by agreement between the foundation body and the authority.

- (4) Before making a reference to the adjudicator under sub-paragraph (1), (2)(b) or (3)(b), the foundation body or, as the case may be, the authority, must give the other notice of its or their intention to make the reference.
- (5) On a reference under sub-paragraph (1), (2)(b) or (3)(b), the adjudicator may determine the proportion (if any) of the proceeds of disposal that are or will be the publicly funded proceeds of disposal.

- A10
- (1) This paragraph applies where the disposal is made.
  - (2) The foundation body must notify the authority that the disposal has been made and of the amount of the proceeds of disposal.
  - (3) Where—
    - (a) the authority gave notice of their claim to the whole or a part of the publicly funded proceeds of disposal in accordance with paragraph A8(7)(c), and
    - (b) the “appropriate amount” has been determined in accordance with paragraph A9(3) to be an amount greater than zero,
 the foundation body must pay the “appropriate amount” to the authority.
  - (4) The foundation body must ensure that the remaining publicly funded proceeds of disposal are used on the agreed relevant capital expenditure.
  - (5) If the amount of the remaining publicly funded proceeds of disposal exceeds the amount of the agreed relevant capital expenditure, then the foundation body must ensure that the surplus amount is used on relevant capital expenditure.
  - (6) The “agreed relevant capital expenditure” means—
    - (a) in a case where—
      - (i) no notice of objection to the proposed use of the publicly funded proceeds of disposal was given by the authority in accordance with paragraph A8(7)(b), or
      - (ii) such a notice was so given and was then withdrawn in accordance with paragraph A8(9),
 the relevant capital expenditure specified in the notification of the disposal given to the authority under paragraph A8(4), and
    - (b) in a case where such notice of objection was so given and was not withdrawn, the relevant capital expenditure upon which the publicly funded proceeds of disposal are to be used as determined in accordance with paragraph A9(2).

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- (7) The “remaining publicly funded proceeds of disposal” means the amount of the publicly funded proceeds of disposal which remains after deducting the “appropriate amount” (if any) determined in accordance with paragraph A9(3).
- (8) Sub-paragraphs (3), (4) and (5) are subject to paragraph A8(13) (restriction on use of publicly funded proceeds of disposal where notices given under paragraph A8(7)(b) or (c)).
- A11 (1) This paragraph applies where—
- (a) the authority gave notice of their objection to the disposal in accordance with paragraph A8(7)(a), and
  - (b) the adjudicator has determined that he does not approve the disposal.
- (2) The foundation body may apply to the adjudicator for an order to be made by him requiring the land or any part of the land to be transferred to such local authority as he may specify subject to the payment by that authority of such sum by way of consideration (if any) as he determines to be appropriate.
- (3) Before making an application under sub-paragraph (2), the foundation body must give the local education authority notice of its intention to make the application.
- A12 (1) For the purposes of paragraphs A8 to A10, “relevant capital expenditure”, in relation to a disposal of land by a foundation body, means capital expenditure in relation to the premises of—
- (a) any of the schools comprising the group for which the body acts,
  - (b) any existing foundation, voluntary or foundation special school, city technology college, city college for the technology of the arts, or Academy, or
  - (c) any proposed foundation, voluntary or foundation special school, or Academy.
- (2) For the purposes of sub-paragraph (1)(c) it is irrelevant whether proposals have yet been published under any enactment in respect of the proposed school or Academy in question.

### **Disposal of land by trustees of foundation, voluntary or foundation special school**

- A13 (1) This sub-paragraph applies to any disposal by the trustees of a foundation, voluntary or foundation special school in England of—
- (a) any land acquired under section 60, 61 or 70 of the Education Act 1996,
  - (b) any land acquired under any of the following—
    - paragraph 2 of Schedule 3;
    - paragraph 16 of Schedule 6 (including that provision as applied by any enactment);
    - paragraph 5(4B)(d) of this Schedule;
    - any regulations made under paragraph 5 of Schedule 8,

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- (c) any land acquired under any of the following—
    - paragraph 4 or 9 of Schedule 3;
    - paragraph 20 of Schedule 6 (including that provision as applied by any enactment),
  - (d) any land acquired under any of the following—
    - paragraph 8(5) of Schedule 8 to the Education Act 2002;
    - paragraph 14(5) of Schedule 10 to the Education Act 2005;
    - paragraph 28(2) or 31(1) of Schedule 2 to the Education and Inspections Act 2006 (including that provision as applied by any enactment);
    - any regulations made under section 24 of that Act by virtue of subsection (3)(b) of that section,
  - (e) any land acquired, or enhanced in value, wholly or partly by means of expenditure incurred on or after the appointed day for the purposes of the school and treated by the local education authority as expenditure of a capital nature,
  - (f) any land acquired from the Funding Agency for Schools,
  - (g) any land acquired, or enhanced in value, wholly or partly by means of—
    - (i) any maintenance, special purpose or capital grant (within the meaning of Chapter 6 of Part 3 of the Education Act 1996), or
    - (ii) any grant paid under section 216(2) of that Act,
  - (h) any land acquired wholly or partly with the proceeds of disposal of any land acquired or enhanced in value as mentioned in paragraph (f) or (g),
  - (i) any land acquired, or enhanced in value, wholly or partly by means of any grant made in pursuance of a special agreement (as defined by section 32(5) of the Education Act 1996),
  - (j) any land acquired, or enhanced in value, wholly or partly by means of any grant made on or after 1st April 2007 by the Secretary of State under paragraph 5 of Schedule 3 (including that provision as applied by any enactment) in relation to which notice is given in accordance with paragraph A27, or
  - (k) any land acquired, or enhanced in value, wholly or partly with the proceeds of disposal of any land acquired or enhanced in value as mentioned in paragraph (j).
- (2) This sub-paragraph applies to any disposal by the trustees of a foundation or foundation special school in England of—
- (a) any land acquired by the trustees from the governing body of the school or of another foundation or foundation special school which was land—
    - (i) acquired by the governing body under a transfer under section 201(1)(a) of the Education Act 1996,
    - (ii) acquired by the governing body under any of the provisions mentioned in sub-paragraph (1)(b) or under paragraph 8A of this Schedule, or

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- (iii) acquired by the governing body, or enhanced in value, wholly or partly with the proceeds of disposal of land acquired as mentioned in sub-paragraph (i) or (ii), or
    - (b) any land acquired, or enhanced in value, wholly or partly with the proceeds of disposal of any land acquired as mentioned in sub-paragraph (1)(b).
  - (3) This sub-paragraph applies to any disposal by the trustees of a voluntary school in England of—
    - (a) any land acquired by the trustees from the governing body of the school which was land acquired by the governing body—
      - (i) under a transfer under section 201(1)(a) of the Education Act 1996, or
      - (ii) wholly or partly with the proceeds of disposal of any land so acquired,and transferred by the governing body to be held on trust by the trustees, or
    - (b) in the case of a school to which sub-paragraph (4) applies, any land acquired, or enhanced in value, wholly or partly by means of expenditure incurred under section 63 or 64 of the Education Act 1996.
  - (4) This sub-paragraph applies to a voluntary aided school which was, immediately before the appointed day, a controlled school within the meaning of the Education Act 1996.
  - (5) Sub-paragraph (1)(e) does not apply in the case of any expenditure unless the authority—
    - (a) prepared an appropriate statement in relation to the expenditure, and
    - (b) sent a copy of the statement to the trustees either before, or no later than 12 months after, the expenditure was incurred.
  - (6) An “appropriate statement” in relation to expenditure is a statement in writing which—
    - (a) contains details of the amount of the expenditure, the acquisition or works funded (or to be funded) by such expenditure, and the total cost (or estimated total cost) of that acquisition or those works, and
    - (b) indicates that the expenditure was being treated by the authority as expenditure of a capital nature.
  - (7) Where the trustees of a foundation, voluntary or foundation special school wish, in the case of any land held by them for the purposes of the school, to use the land for purposes not connected with the provision of education in maintained schools the preceding provisions of this paragraph and paragraphs A14 to A16 apply (subject to the modifications specified in paragraphs A14(18), A15(5) and A16(9)) as if any such change of use of the land were a disposal of the land.
- A14 (1) This paragraph applies to a disposal of land to which sub-paragraph (1), (2) or (3) of paragraph A13 applies.

