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STATUTORY INSTRUMENTS

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**2003 No. 1200**

**EDUCATION, ENGLAND**

**The Education (Additional Secondary School Proposals) Regulations 2003**

<i>Made</i>	- - - -	<i>1st May 2003</i>
<i>Laid before Parliament</i>		<i>9th May 2003</i>
<i>Coming into force</i>	- -	<i>1st June 2003</i>

In exercise of the powers conferred on the Secretary of State by sections 70(3), (4) and (6) and 210(7) of, and paragraphs 2,3 and 5 of Schedule 8 to, the Education Act 2002<sup>(1)</sup> the Secretary of State for Education and Skills hereby makes the following Regulations:

**Citation, commencement and application**

1. These Regulations may be cited as the Education (Additional Secondary School Proposals) Regulations 2003 and shall come into force on 1st June 2003.

**Interpretation**

2.—(1) In these Regulations—

“the Act” means the Education Act 2002;

“the 1998 Act” means the School Standards and Framework Act 1998<sup>(2)</sup>;

“adjudicator” means a person appointed under section 25 of the 1998 Act;

“local education authority” means a local education authority in England;

“pupil places” means the number of places (whether planned or actual) available within the age range of the school.

“sixth form education” means full-time secondary education suitable to the requirements of pupils over compulsory school age

and any reference to section 70 or Schedule 8 is a reference to that section of, or Schedule to, the Act.

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(1) 2002 C.32.

(2) 1998 C.31.

### **Information to be contained in a notice inviting proposals**

3. Notices published under section 70(1) inviting proposals for the establishment of a school shall specify the matters specified in Schedule 1 to these Regulations (in addition to the matters referred to in section 70(3) (a) and (b)).

### **Interval which must elapse before proposals must be sent to the local education authority**

4. For the purposes of section 70(3) (b) the prescribed interval is an interval of two months from the date of the publication of the notice inviting proposals.

### **Manner of publication of a notice inviting proposals**

5.—(1) This regulation prescribes for the purposes of section 70(3) (d) the manner in which notices published under section 70(1) shall be published.

(2) Notices inviting proposals for the establishment of a school shall be published—

- (a) in at least one newspaper circulating in the area to be served by the school;
- (b) by being sent to any local education authority likely to be affected by the proposals;
- (c) by being sent to the Secretary of State;
- (d) by being sent to—
  - (i) any Diocesan Board of Education for a diocese of the Church of England which is comprised in the area of the local education authority;
  - (ii) any Bishop of a Roman Catholic Church diocese which is comprised in the area of the local education authority; and
  - (iii) any other person or organisation that has previously expressed an interest in writing to the authority in setting up an additional secondary school to serve pupils in the area;
- (e) by being sent to the Learning Skills Council for England if it is intended that the school should provide sixth form education;
- (f) by being sent to the adjudicator;
- (g) by being sent to any other body or organisation that in the opinion of the local education authority is likely to be interested in the notice; and
- (h) by being posted in a conspicuous place in the area to be served by the school.

### **Information to be contained in proposals made in response to a notice**

6. Proposals made by a promoter pursuant to a notice published under section 70(1) shall contain the information specified in Part 1 of Schedule 2.

### **Information to be contained in proposals published by the local education authority**

7. Proposals published by the local education authority under section 70(5) (b) shall contain the information specified in Part 2 of Schedule 2.

### **Manner in which the local education authority shall publish details of the proposals that it has received from promoters or made itself**

8.—(1) This regulation prescribes for the purposes of section 70(6) (a) the manner in which the local education authority shall publish proposals submitted by promoters or proposals of their own.

(2) The local education authority shall—

- (a) if it has received proposals from a promoter, publish details of the matters referred to in paragraphs 1 to 17 in Part 1 of Schedule 2 (except details of the matters referred to in paragraph 6(b) to (d) relating to each proposal that it has received);
- (b) if it has itself made proposals, publish details of the matters referred to in paragraphs 26 to 35 in Part 2 of Schedule 2 (except details of the matters referred to in paragraph 31(b) to (d) relating to those proposals); and
- (c) publish details of where complete copies of the proposals can be inspected

in at least one newspaper circulating in the area to be served by the school and in a conspicuous place in the area to be served by the school.