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- (2) But this paragraph only applies to a disposal if, or to the extent that, it comprises a disposal of non-playing field land which does not fall within sub-paragraph (5).
- (3) “Non-playing field land” means land which does not include playing fields within the meaning of section 77.
- (4) Accordingly, in this paragraph, paragraphs A15 to A17 and paragraph A19—
  - (a) references to the disposal are to the disposal by the trustees of the non-playing field land, and
  - (b) references to the land are to that non-playing field land.
- (5) A disposal of non-playing field land falls within this sub-paragraph if it is a disposal of—
  - (a) land acquired under section 60 or 61 of the Education Act 1996, or
  - (b) land acquired under paragraph 2 or 4 of Schedule 3 to this Act, by the trustees of an institution which is, or has at any time been, within the further education sector (as defined by section 4(3) of the Education Act 1996).
- (6) The trustees must give the local education authority notice of their intention to dispose of the land.
- (7) That notification must specify—
  - (a) the relevant capital expenditure upon which it is proposed the publicly funded proceeds of disposal are to be used, and
  - (b) the estimated amount of the proceeds of disposal.
- (8) For the purposes of this paragraph and paragraphs A15 and A16, the “publicly funded proceeds of disposal” means the proceeds of disposal which are attributable to the land having been acquired or enhanced in value, or both, as the case may be, as mentioned in the relevant paragraph or paragraphs of sub-paragraph (1), (2) or (3) of paragraph A13.
- (9) The authority may, within the requisite period, give the trustees any or all of the following—
  - (a) notice of their objection to the disposal, giving reasons for their objection;
  - (b) notice of their objection to the proposed use of the publicly funded proceeds of disposal, giving reasons for their objection;
  - (c) notice of their claim to the whole or a part of the publicly funded proceeds of disposal.
- (10) The “requisite period” means the period of 6 weeks beginning with the date upon which the trustees gave notification of the disposal to the authority under sub-paragraph (6).
- (11) A notice given under sub-paragraph (9) may be withdrawn at any time by the authority giving the trustees notice to that effect.
- (12) The trustees may not make the disposal within the requisite period unless within that period—

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- (a) the authority give the trustees notice that they relinquish any right to give notice under sub-paragraph (9)(a) in relation to the disposal, or
  - (b) in a case where the authority give notice of their objection to the disposal in accordance with sub-paragraph (9)(a), the relevant requirements in relation to such a notice are met.
- (13) If the authority give notice of their objection to the disposal in accordance with sub-paragraph (9)(a), the trustees may not make the disposal on or after the expiry of the requisite period until the relevant requirements in relation to such a notice are met.
- (14) The “relevant requirements” in relation to a notice given under sub-paragraph (9)(a) are met if—
  - (a) the adjudicator has approved the disposal on a reference made under paragraph A15(1), or
  - (b) the authority have withdrawn notice of their objection to the disposal in accordance with sub-paragraph (11).
- (15) If the authority give either or both of the following notices in relation to the disposal in accordance with sub-paragraph (9)—
  - (a) notice of their objection to the proposed use of the publicly funded proceeds of disposal under sub-paragraph (9)(b);
  - (b) notice of their claim to the whole or a part of the publicly funded proceeds of disposal under sub-paragraph (9)(c),the trustees may not use the publicly funded proceeds of disposal until the relevant requirements in relation to each notice so given are met.
- (16) The “relevant requirements” in relation to a notice given under sub-paragraph (9)(b) are met if—
  - (a) the relevant capital expenditure upon which the publicly funded proceeds of disposal are to be used has been determined in accordance with paragraph A15(2), or
  - (b) the authority have withdrawn notice of their objection to the proposed use of the publicly funded proceeds of disposal in accordance with sub-paragraph (11).
- (17) The “relevant requirements” in relation to a notice given under sub-paragraph (9)(c) are met if—
  - (a) the “appropriate amount” has been determined in accordance with paragraph A15(3), or
  - (b) the authority have withdrawn notice of their claim in accordance with sub-paragraph (11).
- (18) In its application in the case of a disposal of land to which sub-paragraph (1), (2) or (3) of paragraph A13 applies by virtue of sub-paragraph (7) of that paragraph, this paragraph is modified as follows—
  - (a) in sub-paragraph (7) for paragraphs (a) and (b) substitute “the purposes for which it is proposed the land is to be used”,
  - (b) in sub-paragraph (9)—
    - (i) omit paragraphs (a) and (c), and

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- (ii) in paragraph (b), for “proposed use of the publicly funded proceeds of disposal” substitute “proposed purposes for which the land is to be used”,
  - (c) in sub-paragraph (15)—
    - (i) for “proposed use of the publicly funded proceeds of disposal” substitute “proposed purposes for which the land is to be used”, and
    - (ii) for “use the publicly funded proceeds of disposal” substitute “use the land for purposes not connected with the provision of education in maintained schools”, and
  - (d) in sub-paragraph (16)—
    - (i) for “relevant capital expenditure upon which the publicly funded proceeds of disposal are to be used has” substitute “purposes for which the land is to be used have”, and
    - (ii) for “proposed use of the publicly funded proceeds of disposal” substitute “proposed purposes for which the land is to be used”.
- A15 (1) Where the authority give the trustees notice of their objection to the disposal in accordance with paragraph A14(9)(a), the trustees or the authority may refer the matter to the adjudicator for a determination by him as to whether he approves the disposal.
- (2) Where the authority give the trustees notice of their objection to the proposed use of the publicly funded proceeds of disposal in accordance with paragraph A14(9)(b), the relevant capital expenditure upon which those proceeds are to be used is to be determined—
- (a) by agreement between the trustees and the authority, or
  - (b) by the adjudicator where—
    - (i) the trustees or the authority refer the matter to him for determination, and
    - (ii) by the time of his determination the matter has not been determined by agreement between the trustees and the authority.
- (3) Where the authority give the trustees notice of their claim to the whole or a part of the publicly funded proceeds of disposal in accordance with paragraph A14(9)(c), the amount of those proceeds which it is appropriate for the trustees or their successors to pay to the authority (the “appropriate amount”) is to be determined—
- (a) by agreement between the trustees and the authority, or
  - (b) by the adjudicator where—
    - (i) the trustees or the authority refer the matter to him for determination, and
    - (ii) by the time of his determination the matter has not been determined by agreement between the trustees and the authority.
- (4) Before making a reference to the adjudicator under sub-paragraph (1), (2)(b) or (3)(b), the trustees or, as the case may be, the authority, must give the other notice of their intention to make the reference.



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- (5) On a reference under sub-paragraph (1), (2)(b) or (3)(b), the adjudicator may determine the proportion (if any) of the proceeds of disposal that are or will be the publicly funded proceeds of disposal.
  - (6) In the application of this paragraph in the case of a disposal of land to which sub-paragraph (1), (2) or (3) of paragraph A13 applies by virtue of sub-paragraph (7) of that paragraph, sub-paragraph (2) is modified as follows—
    - (a) for “proposed use of the publicly funded proceeds of disposal” substitute “proposed purposes for which the land is to be used”, and
    - (b) for “relevant capital expenditure upon which those proceeds are to be used is” substitute “purposes for which the land is to be used are”.
- A16
- (1) This paragraph applies where the disposal is made.
  - (2) The trustees must notify the authority that the disposal has been made and of the amount of the proceeds of disposal.
  - (3) Where—
    - (a) the authority gave notice of their claim to the whole or a part of the publicly funded proceeds of disposal in accordance with paragraph A14(9)(c), and
    - (b) the “appropriate amount” has been determined in accordance with paragraph A15(3) to be an amount greater than zero,the trustees or their successors must pay the “appropriate amount” to the authority.
  - (4) The trustees and their successors must ensure that the remaining publicly funded proceeds of disposal are used on the agreed relevant capital expenditure.
  - (5) If the amount of the remaining publicly funded proceeds of disposal exceeds the amount of the agreed relevant capital expenditure, then the trustees and their successors must ensure that the surplus amount is used on relevant capital expenditure.
  - (6) The “agreed relevant capital expenditure” means—
    - (a) in a case where—
      - (i) no notice of objection to the proposed use of the publicly funded proceeds of disposal was given by the authority in accordance with paragraph A14(9)(b), or
      - (ii) such a notice was so given and was then withdrawn in accordance with paragraph A14(11),the relevant capital expenditure specified in the notification of the disposal given to the authority under paragraph A14(6), and
    - (b) in a case where such notice of objection was so given and was not withdrawn, the relevant capital expenditure upon which the publicly funded proceeds of disposal are to be used as determined in accordance with paragraph A15(2).

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- (7) The “remaining publicly funded proceeds of disposal” means the amount of the publicly funded proceeds of disposal which remains after deducting the “appropriate amount” (if any) determined in accordance with paragraph A15(3).
- (8) Sub-paragraphs (3), (4) and (5) are subject to paragraph A14(15) (restriction on use of publicly funded proceeds of disposal where notices given under paragraph A14(9)(b) or (c)).
- (9) In its application in the case of a disposal of land to which sub-paragraph (1), (2) or (3) of paragraph A13 applies by virtue of sub-paragraph (7) of that paragraph, this paragraph is modified as follows—
- (a) in sub-paragraph (2) omit the words from “and of the amount” to the end,
  - (b) in sub-paragraph (4) for “remaining publicly funded proceeds of disposal are used on the agreed relevant capital expenditure” substitute “land is used for the agreed purposes”,
  - (c) omit sub-paragraph (5), and
  - (d) in sub-paragraph (6)—
    - (i) for “agreed relevant capital expenditure” substitute “agreed purposes”,
    - (ii) for “proposed use of the publicly funded proceeds of disposal” substitute “proposed purposes for which the land is to be used”,
    - (iii) for “relevant capital expenditure” substitute “proposed purposes”, and
    - (iv) for “relevant capital expenditure upon which the publicly funded proceeds of disposal are to be used” substitute “purposes for which the land is to be used”.
- A17 (1) This paragraph applies where—
- (a) the authority gave notice of their objection to the disposal in accordance with paragraph A14(9)(a), and
  - (b) the adjudicator has determined that he does not approve the disposal.
- (2) The trustees may apply to the adjudicator for an order to be made by him requiring the land or any part of the land to be transferred to such local authority as he may specify subject to the payment by that authority of such sum by way of consideration (if any) as he determines to be appropriate.
- (3) Before making an application under sub-paragraph (2), the trustees must give the local education authority notice of their intention to make the application.
- A18 (1) For the purposes of paragraphs A14 to A16, “relevant capital expenditure”, in relation to a disposal of land by the trustees of a foundation, voluntary or foundation special school, means capital expenditure in relation to the premises of—
- (a) the school,

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- (b) any existing foundation, voluntary or foundation special school, city technology college, city college for the technology of the arts, or Academy, or
  - (c) any proposed foundation, voluntary or foundation special school, or Academy.
- (2) For the purposes of sub-paragraph (1)(c) it is irrelevant whether proposals have yet been published under any enactment in respect of the proposed school or Academy in question.

### **Duty to have regard to guidance etc**

- A19 (1) A local education authority, a governing body, a foundation body and trustees must have regard, in particular, to any guidance given from time to time by the Secretary of State—
- (a) in determining whether to give a notice, or make a reference or application to the adjudicator, under any of paragraphs A2 to A17, or
  - (b) in determining the publicly funded proceeds of disposal or the “appropriate amount” for the purposes of any of those paragraphs.
- (2) In determining any matter for the purposes of any of the provisions mentioned in sub-paragraph (1), the adjudicator must have regard, in particular, to any guidance given from time to time by the Secretary of State.
- (3) In addition to having regard to guidance as required under sub-paragraph (1)(b) or (2), a local education authority, a governing body, a foundation body, trustees and the adjudicator, must also have regard, in particular, to the factors mentioned in sub-paragraph (4) in determining any of the following for the purposes of any of paragraphs A2 to A17—
- (a) the publicly funded proceeds of disposal;
  - (b) the “appropriate amount”;
  - (c) the amount of the consideration (if any) to be paid under paragraph A5, A11 or A17.
- (4) The factors referred to in sub-paragraph (3) are—
- (a) in the case of any disposal, the value of the land as at the date of the determination,
  - (b) in the case of any disposal, any enhancement in value of the land attributable to expenditure on the land by the local education authority or a relevant person,
  - (c) in the case of any disposal, any expenditure on the land by a relevant person,
  - (d) in the case of any disposal, any relevant payments made by a relevant person to the local education authority or the Secretary of State,
  - (e) in the case of any disposal, to the extent that they do not fall within paragraph (c) or (d), any payments in respect of the acquisition of the land, and

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- (f) in the case of a disposal falling within paragraph A1(1)(i), paragraph A7(1)(h) or paragraph A13(1)(h) or (k), (2)(a)(iii) or (b), or (3)(a)(ii), the extent to which the proceeds of disposal mentioned in the provision in question were publicly funded proceeds of disposal as defined for the purposes of paragraph A2, A8 or A14, as the case may be.
- (5) A “relevant person” means—
- (a) in the case of a disposal to which paragraph A2 or A14 applies, the governing body or the trustees of the school in question, and
  - (b) in the case of a disposal to which paragraph A8 applies, the foundation body in question.
- (6) A “relevant payment” means—
- (a) in the case of any disposal, a payment in respect of the current school site or sites to which the land relates,
  - (b) in the case of any disposal, a payment under any of the following provisions—
    - paragraph 2(6) of Schedule 3;
    - paragraph 16(5) of Schedule 6 (including that provision as applied by any enactment);
    - section 60(4) of the Education Act 1996;
    - paragraph 28(5) of Schedule 2 to the Education and Inspections Act 2006 (including that provision as applied by any enactment), and
  - (c) in the case of a disposal of land falling within any of the following provisions—
    - paragraph A1(1)(f) or (g);
    - paragraph A7(1)(e) or (f);
    - paragraph A13(1)(g), (i) or (j),a payment in respect of the grant mentioned in the provision in question.
- (7) The reference in sub-paragraph (5)(a) to the governing body or the trustees of the school in question includes—
- (a) where the school was established in pursuance of proposals published under section 28(2) or 28A(2), the persons who published the proposals,
  - (b) where the school was established in pursuance of proposals published under section 70 of the Education Act 2002 or section 66 of the Education Act 2005 which were made by persons other than a local education authority, the persons by whom the proposals were made, and
  - (c) where the school was established in pursuance of proposals published under any of sections 7, 10 and 11 of the Education and Inspections Act 2006, any persons, other than a local education authority, by whom the proposals were treated for the purposes of Schedule 2 to that Act as having been made.
- (8) The reference in sub-paragraph (5)(b) to the foundation body in question includes—

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- (a) where the school or any of the schools to which the land in question relates was established in pursuance of proposals published under section 28(2) or 28A(2), the persons who published the proposals,
- (b) where the school or any of the schools to which the land in question relates was established in pursuance of proposals published under section 70 of the Education Act 2002 or section 66 of the Education Act 2005 which were made by persons other than a local education authority, the persons by whom the proposals were made, and
- (c) where the school or any of the schools to which the land in question relates was established in pursuance of proposals published under any of sections 7, 10 and 11 of the Education and Inspections Act 2006, any persons, other than a local education authority, by whom the proposals were treated for the purposes of Schedule 2 to that Act as having been made.