(3) The local education authority must make available for inspection by members of the public at the offices of the authority, and any other place that it considers to be appropriate, complete copies all of the proposals.

- (4) The local education authority shall send copies of the proposals—
  - (a) to any local education authority likely to be affected by the proposals;
  - (b) to—
    - (i) any Diocesan Board of Education for a diocese of the Church of England which is comprised in the area of the local education authority,
    - (ii) any bishop of a Roman Catholic Church diocese which is comprised in the area of the local education authority, and
    - (iii) any other person or organisation that has previously expressed an interest in writing to the authority in setting up a new secondary school to serve pupils in the area;
  - (c) to the Learning Skills Council for England if the proposals include the provision of sixth form education.

### **Objections and Comments**

9. Any person may object to or comment on proposals published in accordance with Regulation 8 and such objections or comments shall be sent to the local education authority within six weeks after the date of publication of the proposals.

### **Submission of proposals to the school organisation committee**

10. The local education authority shall send copies of the published proposals and any objections or comments received in accordance with regulation 9 to the school organisation committee within one week after the end of the time-period specified in regulation 9.

### **Consideration of proposals by the school organisation committee**

11. The school organisation committee shall consider and comment on the proposals, and any objections to or comments on the proposals made in accordance with regulation 9, within six weeks of receipt from the local education authority.

### **Consultation by the school organisation committee**

12.—(1) Before considering proposals for the establishment of an additional secondary school the school organisation committee shall, where they consider it appropriate to do so, request the comments of such persons as they consider appropriate and the promoters or, where the local education authority has published proposals of its own, the local education authority on the comments and objections that they have received.

(2) When requesting comments under this regulation the committee shall specify the date when the comments shall be received by the committee and the date when the proposals will be considered, and in specifying such dates shall have regard to the requirement of regulation 14(2) that the proposals shall be forwarded to the Secretary of State within six weeks of receipt of the proposals by the local education authority.

### **Matters that the school organisation committee must have regard to**

**13.** The school organisation committee shall have regard to any guidance provided by the Secretary of State when considering proposals for the establishment of an additional secondary school.

### **Submission of proposals to the Secretary of State**

**14.—(1)** In this regulation references to a group of members of a school organisation committee shall be construed in accordance with the Education (School Organisation Committees) (England) Regulations 1999(3).

(2) The school organisation committee shall send to the Secretary of State within six weeks of receipt of the published proposals from the local education authority –

- (a) a copy of any objections or comments received pursuant to regulation 9;
- (b) a copy of all the published proposals sent to them pursuant to regulation 10;
- (c) any comments received by the committee during the consultation undertaken pursuant to regulation 12; and
- (d) the committee’s comments on the proposals including, details of the level of support each proposal received from the committee as a whole and from each group on the committee.

### **Withdrawal of proposals**

**15.—(1)** Promoters may withdraw their proposals at anytime before the Secretary of State approves any proposal to establish a community, foundation or voluntary school or enters into an agreement under section 482 of the Education Act 1996 for the establishment of an Academy by notifying in writing the local education authority that published the notice pursuant to section 70(1).

(2) If the local education authority receives notification in writing that the promoters wish to withdraw their proposals it shall submit a copy of the notification to any person that it considers it appropriate to send a copy to and–

- (a) the school organisation committee,
- (b) the adjudicator, and
- (c) the Secretary of State.

(3) The local education authority may withdraw its proposals at anytime before the Secretary of State approves any proposal to establish a community, foundation or voluntary school or enters into an agreement under section 482 of the Education Act 1996 for the establishment of an Academy by notifying—

- (a) any promoters that made proposals in response to the notice made pursuant to section 70(1) who have not withdrawn their proposals;
- (b) the school organisation committee and
- (c) the Secretary of State.