#### **Power to vary or revoke determinations or orders**

- A20 (1) A determination made by the adjudicator on a reference made to him under any of paragraphs A3 to A15 may be varied or revoked by a further determination made by him if—
- (a) the matter is referred to him by a relevant person in relation to the determination, and
  - (b) before making the further determination, the adjudicator consults such persons as he considers appropriate.
- (2) A “relevant person” in relation to a determination means—
- (a) the local education authority, governing body, foundation body or trustees who made the reference to the adjudicator in relation to which the determination was made, or
  - (b) any other of those persons who could have made that reference.
- (3) In determining whether to make a reference to the adjudicator under subparagraph (1)(a), a relevant person must have regard, in particular, to any guidance given from time to time by the Secretary of State.
- (4) An order made by the adjudicator on an application under paragraph A5, A11 or A17 may be varied or revoked by a further order made by him if—
- (a) an application for its variation or revocation is made to him by an appropriate person in relation to the order, and
  - (b) before making the further order, the adjudicator consults such persons as he considers appropriate.
- (5) An “appropriate person” in relation to an order made under paragraph A5, A11 or A17 means—
- (a) the governing body, the foundation body or the trustees, as the case may be, who applied for the order,
  - (b) the local education authority, or
  - (c) if different from that authority, the local authority to whom land is required to be transferred under the order.

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- (6) In determining whether to make an application to the adjudicator under sub-paragraph (4)(a), an appropriate person must have regard, in particular, to any guidance given from time to time by the Secretary of State.
- (7) Paragraph A19 applies in relation to the further determination by the adjudicator, by virtue of sub-paragraph (1) or (4), of any matter for the purposes of any of paragraphs A2 to A17 as it applies in relation to the original determination of the matter.

### **Meaning of “capital expenditure”**

- A21 (1) This paragraph applies to the references to capital expenditure in the definition of “relevant capital expenditure” in paragraphs A6, A12 and A18.
- (2) Subject to sub-paragraphs (3) and (4), such references are references to—
    - (a) in the case of paragraph A6, expenditure which, if it were to be incurred by the governing body, would fall to be capitalised in accordance with proper accounting practices;
    - (b) in the case of paragraph A12, expenditure which, if it were to be incurred by the foundation body, would fall to be capitalised in accordance with proper accounting practices;
    - (c) in the case of paragraph A18, expenditure which, if it were to be incurred by the trustees, would fall to be capitalised in accordance with proper accounting practices.
  - (3) The Secretary of State may by regulations prescribe classes or descriptions of expenditure which are to be treated—
    - (a) for the purposes of paragraph A6 as being, or as not being, capital expenditure of any governing body, or any prescribed class or description of governing body;
    - (b) for the purposes of paragraph A12 as being, or as not being, capital expenditure of any foundation body, or any prescribed class or description of foundation body;
    - (c) for the purposes of paragraph A18 as being, or as not being, capital expenditure of any trustees, or any prescribed class or description of trustee.
  - (4) The Secretary of State may by direction provide that—
    - (a) expenditure of a particular governing body, which is expenditure of a particular class or description, is to be treated for the purposes of paragraph A6 as being, or as not being, capital expenditure of that body;
    - (b) expenditure of a particular foundation body, which is expenditure of a particular class or description, is to be treated for the purposes of paragraph A12 as being, or as not being, capital expenditure of that body;
    - (c) expenditure of particular trustees, which is expenditure of a particular class or description, is to be treated for the purposes

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of paragraph A18 as being, or as not being, capital expenditure of those persons.

- (5) Directions under sub-paragraph (4) may be expressed to have effect in specified circumstances or subject to specified conditions.
- A22 (1) For the purposes of paragraph A21, “proper accounting practices”, in relation to a governing or foundation body, or to trustees, means those accounting practices—
- (a) which, whether by virtue of any enactment or by reference to any generally recognised published code or otherwise, are regarded as proper accounting practices to be followed in the keeping of accounts by that body, or as the case may be, those persons, or
  - (b) which, whether by virtue of any enactment or by reference to any generally recognised published code or otherwise, are regarded as proper accounting practices to be followed in the keeping of accounts by the relevant local education authority.
- (2) The “relevant local education authority” means the local education authority to whom notice of the disposal in question is required to be given under paragraph A2, A8 or A14.
- (3) In the event of conflict between the accounting practices falling within paragraph (a) of sub-paragraph (1) and those falling within paragraph (b) of that sub-paragraph, only those falling within paragraph (a) are to be regarded as proper accounting practices.

#### **Land required by local education authority for certain purposes**

- A23 (1) A local education authority in England may apply to the adjudicator for a transfer order under this paragraph in relation to publicly funded land which—
- (a) is held for the purposes of a foundation, voluntary or foundation special school by the governing body of the school,
  - (b) is held by a foundation body for the purposes of the group of schools for which it acts, or
  - (c) is held, or held on trust, for the purposes of a foundation, voluntary or foundation special school by the trustees of the school.
- (2) A transfer order is an order requiring the land in relation to which it is made to be transferred by the body or trustees holding it to the authority, subject to the payment by the authority of such sum by way of consideration (if any) as the adjudicator determines to be appropriate.
- (3) In determining whether to make an application under sub-paragraph (1) for a transfer order, a local education authority must have regard, in particular, to any guidance given from time to time by the Secretary of State.
- (4) Before making an application under sub-paragraph (1) for a transfer order in relation to publicly funded land, the authority must give the

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body or trustees holding the land notice of the authority's intention to make the application.

- (5) An application under sub-paragraph (1) must state the purpose for which the land to which it relates is required by the authority ("the stated purpose").
- (6) In relation to the content of such an application, a local education authority must have regard, in particular, to any guidance given from time to time by the Secretary of State.
- (7) Where an application is made under sub-paragraph (1) for a transfer order in relation to publicly funded land, the adjudicator may make a transfer order if he is satisfied that—
  - (a) the land is not required for the purposes of the school or, as the case may be, the schools in the group,
  - (b) the land is required by the authority for the stated purpose,
  - (c) the stated purpose is a qualifying purpose, and
  - (d) it is appropriate for the land to be used for that purpose.
- (8) For the purposes of sub-paragraph (7)(c) the stated purpose is a qualifying purpose if it falls within one or more of the following descriptions of purpose—
  - (a) the land is required for the purposes of any school or institution which is, or is to be, maintained by the authority, or which they have power to assist;
  - (b) the land is otherwise required for the purposes of the exercise of any of the functions of the authority;
  - (c) the land is required for the provision of children's services by or on behalf of the local authority who are that authority in the exercise of any of the relevant functions of that local authority.
- (9) For the purposes of sub-paragraph (8)(c)—
 

"children's services" are services provided for or in relation to any of the following persons (whether or not they are also provided for or in relation to any other persons)—

  - (a) children;
  - (b) persons aged 18 or 19;
  - (c) persons over the age of 19 who are receiving services under sections 23C to 24D of the Children Act 1989;
  - (d) persons over the age of 19 but under the age of 25 who have a learning difficulty, within the meaning of section 13 of the Learning and Skills Act 2000, and are receiving services under that Act;

"relevant functions" means the functions described in any of paragraphs (a), (c), (d) or (e) of subsection (1) of section 135 of the Education and Inspections Act 2006.
- (10) Before making a transfer order the adjudicator must consult the body or trustees holding the land in relation to which the application for the transfer order is made.



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- (11) In determining whether to make a transfer order, the adjudicator must have regard, in particular, to any guidance given from time to time by the Secretary of State.
  - (12) Where a transfer order is made, the authority must use the land to which it relates for the stated purpose.
  - (13) A transfer order made by the adjudicator may be varied or revoked by a further order made by the adjudicator if—
    - (a) an application for its variation or revocation is made to him by a relevant person in relation to the order, and
    - (b) before making the further order, the adjudicator consults such persons as he considers appropriate.
  - (14) A “relevant person” in relation to a transfer order means—
    - (a) the local education authority who applied for the transfer order, or
    - (b) the body or trustees who held the land to which the order relates.
  - (15) In determining whether to make an application to the adjudicator under sub-paragraph (13)(a), a relevant person must have regard, in particular, to any guidance given from time to time by the Secretary of State.
  - (16) Sub-paragraph (11) applies in relation to the making of a further order by virtue of sub-paragraph (13) as it applies in relation to the making of the original transfer order.
- A24 (1) For the purposes of paragraph A23, land held for the purposes of a foundation, voluntary or foundation special school by the governing body of the school is “publicly funded land” if it is—
- (a) land acquired under a transfer under section 201(1)(a) of the Education Act 1996,
  - (b) land acquired under any of the following—
    - paragraph 2 of Schedule 3;
    - paragraph 16 of Schedule 6 (including that provision as applied by any enactment);
    - paragraph 5(4)(c), 5(4B)(d) or 8A of this Schedule;
    - any regulations made under paragraph 5 of Schedule 8;
    - paragraph 28(2) of Schedule 2 to the Education and Inspections Act 2006 (including that provision as applied by any enactment),
  - (c) land acquired under any regulations made under—
    - section 24 of the Education and Inspections Act 2006 by virtue of subsection (3)(b) of that section, or
    - section 27 of that Act by virtue of subsection (2)(b) of that section,
  - (d) land acquired from a foundation body,
  - (e) land acquired from the Funding Agency for Schools,
  - (f) land acquired wholly by means of—

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- (i) any maintenance, special purpose or capital grant (within the meaning of Chapter 6 of Part 3 of the Education Act 1996), or
  - (ii) any grant paid under any regulations made under paragraph 4 of Schedule 32 to this Act other than a grant paid under such regulations to the governing body of a voluntary aided school,
  - (g) land acquired wholly or partly by means of any grant made on or after 1st April 2007 by the Secretary of State under paragraph 5 of Schedule 3 (including that provision as applied by any enactment) in relation to which notice is given in accordance with paragraph A27,
  - (h) land acquired wholly by means of expenditure incurred for the purposes of the school and treated by the local education authority as expenditure of a capital nature, or
  - (i) land acquired wholly with the proceeds of disposal of any land acquired as mentioned in any of paragraphs (a) to (h).
- (2) Sub-paragraph (1)(h) does not apply in the case of any expenditure incurred on or after the appointed day unless the authority—
- (a) prepared an appropriate statement in relation to the expenditure, and
  - (b) sent a copy of the statement to the governing body either before, or no later than 12 months after, the expenditure was incurred.
- (3) An “appropriate statement” in relation to expenditure is a statement in writing which—
- (a) contains details of the amount of the expenditure, the acquisition or works funded (or to be funded) by such expenditure, and the total cost (or estimated total cost) of that acquisition or those works, and
  - (b) indicates that the expenditure was being treated by the authority as expenditure of a capital nature.
- A25 (1) For the purposes of paragraph A23, land held by a foundation body for the purposes of the group of schools for which it acts is “publicly funded land” if it is—
- (a) land acquired under any of the following—
    - paragraph 2, 4 or 9 of Schedule 3;
    - paragraph 16 or 20 of Schedule 6 (including that provision as applied by any enactment);
    - paragraph 5 or 6 of Schedule 21;
    - paragraph 5(4B)(d) of this Schedule;
    - any regulations made under paragraph 5 of Schedule 8,
  - (b) land acquired under any of the following—
    - paragraph 8(5) of Schedule 8 to the Education Act 2002;
    - paragraph 14(5) of Schedule 10 to the Education Act 2005;
    - paragraph 28(2) or 31(1) of Schedule 2 to the Education and Inspections Act 2006 (including that provision as applied by any enactment);

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- any regulations made under section 24 of that Act by virtue of subsection (3)(b) of that section;
  - any regulations made under section 27 of that Act by virtue of subsection (2)(b) of that section,
  - (c) land acquired from the governing body of a maintained school,
  - (d) land acquired from another foundation body,
  - (e) land acquired wholly by means of—
    - (i) any grant provided by the Secretary of State on or after the appointed day other than a grant made on or after 1st April 2007 under paragraph 5 of Schedule 3 (including that provision as applied by any enactment), or
    - (ii) any grant paid under any regulations made under paragraph 4 of Schedule 32 to this Act other than a grant paid under such regulations to the governing body of a voluntary aided school,
  - (f) land acquired wholly or partly by means of any grant made on or after 1st April 2007 by the Secretary of State under paragraph 5 of Schedule 3 (including that provision as applied by any enactment) in relation to which notice is given in accordance with paragraph A27,
  - (g) land acquired wholly by means of expenditure incurred for the purposes of any of the schools comprising the group for which the body acts and treated by the local education authority as expenditure of a capital nature, or
  - (h) land acquired wholly with the proceeds of disposal of any land acquired as mentioned in any of paragraphs (a) to (g).
- (2) Sub-paragraph (1)(g) does not apply in the case of any expenditure incurred on or after the appointed day unless the authority—
- (a) prepared an appropriate statement in relation to the expenditure, and
  - (b) sent a copy of the statement to the foundation body either before, or no later than 12 months after, the expenditure was incurred.
- (3) An “appropriate statement” in relation to expenditure is a statement in writing which—
- (a) contains details of the amount of the expenditure, the acquisition or works funded (or to be funded) by such expenditure, and the total cost (or estimated total cost) of that acquisition or those works, and
  - (b) indicates that the expenditure was being treated by the authority as expenditure of a capital nature.
- A26 (1) For the purposes of paragraph A23, land held, or held on trust, for the purposes of a foundation, voluntary or foundation special school by the trustees of the school is “publicly funded land” if it is—
- (a) land acquired under section 60, 61 or 70 of the Education Act 1996,
  - (b) land acquired under any of the following—
    - paragraph 2 of Schedule 3;

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- paragraph 16 of Schedule 6 (including that provision as applied by any enactment);
    - paragraph 5(4B)(d) of this Schedule;
    - any regulations made under paragraph 5 of Schedule 8,
  - (c) land acquired under any of the following—
    - paragraph 4 or 9 of Schedule 3;
    - paragraph 20 of Schedule 6 (including that provision as applied by any enactment),
  - (d) land acquired under any of the following—
    - paragraph 8(5) of Schedule 8 to the Education Act 2002;
    - paragraph 14(5) of Schedule 10 to the Education Act 2005;
    - paragraph 28(2) or 31(1) of Schedule 2 to the Education and Inspections Act 2006 (including that provision as applied by any enactment);
    - any regulations made under section 24 of that Act by virtue of subsection (3)(b) of that section,
  - (e) land acquired wholly by means of expenditure incurred on or after the appointed day for the purposes of the school and treated by the local education authority as expenditure of a capital nature,
  - (f) land acquired from the Funding Agency for Schools,
  - (g) land acquired wholly by means of—
    - (i) any maintenance, special purpose or capital grant (within the meaning of Chapter 6 of Part 3 of the Education Act 1996),
    - (ii) any grant paid under section 216(2) of that Act, or
    - (iii) any grant paid under any regulations made under paragraph 4 of Schedule 32 to this Act other than a grant paid under such regulations to the governing body of a voluntary aided school,
  - (h) land acquired wholly or partly by means of any grant made on or after 1st April 2007 by the Secretary of State under paragraph 5 of Schedule 3 (including that provision as applied by any enactment) in relation to which notice is given in accordance with paragraph A27,
  - (i) land acquired wholly with the proceeds of disposal of any land acquired as mentioned in any of paragraphs (f) to (h), or
  - (j) land acquired wholly by means of any grant made in pursuance of a special agreement (as defined by section 32(5) of the Education Act 1996).
- (2) For the purposes of paragraph A23, land held, or held on trust, for the purposes of a foundation or foundation special school by the trustees of the school is also “publicly funded land” if it is—
- (a) land acquired by the trustees from the governing body of the school or of another foundation or foundation special school which was land—
    - (i) acquired by the governing body under a transfer under section 201(1)(a) of the Education Act 1996,