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(3) [SI 1999/700](#) to which there are amendments not relevant to these Regulations

### **Modification of approved proposals**

16.—(1) This regulation prescribes for the purpose of paragraph 5(2) (a) and (b) of Schedule 8 the persons—

- (a) at whose request the Secretary of State may modify approved proposals to establish a community, foundation or voluntary school; and
- (b) at whose request the Secretary of State may, where approval was given in accordance with paragraph 3(2) of Schedule 8 (approval expressed to take effect only if an event specified in the approval occurs by a date specified), specify a later date by which the event in question must occur.

(2) The persons prescribed are the promoters or the local education authority who made the proposals and, where the proposals were made by promoters, the local education authority who it is proposed should maintain the school.

### **Consultation required before modifying proposals or removing the duty to implement proposals**

17.—(1) For the purposes of paragraphs 3(1)(c) and 5(2)(a) of Schedule 8, before modifying proposals the Secretary of State shall consult the promoters or the local education authority who made the proposals and where the proposals are to establish an additional foundation or voluntary school, the local education authority that it is proposed should maintain the school.

(2) For the purposes of paragraph 5(3) of Schedule 8 before removing the requirement to implement proposals the Secretary of State shall consult the promoters who made the proposals and where the proposals are to establish a new foundation or voluntary school, the local education authority that it is proposed should maintain the school.

1st May 2003

*David Miliband*  
Minister of State,  
Department for Education and Skills

SCHEDULE 1

Regulation 3

MATTERS TO BE SPECIFIED IN A NOTICE INVITING PROPOSALS FOR AN ADDITIONAL SECONDARY SCHOOL

1. A statement explaining the reason why an additional secondary school is considered necessary.
2. A statement explaining:
  - (a) the location of the site (including details of whether the school is to occupy a single or split site), including where appropriate the postal address or addresses;
  - (b) the reason for the choice of site;
  - (c) the accessibility of the site (if the school is to occupy a split site the accessibility of the accommodation); and
  - (d) the tenure (freehold or leasehold) on which the site will be held, and if the site is to be held on a lease, details of the proposed lease;
  - (e) the effect of paragraphs 7(4) and 8(4) of Schedule 8 to the Act (that the local education authority must transfer their interest in the site to the school's trustees, foundation body, or governing body).
3. The date by which the school should open.
4. Information on—
  - (a) the number of pupil places the school should provide;
  - (b) the upper and lower age limits of the proposed school (that is to say the highest and lowest ages of pupils for whom it is intended that education is normally provided at the school) and, where it is intended that it should provide sixth form education, the number of pupils for whom it is intended that such education should be provided;
  - (c) the number of pupils to be admitted to the proposed school in each relevant age group in the first school year in which the proposals have been implemented or, where it is intended that the proposals should be implemented in stages, the number of pupils to be admitted to the proposed school in the first school year in which each stage has been implemented
  - (d) whether it is proposed that the school should admit pupils of both sexes or boys or girls only and, in the case of a single sex school where it is intended to provide sixth form education, whether both sexes or boys or girls only are to be admitted to the sixth form;
  - (e) whether the new school should make provision which is recognised by the local education authority as reserved for children with special educational needs, and if so the range of special needs and the number of pupils for which provision is proposed, and
  - (f) the estimated capital costs of providing the school (such an estimate to be made in accordance with the guidance provided at pages 17 to 19 of Department for Education and Skills Guidance "Education Building Projects – Information on Costs and Performance Data – Schools Building and Design Unit", (reference DfES/0288/2003) (ISBN 1 84185 950 8) issued in April 2003). The Excel spreadsheet attached to the guidance should be completed and included in this information.
5. A statement explaining that proposals should be in line with requirements set out in paragraph 4 above, but that proposals that do not comply with all of the requirements but meet the need for secondary places in the area will be considered.
6. A statement explaining—
  - (a) the address of the local education authority; and
  - (b) the name of the person to whom proposals should be addressed.

7. A brief statement explaining the procedure to be followed after the date when proposals must be received by the local education authority (i.e. the procedure outlined in regulations 8 to 14).

8. A statement that any proposals made pursuant to a notice published under section 70(1) must contain the information required by Part 1 of Schedule 2.

## SCHEDULE 2

Regulation 6

### PART 1

#### MATTERS TO BE SPECIFIED IN PROPOSALS TO ESTABLISH AN ADDITIONAL SECONDARY SCHOOL MADE BY A PROMOTER OTHER THAN THE LOCAL EDUCATION AUTHORITY

1. The name of the promoter, or promoters, and a contact address.
2. The type of school that the promoters propose to establish (a community school; a foundation school; a voluntary school or an Academy).
3. The proposed ethos of the school and if the school is to have a religious character, information about such religious character.
4. Whether the proposed school will have any specialisms on implementation and whether the promoter intends to apply to the Secretary of State for the school to be a specialist school.
5. A statement indicating how the school would contribute to enhancing the diversity and quality of education in the area.
6. The following information relating to the proposals—
  - (a) a description of what the proposals are intended to deliver in terms of community cohesion;
  - (b) the objectives which the promoters intend to set to further the aims of inclusiveness and partnership working;
  - (c) what activities are planned to achieve the objectives specified in sub-paragraph (b); and
  - (d) measures proposed to be taken to ensure that the governing body, teachers, pupils and parents are aware of their role in contributing to inclusiveness and partnership working.
7. An indication of the admission arrangements and over-subscription criteria which the promoters consider appropriate for the proposed school and where the proposed school is to be a foundation or voluntary school or Academy which it is proposed should have a religious character—
  - (a) an indication of the extent to which the promoters consider it appropriate for priority to be given to children of the school's faith or denomination, and
  - (b) an indication of the extent to which the promoters consider it appropriate for any priority to be given for any places to children or other faiths or denominations or to children in specified groups regardless of their faith or denomination.
8. Information on—
  - (a) the number of pupil places which the school will provide;
  - (b) the upper and lower age limits of the proposed school and, where it is intended that it should provide sixth form education, the number of pupils in each age group for whom it is intended that such education should be provided;

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- (c) the number of pupils to be admitted to the new school in each relevant age group in the first school year in which the proposals have been implemented or, where it is intended that the proposals should be implemented in stages, the number of pupils to be admitted to the proposed school in the first school year in which each stage has been implemented.
- 9.** A statement as to whether the promoter is satisfied that accommodation will be adequate to meet the number of pupil places specified in paragraph 16(a).
- 10.** Whether it is proposed that the new admission arrangements for the school will make provision for selection by ability as is mentioned in section 101 of the 1998 Act (pupil banding); and
- 11.** Whether the new school will admit pupils of both sexes or boys only or girls only and, in the case of a single sex school where it is intended to provide sixth form education, whether both sexes or boys or girls only are to be admitted to the sixth form;
- 12.** Whether the promoter wishes to establish the school on the site proposed in the notice published by the local education authority. If the promoter wishes to establish the school on a site that is different from that proposed in the notice published by the local education authority information on—
- (a) the location of the site (including where appropriate the postal address or addresses if the school is to occupy a split site);
  - (b) whether the school will occupy a single or split site;
  - (c) the accessibility of the site (if the school is to occupy a split site the accessibility of the accommodation);
  - (d) the current ownership and tenure (freehold or leasehold) of the site, the estimated cost of providing the site and the proposed use of any buildings already on the site;
  - (e) details of the tenure (freehold or leasehold) on which the site of the school will be held, and if the site is to be held on a lease, details of the proposed lease; and
  - (f) whether the site is currently used for the purposes of another school which will no longer be required for the purposes of that school. If so, provide details as to why the site will no longer be required for the purposes of that school.
- 13.** The date when it is planned that the proposals will be implemented, or where the proposals are to be implemented in stages, the date on which each stage is planned to be implemented.
- 14.** A statement as to whether the promoters consider that the costs of establishing the proposed school can be met within the estimate of capital costs of providing the school outlined in the notice published by the local education authority.
- 15.** Where the proposals are to establish an additional voluntary controlled or foundation school—
- (a) statement as to whether the proposals are to be implemented by the local education authority or by the promoters, and if the proposals are to be implemented by both,
    - (i) a statement as to the extent that they are to be implemented by each body, and
    - (ii) a statement as to the extent to which the capital costs of implementation are to be met by each body.
- 16.** Details of how it is proposed to fund the promoter’s share of the capital costs of implementing the proposals (if any).
- 17.—(1)** Information as to whether the school will have provision which is recognised by the local education authority as reserved for children with special educational needs and, if so, the nature of such provision and the proposed number of pupils for whom such provision is to be made.