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- (ii) acquired by the governing body under any of the provisions mentioned in sub-paragraph (1)(b) or under paragraph 8A of this Schedule, or
    - (iii) acquired by the governing body wholly with the proceeds of disposal of land acquired as mentioned in sub-paragraph (i) or (ii), or
  - (b) land acquired wholly with the proceeds of disposal of any land acquired as mentioned in sub-paragraph (1)(b).
- (3) For the purposes of paragraph A23, land held, or held on trust, for the purposes of a voluntary school by the trustees of the school is also “publicly funded land” if it is—
  - (a) land acquired by the governing body of the school—
    - (i) under a transfer under section 201(1)(a) of the Education Act 1996, or
    - (ii) wholly with the proceeds of disposal of any land so acquired,  
and transferred by the governing body to be held on trust by the trustees, or
  - (b) in the case of a school to which sub-paragraph (4) applies, land acquired wholly by means of expenditure incurred under section 63 or 64 of the Education Act 1996.
- (4) This sub-paragraph applies to a voluntary aided school which was, immediately before the appointed day, a controlled school within the meaning of the Education Act 1996.
- (5) Land held, or held on trust, for the purposes of a foundation, voluntary or foundation special school by the trustees of the school is not “publicly funded land” for the purposes of paragraph A23 if it is—
  - (a) land acquired under section 60 or 61 of the Education Act 1996, or
  - (b) land acquired under paragraph 2 or 4 of Schedule 3 to this Act, by the trustees of an institution which is, or has at any time been, within the further education sector (as defined by section 4(3) of the Education Act 1996).
- (6) Sub-paragraph (1)(e) does not apply in the case of any expenditure unless the authority—
  - (a) prepared an appropriate statement in relation to the expenditure, and
  - (b) sent a copy of the statement to the trustees either before, or no later than 12 months after, the expenditure was incurred.
- (7) An “appropriate statement” in relation to expenditure is a statement in writing which—
  - (a) contains details of the amount of the expenditure, the acquisition or works funded (or to be funded) by such expenditure, and the total cost (or estimated total cost) of that acquisition or those works, and
  - (b) indicates that the expenditure was being treated by the authority as expenditure of a capital nature.

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### **Notice in relation to grants under paragraph 5 of Schedule 3**

- A27 (1) Where a grant is made on or after 1st April 2007 by the Secretary of State under paragraph 5 of Schedule 3 (including that provision as applied by any enactment), the Secretary of State may within the relevant period give the body or other persons to whom the grant is made notice that—
- (a) any land acquired, or enhanced in value, wholly or partly by means of the grant is land falling within paragraph A1(1)(g), A7(1)(f) and A13(1)(j), and
  - (b) any land acquired wholly or partly by means of the grant is land falling within paragraph A24(1)(g), A25(1)(f) and A26(1)(h).
- (2) The “relevant period” means the period of 6 months beginning with the date upon which the grant is made.”

- 3 In the heading to Part 1 of the Schedule after “SCHOOLS” insert “IN WALES”.
- 4 (1) Paragraph 1 is amended as follows.
- (2) In sub-paragraph (1)—
    - (a) after “foundation special school” insert “in Wales”, and
    - (b) omit paragraph (c).
  - (3) In sub-paragraph (1A)(b) for “falling within section 21(1)(a)” substitute “established otherwise than under this Act”.
  - (4) In sub-paragraphs (2) and (3) for “Secretary of State” substitute “Assembly”.
  - (5) In sub-paragraph (3)—
    - (a) for “his” substitute “its”,
    - (b) for “he”, wherever occurring, substitute “the Assembly”, and
    - (c) for “him” substitute “the Assembly”.
- 5 (1) Paragraph 2 is amended as follows.
- (2) In sub-paragraph (1)—
    - (a) after “by a foundation body” insert “in Wales”,
    - (b) in paragraph (a) omit the words from “or acquired” to the end, and
    - (c) in paragraph (d) for “Secretary of State” substitute “Assembly”.
  - (3) After that sub-paragraph insert—
 

“(1A) A “foundation body in Wales” means a foundation body where each of the schools comprising the group of schools for which the foundation body acts is maintained by a local education authority in Wales.”
  - (4) In sub-paragraphs (2) and (3) for “Secretary of State” substitute “Assembly”.
  - (5) In sub-paragraph (3)—
    - (a) for “his” substitute “its”, and
    - (b) for “he”, wherever occurring, substitute “the Assembly”.
- 6 (1) Paragraph 2A is amended as follows.

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- (2) In sub-paragraph (1) after “trustees of a foundation or foundation special school” insert “in Wales”.
  - (3) In sub-paragraphs (3) and (4) for “Secretary of State” substitute “Assembly”.
  - (4) In sub-paragraph (4)—
    - (a) for “his” substitute “its”, and
    - (b) for “he”, wherever occurring, substitute “the Assembly”.
  - (5) In sub-paragraph (6) after “foundation special school” insert “in Wales”.
- 7
- (1) Paragraph 3 is amended as follows.
  - (2) In sub-paragraph (1)—
    - (a) after “foundation special school” insert “in Wales”,
    - (b) in paragraph (a) omit the words from “or acquired” to the end,
    - (c) omit paragraph (d), and
    - (d) in paragraph (f) omit “(d) or”.
  - (3) In sub-paragraph (2) after “voluntary aided school” insert “in Wales”.
  - (4) In sub-paragraphs (3) and (4) for “Secretary of State” substitute “Assembly”.
  - (5) In sub-paragraph (8) omit “(d),”.
  - (6) In sub-paragraph (9)—
    - (a) for “Secretary of State”, wherever occurring, substitute “Assembly”, and
    - (b) for “he” substitute “the Assembly”.
  - (7) In sub-paragraph (12) after “foundation special school” insert “in Wales”.
- 8
- (1) Paragraph 4 is amended as follows.
  - (2) In sub-paragraph (1)—
    - (a) after “local education authority” insert “in Wales”, and
    - (b) for “Secretary of State” substitute “Assembly”.
  - (3) In sub-paragraph (2)—
    - (a) for “Secretary of State” substitute “Assembly”, and
    - (b) for “he” substitute “the Assembly”.
- 9
- (1) Paragraph 5 is amended as follows.
  - (2) In sub-paragraph (1)(b)—
    - (a) for “Secretary of State” substitute “appropriate authority”, and
    - (b) for sub-paragraphs (i) and (ii) substitute—
      - “(i) under section 19(1) requiring a foundation, voluntary or foundation special school in Wales to be discontinued,
      - (ii) under section 32(1) requiring a foundation special school in Wales to be discontinued,
      - (iii) under section 68(1) of the Education and Inspections Act 2006 requiring a foundation, voluntary or foundation special school in England to be discontinued, or

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(iv) under section 17(1) of that Act requiring a foundation special school in England to be discontinued.”