(2) Details of the proposed policy of the school relating to the education of pupils with special educational needs.

18. The proposed arrangements for transport of pupils to the school.

19. Details of any proposals for the school to be federated with one or more schools (by virtue of section 24 and 74(1) of the Act).

20. An outline of the proposed senior staffing at the school.

21. A statement that the school will meet the general requirements in relation to curriculum pursuant to section 78 of the Act and an outline of any provision that will be in addition to the basic curriculum required by section 80 to the Act.

22. Evidence of any relevant experience in education held by the promoter, or promoters. In particular, details of any involvement in the improvement of standards in education.

23. In addition, where the proposed school is to be a voluntary aided school –

- (a) details of the trusts on which the site is to be held together with details of any arrangements to secure that, if the school is discontinued or transfers to a new site, the proceeds of sale of the site will be available for use in connection with another maintained school;
- (b) the amount of grant under paragraph 5 or 6 of Schedule 3 to the 1998 Act for which it is intended that an application should be made; a statement that the governing body will be able and willing to carry out their obligations under Schedule 3 to the 1998 Act;
- (c) a statement that the governing body will be able and willing to carry out their obligations under Schedule 3 to the 1998 Act;
- (d) details of the proposed ownership of the site; and
- (e) a statement as to whether the proceeds of sale of other premises will be available to the trustees.

24. Where the school is to be a foundation school

- (a) details of any trusts on which the site is to be held together with details of any arrangements to secure that, if the school is discontinued or transfers to a new site, the proceeds of sale of the site will be available for use in connection with another maintained school; and
- (b) a statement as to whether the school –
  - (i) will have a foundation established otherwise than under the 1998 Act;
  - (ii) will belong to a group of schools for which a foundation body acts under section 21 of the 1998 Act; or
  - (iii) will not fall within sub-paragraph (i) or (ii).

25. Where the school is to be a foundation or voluntary school or an Academy, which it is proposed should have a religious character, an estimate of the demand in the area for religious education in accordance with the tenets of the religion or religious denomination in question that is not already met in other maintained schools or Academies in the area.

Regulation 7

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## PART 2

### MATTERS TO BE SPECIFIED IN PUBLISHED PROPOSALS TO ESTABLISH AN ADDITIONAL SECONDARY SCHOOL WHERE THE PROPOSER IS THE LOCAL EDUCATION AUTHORITY

**26.** The name of the local education authority submitting the proposals together with the name and address of the person to whom enquiries should be sent to.

**27.** Whether the school is to be a community or foundation school.

**28.** The proposed ethos of the school.

**29.** Whether the proposed school will have any specialisms on implementation and whether the local education authority intends to apply to the Secretary of State for the school to be a specialist school from implementation.

**30.** A statement indicating how the school would contribute to enhancing the diversity and quality of education in the area

**31.** The following information relating to the proposals—

- (a) a description of what the proposals are intended to deliver in terms of community cohesion;
- (b) the objectives which the local authority intend to set to further the aims of inclusiveness and partnership working;
- (c) what activities are planned to achieve the objectives specified in sub-paragraph (b); and
- (d) measures proposed to be taken to ensure that the governing body, teachers, pupils and parents are aware of their role in contributing to inclusiveness and partnership working.

**32.** An indication of the admission arrangements and over-subscription criteria for the proposed school.

**33.** Information on—

- (a) the number of pupils for whom the school will provide;
- (b) the upper and lower age limits of the proposed school and, where it is intended that it should provide sixth form education, the number of pupils in each year group for whom it is intended that such education should be provided;
- (c) the number of pupils to be admitted to the proposed school in each relevant age group in the first school year in which the proposals have been implemented or, where it is intended that the proposals should be implemented in stages, the number of pupils to be admitted to the proposed school in the first school year in which each stage has been implemented;
- (d) whether it is proposed that the new admission arrangements for the school will make provision for selection by ability as is mentioned in section 101 of the 1998 Act (pupil banding); and
- (e) whether the proposed school will admit pupils of either sexes or boys only or girls only and, in the case of a single sex school where it is intended to provide sixth form education, whether both sexes or boys or girls only are to be admitted to the sixth form.