(3) In sub-paragraph (2) for the words from “Secretary of State” to the end substitute “appropriate authority for it to exercise its powers under sub-paragraph (4) below in relation to—

- (a) if the school is in England, any land falling within paragraphs (a) to (i) of paragraph A1(1) other than land falling within sub-paragraph (2A), or
- (b) if the school is in Wales, any land falling within paragraphs (a) to (f) of paragraph 1(1),

which is held by the body for the purposes of the school.”

(4) After sub-paragraph (2) insert—

“(2A) Land falls within this sub-paragraph if it is—

- (a) land falling within paragraph (g) of paragraph A1(1) by virtue of being land enhanced in value as mentioned in that paragraph, or
- (b) land falling within paragraph (i) of paragraph A1(1) by virtue of being land acquired, or enhanced in value, wholly or partly with the proceeds of disposal of any land falling within paragraph (a) above.

(2B) If the school is in England and the governing body dispose of any land falling within sub-paragraph (2A) which is held by them for the purposes of the school, paragraph A1 shall apply to them.”

(5) In sub-paragraph (3) for the words from “Secretary of State” to the end substitute “appropriate authority for it to exercise its powers under sub-paragraph (4) below in relation to—

- (a) if the school is in England, any land falling within paragraphs (a) to (h) of paragraph A7(1) other than land falling within sub-paragraph (3A), or
- (b) if the school is in Wales, any land falling within paragraphs (a) to (f) of paragraph 2(1),

which is held by the body for the purposes of the schools comprising the group.”

(6) After sub-paragraph (3) insert—

“(3A) Land falls within this sub-paragraph if it is—

- (a) land falling within paragraph (f) of paragraph A7(1) by virtue of being land enhanced in value as mentioned in that paragraph, or
- (b) land falling within paragraph (h) of paragraph A7(1) by virtue of being land acquired, or enhanced in value, wholly or partly with the proceeds of disposal of any land falling within paragraph (a) above.

(3B) If the school is in England and the foundation body disposes of any land falling within sub-paragraph (3A) which is held by it for the purposes of the schools comprising the group, paragraph A7 shall apply to it.”



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- (7) In sub-paragraph (4)—
- (a) for “Secretary of State” substitute “appropriate authority”,
  - (b) for paragraph (a) substitute—
    - “(a) require the land or any part of the land to be transferred to such local authority as the appropriate authority may specify, subject to the payment by that local authority of such sum by way of consideration (if any) as the appropriate authority determines to be appropriate;”,
  - (c) in paragraph (b) for “him” and “he” substitute “the appropriate authority”, and
  - (d) in paragraph (c) for “he” substitute “the appropriate authority”.
- (8) After sub-paragraph (4) insert—
- “(4ZA) Where the school is in England, the trustees of the school shall apply to the appropriate authority for it to exercise its powers under sub-paragraph (4B) in relation to any land falling within paragraph A13(1), (2) or (3), other than land falling within sub-paragraph (4ZB), which is held by the trustees for the purposes of the school.
- (4ZB) Land falls within this sub-paragraph if it is—
- (a) land falling within paragraph (j) of paragraph A13(1) by virtue of being land enhanced in value as mentioned in that paragraph, or
  - (b) land falling within paragraph (k) of paragraph A13(1) by virtue of being land acquired, or enhanced in value, wholly or partly with the proceeds of disposal of any land falling within paragraph (a) above.”
- (9) In sub-paragraph (4A)—
- (a) after “Where the school” insert “is in Wales and”, and
  - (b) for “Secretary of State for him to exercise his” substitute “appropriate authority for it to exercise its”.
- (10) In sub-paragraph (4B)—
- (a) after “under sub-paragraph” insert “(4ZA) or”,
  - (b) for “Secretary of State” substitute “appropriate authority”,
  - (c) for paragraph (a) substitute—
    - “(a) require the land or any part of the land to be transferred to such local authority as the appropriate authority may specify, subject to the payment by that local authority of such sum by way of consideration (if any) as the appropriate authority determines to be appropriate;”,
  - (d) in paragraph (b) for the words from “for the purposes of another” to the end substitute “—
    - (i) in the case of a school in England, for the purposes of another foundation, voluntary or foundation special school, or
    - (ii) in the case of a school in Wales, for the purposes of another foundation or foundation special school or for the purposes of a voluntary school,

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- direct the trustees to exercise that power in such manner as the appropriate authority may specify;”
- (e) in paragraph (c) after “sub-paragraph” insert “(4ZA) or, as the case may be,”, and
- (f) in paragraphs (c) and (d) for “he”, wherever occurring, substitute “the appropriate authority”.
- (11) In sub-paragraph (5)—
- (a) after “(3)” insert “, (4ZA)”, and
- (b) for “Secretary of State” substitute “appropriate authority”.
- (12) After that sub-paragraph insert—
- “(5A) Where the school is in England and the trustees of the school—
- (a) dispose of any land falling within sub-paragraph (4ZB), or
- (b) wish to use any such land for purposes not connected with the provision of education in maintained schools,
- paragraph A13 shall apply to them.”
- (13) In sub-paragraph (6) after “Where” insert “the school is in Wales and”.
- 10 (1) Paragraph 6 is amended as follows.
- (2) In sub-paragraph (1) for “Secretary of State's” substitute “appropriate authority's”.
- (3) In sub-paragraph (2)—
- (a) for “Secretary of State” substitute “appropriate authority”,
- (b) for “he”, wherever occurring, substitute “the appropriate authority”,
- (c) for “the authority”, wherever occurring, substitute “the local education authority”, and
- (d) for “him” substitute “the appropriate authority”.
- (4) After sub-paragraph (3) insert—
- “(3A) Where the school is in England and the trustees of the school—
- (a) dispose of any land falling within paragraph A13(1), (2) or (3), or
- (b) wish to use any such land for purposes not connected with the provision of education in maintained schools,
- paragraph A13 shall apply to them.”
- (5) In sub-paragraph (4) after “Where” insert “the school is in Wales and”.
- 11 In paragraph 7, in sub-paragraphs (2)(ii), (3)(c) and (6), for “Secretary of State” substitute “appropriate authority”.
- 12 In paragraph 8(2)—
- (a) for “Secretary of State” substitute “appropriate authority”,
- (b) for “he”, wherever occurring, substitute “the appropriate authority”,
- (c) for “him” substitute “the appropriate authority”, and
- (d) for “the authority”, wherever occurring, substitute “the local education authority”.
- 13 After paragraph 8 insert—

## “PART 2A

### MAINTAINED SCHOOL: TRANSFER OF LAND FROM TRUSTEE TO GOVERNING BODY

8A (1) This paragraph applies where the trustee of one or more foundation or foundation special schools to which section 23A (requirements as to foundations) applies is a body corporate.

(2) Where—

- (a) the body corporate has under any enactment passed a resolution for its winding up,
- (b) a court has made an order for the winding up of the body corporate,
- (c) the body corporate has been removed under subsection (4) of section 3 of the Charities Act 1993 from the register of charities kept under that section, or
- (d) prescribed conditions relating to the ability of the body corporate to pay its debts or to its continued existence as a body corporate or as a charity are met,

the Secretary of State may make an order under this paragraph.

(3) Conditions may be prescribed under sub-paragraph (2)(d) by reference to the opinion of the Secretary of State as to any prescribed matter.

(4) An order under this paragraph is an order directing that any land falling within paragraph A13(1)(b) or (2) held by the body corporate on trust for one or more foundation or foundation special schools to which section 23A applies is to be transferred to, and by virtue of the order vest in—

- (a) the governing body of the school, or
- (b) 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.

(5) In a case where—

- (a) proposals to establish a new foundation or foundation special school fall to be implemented under Schedule 2 to the Education and Inspections Act 2006, and
- (b) the local education authority have before the school opening date transferred land to be held on trust for the school,

references in this paragraph to a foundation or foundation special school include references to a proposed such school, references to a governing body include references to a proposed governing body and for the purpose of sub-paragraph (1) section 23A is to be taken to apply to the proposed school if it would apply to the school when it is established.

(6) In this paragraph—

“charity” has the same meaning as in the Charities Act 1993;  
“foundation” means a foundation established otherwise than under this Act.”

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- 14 In paragraph 9(1)—
- (a) after “paragraph” insert “A5, A11, A17, A23,” and
  - (b) for “or 8(2)(b)” substitute “, 8(2)(b) or 8A”.
- 15 (1) Paragraph 10 is amended as follows.
- (2) In sub-paragraph (1) after paragraph (d) insert—
    - “(e) “the appropriate authority” means—
    - (i) in relation to a school in England, the Secretary of State, and
    - (ii) in relation to a school in Wales, the Assembly.”
  - (3) In sub-paragraph (3) after “paragraphs” insert “A1(1), A13(1), (2) or (3)(a), A24 to A26,”.
  - (4) In sub-paragraph (4) after “paragraphs” insert “A1(1), A13(1),”.
  - (5) In sub-paragraph (5) for “paragraph 1(1)” substitute “paragraphs A1(1) and 1(1)”.
- 16 (1) Paragraph 11 is amended as follows.
- (2) For paragraph (a) of sub-paragraph (1) substitute—
    - “(a) subject to sub-paragraph (7), “capital expenditure” means expenditure of the governing body in question which falls to be capitalised in accordance with proper accounting practices;”.
  - (3) In paragraph (b) of that sub-paragraph for “that Order” substitute “the Regulatory Reform (Voluntary Aided Schools Liabilities and Funding) (England) Order 2002”.
  - (4) In sub-paragraph (4) for the words from “, either by agreement” to the end substitute “—
    - (a) by agreement between the authority and the relevant body, or
    - (b) by the adjudicator where—
      - (i) the authority or the relevant body refer the matter to him for determination, and
      - (ii) by the time of his determination, the matter has not been determined by agreement between the authority and the relevant body.”
  - (5) After sub-paragraph (4) insert—
    - “(4A) In determining whether to make a reference to the adjudicator under sub-paragraph (4)(b), the authority or, as the case may be, the relevant body, must have regard, in particular, to any guidance given from time to time by the Secretary of State.
    - (4B) Before making a reference to the adjudicator under sub-paragraph (4)(b), the authority or, as the case may be, the relevant body, must give the other notice of their intention to make the reference.”
  - (6) In sub-paragraph (5)—
    - (a) for “Secretary of State” substitute “adjudicator”, and
    - (b) after “particular” insert “to any guidance given from time to time by the Secretary of State and”.
  - (7) After sub-paragraph (5) insert—

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“(5A) A determination made by the adjudicator on a reference made to him under sub-paragraph (4)(b) may be varied or revoked by a further determination made by him if—

- (a) the matter is referred to him by the local education authority or the relevant body, and
- (b) before making the further determination, the adjudicator consults such persons as he considers appropriate.

(5B) In determining whether to make a reference to the adjudicator under sub-paragraph (5A)(a), the local education authority or the relevant body must have regard, in particular, to any guidance given from time to time by the Secretary of State.

(5C) Sub-paragraph (5) applies in relation to the further determination of any matter by the adjudicator, by virtue of sub-paragraph (5A), as it applies in relation to the original determination of the matter.”

(8) After sub-paragraph (6) insert—

“(7) The Secretary of State may—

- (a) by regulations prescribe classes or descriptions of expenditure which are to be treated for the purposes of this paragraph as being, or as not being, capital expenditure of any governing body or of any prescribed class or description of governing body;
- (b) by direction provide that expenditure of a particular governing body which is expenditure of a particular class or description is to be treated for the purposes of this paragraph as being, or as not being, capital expenditure of that body.

(8) Directions under sub-paragraph (7)(b) may be expressed to have effect in specified circumstances or subject to specified conditions.”

17 After paragraph 11 insert—

“12 (1) For the purposes of paragraph 11(1)(a), “proper accounting practices”, in relation to a governing body, means those accounting practices—

- (a) which, whether by virtue of any enactment or by reference to any generally recognised published code or otherwise, are regarded as proper accounting practices to be followed in the keeping of accounts by the governing body, or
- (b) which, whether by virtue of any enactment or by reference to any generally recognised published code or otherwise, are regarded as proper accounting practices to be followed in the keeping of accounts by the local education authority.

(2) In the event of conflict between the accounting practices falling within paragraph (a) of sub-paragraph (1) and those falling within paragraph (b) of that sub-paragraph, only those falling within paragraph (a) are to be regarded as proper accounting practices.”

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## PART 2

### AMENDMENTS TO SECTION 77 OF SSFA 1998

- 18 (1) Section 77 of SSFA 1998 (control of disposals or changes of use of school playing fields in relation to England) is amended as follows.
- (2) In subsection (1)—
- (a) for “Except” substitute “Subject to subsections (2A) and (2B), except”, and
  - (b) after “a body” insert “or trustees”.
- (3) For subsection (2) substitute—
- “(2) Subsection (1) applies to—
- (a) a local authority;
  - (b) the governing body of a maintained school;
  - (c) a foundation body;
  - (d) the trustees of a foundation, voluntary or foundation special school.”
- (4) After subsection (2) insert—
- “(2A) Subsection (1) applies in the case of a disposal by the trustees of a foundation, voluntary or foundation special school, only if the disposal is of land falling within paragraph A13(1), (2) or (3) of Schedule 22.
- (2B) Subsection (1) does not apply—
- (a) to a disposal in pursuance of a transfer order under paragraph A23 of that Schedule, or
  - (b) to a disposal to which paragraph 5 or 6 of Schedule 22 (disposals on discontinuance) applies.”
- (5) In subsection (3)—
- (a) for “Except” substitute “Subject to subsections (4) and (4A), except”,
  - (b) for “a local authority” substitute “a body or trustees to whom subsection (1) applies”, and
  - (c) for “falling within subsection (1)” substitute “which falls within subsection (1) or is excluded from that subsection by subsection (2B)(a) or (b)”.
- (6) In subsection (4) omit “by a local authority”.
- (7) After subsection (4) insert—
- “(4A) Subsection (3) applies in relation to the trustees of a foundation, voluntary or foundation special school only if the playing fields in question are land falling within paragraph A13(1), (2) or (3) of Schedule 22.”
- (8) In subsection (7), at the appropriate place, insert—
- ““maintained school” includes a maintained nursery school;”.

### PART 3

#### CONSEQUENTIAL AMENDMENTS

- 19 In section 75(2) of SSFA 1998 (transfer of land by governing body to trustees) after “Paragraph” insert “A1 or”.
- 20 In section 79(1)(b) of SSFA 1998 (stamp duty exemption for certain transfers) after “paragraph” insert “A23,”.
- 21 In section 138 of SSFA 1998 (orders and regulations), in subsection (2)(b) (orders not made by statutory instrument), for “or 7(3)(c)” substitute “, 7(3)(c) or 8A”.
- 22 In Schedule 3 to SSFA 1998 (funding of foundation, voluntary and foundation special schools), in paragraph 2, in sub-paragraph (10), after “paragraphs” insert “A1 to A16 or”.
- 23 In Schedule 32 to SSFA 1998 (transitional provisions and savings), in paragraph 4(4)—
- (a) in paragraph (a) for “paragraph 1(1)(d)” substitute “paragraphs A1(1)(f) and 1(1)(d)”,
  - (b) in paragraph (b) for “paragraph 2(1)(d)” substitute “paragraphs A7(1)(e) and 2(1)(d)”, and
  - (c) in paragraph (c) for “paragraph 3(1)(e)” substitute “paragraphs A13(1)(g) and 3(1)(e)”.