**34.** The date on which the proposals are planned to be implemented, or where the proposals are planned to be implemented in stages, the date on which each stage is planned to be implemented.

**35.—(1)** Information as to whether the school will have provision that is recognised by the local education authority as reserved for children with special educational needs and, if so, the nature of such provision and the proposed number of pupils for whom such provision is to be made.

(2) Details of the proposed policy of the school relating to the education of pupils with special educational needs.

**36.** The proposed arrangements for transport of pupils to the school.

**37.** Details of any proposals for the school to be federated with one or more schools (by virtue of section 24 and 74(1) of the Act).

**38.** Details of how the proposed curriculum of the school will meet the general requirements in relation to curriculum pursuant to section 78 of the Act and an outline of any provision that will be in addition to the basic curriculum required by section 80 of the Act.

**39.** An outline of the proposed senior staffing at the school.

**40.** Where the school is to be a foundation school a statement as to whether the school —

- (a) will have a foundation established otherwise than under the 1998 Act;
- (b) will belong to a group of schools for which a foundation body acts under section 21 of the 1998 Act; or
- (c) will not fall within sub-paragraph (a) or (b).

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations prescribe various matters relating to proposals for the establishment of community, foundation and voluntary secondary schools maintained by local education authorities and Academies.

Regulation 3 with Schedule 1 prescribes (for the purposes of section 70 of the Education Act 2002) the information to be contained in a notice published by a local education authority inviting proposals for the establishment of a community, foundation or voluntary secondary school or an Academy and the manner in which such a notice shall be published.

Regulation 4 prescribes the interval which must elapse before the date on which proposals in response to a published notice must be sent to the local education authority.

Regulation 5 prescribes the manner in which notices inviting proposals must be published by the local education authority.

Regulation 6 with Part 1 of Schedule 2 prescribes the information that has to be contained in proposals for the establishment of an additional secondary school made in pursuant to a notice inviting proposals.

Regulation 7 with Part 2 of Schedule 2 prescribes the information to be contained in proposals made by a local education authority.

Regulation 8 prescribes the manner in which a notice containing details of proposals that it has received or made itself must be published by a local education authority.

Regulation 9 provides for the making of objections or comments to the local education authority in relation to the published proposals.

Regulation 10 provides for the manner in which published proposals must be sent to the school organisation committee.

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Regulation 11 provides for the school organisation committee to consider the proposals.

Regulation 12 provides for consultation by the school organisation committee before considering the published proposals.

Regulation 13 provides that the school organisation committee must have regard to any guidance provided by the Secretary of State before considering the published proposals.

Regulation 14 provides for the submission of the proposals by the school organisation committee to the Secretary of State for determination. Provision is made that the committee must send the Secretary of State—

- (d) copies of representations received during the representation period;
- (e) copies of the published proposals;
- (f) comments received during the consultation undertaken before the published proposals were considered by the committee; and
- (g) the committee's comments on the proposals, including details of the level of support each proposal received from the committee as a whole and from each group of members.

Regulation 15 makes provisions for the withdrawal of a proposal by a promoter or the local education authority.

Regulation 16 prescribes the persons who may request that the Secretary of State modifies approved proposals and those who may request that the Secretary of State specifies a later date by which an event specified in a conditional approval must occur.

Regulation 17 prescribes the persons the Secretary of State must consult before modifying proposals that have been approved and before removing the requirement to implement proposals.

Copies of “Education Building Projects – Information on Costs and Performance Data – Schools Building and Design Unit” may be obtained from DfES publications: Telephone: 0845 6022260. Fax: 0845 6033360. Mincom: 0845 6055560. Email: [dfes@prolog.uk.com](mailto:dfes@prolog.uk.com). The guidance can also be found at [www.teachernet.gov.uk/costinformation](http://www.teachernet.gov.uk/costinformation).