
STATUTORY INSTRUMENTS

2013 No. 3109

**The School Organisation (Establishment and
Discontinuance of Schools) Regulations 2013**

PART 5

Consideration of proposals by a local authority or by the schools adjudicator

Objections and comments

13.—(1) Where the local authority are to consider the proposals under paragraph 8 of Schedule 2 to the Act, or the adjudicator is to consider proposals under paragraph 10 of Schedule 2, any person may send objections or comments in relation to proposals published in accordance with sections 7, 10, 11 or 15 to the local authority within four weeks of—

- (a) the date of publication of the proposals; or
- (b) in relation to proposals published in accordance with section 7 where there are Academy and non-Academy proposals, the date on which a statement is published in accordance with regulation 7(2) in respect of the non-Academy proposals.

(2) In cases where proposals have been referred to the adjudicator in accordance with paragraph 10 of Schedule 2 to the Act, the local authority must forward any objections or comments which they have received under paragraph (1) to the adjudicator within two weeks of the end of the representation period.

(3) In cases where proposals have been referred to the adjudicator in accordance with paragraph 10 of Schedule 2 to the Act, the local authority may forward any objections or comments of their own in relation to any of the proposals to the adjudicator within two weeks of the end of the representation period.

Period in which proposals are to be determined under paragraph 8(3) and 8(4) of Schedule 2 to the Act

14. The local authority must determine whether to give approval under paragraph 8(3) or (4) of Schedule 2 to the Act within two months of the end of the representation period.

Period in which proposals are to be determined under paragraph 19 of Schedule 2 to the Act

15. The local authority's determination under paragraph 19(1)(1) of Schedule 2 to the Act must be made within two months of the end of the representation period.

Conditional approvals

16.—(1) The events listed in paragraph (2) are the prescribed events that may be specified in an approval given under paragraph 8(5) of Schedule 2 to the Act.

(1) Paragraph 19 was amended by section 37 of, and Schedule 11 to, the Education Act 2011.

- (2) The prescribed events are—
- (a) the grant of planning permission under Part 3 of the Town and Country Planning Act 1990(2);
 - (b) the acquisition of the site on which the new school is to be constructed;
 - (c) the acquisition of playing fields to be provided for the school;
 - (d) the securing of any necessary access to a site referred to in sub-paragraph (b) or playing fields referred to in sub-paragraph (c);
 - (e) the entering into an agreement for any necessary building project supported by the Department for Education;
 - (f) the making of any scheme relating to any charity connected with the school;
 - (g) the establishment of any foundation meeting the requirements of section 23A of SSFA 1998(3);
 - (h) the formation of any federation (within the meaning of section 24(2) of EA 2002(4)) of which it is intended that the proposed school should form part, or the fulfilling of any other condition relating to the proposed school forming part of a federation;
 - (i) in the case of maintained schools which are not special schools, the agreement to any change to admission arrangements of any other school or schools specified in the approval;
 - (j) in the case of a proposal under sections 7, 10 or 11 for a maintained school or maintained special school, the decision of the Secretary of State not to enter into any agreement under section 1 of the Academies Act 2010(5) for the establishment of an Academy;
 - (k) in the case of discontinuance proposals, the entering into any agreement under section 1 of the Academies Act 2010 for the establishment of an Academy;
 - (l) in the case of discontinuance proposals, the agreement of the Secretary of State to extend or enlarge an existing Academy;
 - (m) in the case of proposals to establish a maintained school in place of an existing independent school, the securing of approval by the Secretary of State to relax the requirements of the School Premises (England) Regulations 2012(6) as provided for by section 543(1) of EA 1996(7);
 - (n) in the case of proposals to establish any other maintained school, the securing of approval by the Secretary of State to relax the requirements of the School Premises (England) Regulations 2012 in respect of school playing fields as provided for by section 543 (1) of EA 1996;
 - (o) in the case of proposals whose funding is dependent upon capital receipts from the disposal of any school land or buildings, the securing of consent from the Secretary of State for the disposal as provided for by paragraph 2 of Schedule 1 to the Academies Act 2010(8) or section 77 of SSFA 1998(9), or determination in accordance with Schedule 22 to SSFA 1998(10) as applicable;

(2) 1990 c. 8.

(3) Section 23A was inserted by section 33(1) of the Education and Inspections Act 2006 and amended by section 354(1) of, and Schedule 7 to, the Charities Act 2011 (c 25), S.I. 2010/1158, and S.I. 2011/1396.

(4) Section 24(2) was amended by section 19(1), and (4)(c) of the Education (Wales) Measure 2011.

(5) 2010 c 32. Section 1 was amended by sections 52 and 53 of the Education Act 2011.

(6) S.I. 2012/1943.

(7) Section 543(1) was amended by section 140(1) of, and Schedule 30 to, SSFA 1998.

(8) Schedule 1 was substituted by section 63 of, and Schedule 14 to, the Education Act 2011.

(9) Section 77 was amended by section 36(b) of, and Schedule 4 to, the Act, sections 54 and 63 of, and Schedules 13 and 14 to, the Education Act 2011, and S.I. 2010/1158.

(10) Schedule 22 was amended by section 36(b) of, and Schedule 4 to, the Act, S.I. 2010/1080 and S.I. 2010/1158.

- (p) in the case of proposals to establish a maintained school, the Secretary of State making a direction under section 90 of EA 2002(11) that the National Curriculum for England shall not apply or shall apply with modifications;
- (q) in the case of discontinuance proposals, the decision of the Secretary of State to establish a new further education college under section 16 of the Further and Higher Education Act 1992(12); and
- (r) where the proposals in question depend upon any of the events prescribed in subparagraphs (a) to (q) occurring by a specified date in relation to proposals relating to any other school or proposed school, the occurrence of such an event.

Time limits for local authority referrals to adjudicator prior to determination

17.—(1) The local authority must refer to the adjudicator any proposals under paragraph 10 of Schedule 2 to the Act within two weeks of the end of the representation period.

(2) In cases where the local authority are required to refer proposals to the adjudicator under paragraph 13(13) of Schedule 2 (duty to refer where determination delayed) to the Act, they must do so within one week of the end of the two month period referred to in regulation 15.

Referrals to the adjudicator at the request of a relevant person

18.—(1) A request by a relevant person under paragraph 14(1)(14) of Schedule 2 to the Act that proposals determined by the local authority be referred to the adjudicator must be made within four weeks of the date of the notification of the determination.

(2) The local authority's referral under paragraph 14(1) of Schedule 2 to the Act together with any reasons given by the authority for their determination must be made within one week of receipt of a request submitted in accordance with paragraph (1).

(3) A referral made under paragraph 14(1) of Schedule 2 to the Act must include any objections or comments in relation to the proposals received by the local authority together with minutes of the meeting at which the proposals were considered and any papers considered by the authority at that meeting.

Duty to refer related proposals

19.—(1) Subject to paragraph (2), a reference by the local authority under paragraph 15 of Schedule 2 (duty to refer related proposals) to the Act must be made within the same period referred to in paragraph (1) or (2) of regulation 17 as applicable.

(2) Where there is more than one period for referring proposals under paragraph 15 of Schedule 2 to the Act, the period for referring the proposals is the latest period for referring any of the proposals as referred to in paragraph (1) or (2) of regulation 17 as applicable.

Notification of determinations

20.—(1) The local authority must publish on their website a decision under paragraph 8 or a determination under paragraph 21(3) of Schedule 2 to the Act within one week of making the decision or determination and in both cases publish their reasons.

(11) Section 90 was amended by sections 48 and 103(2) of, and Schedules 1 and 3 to, the Childcare Act 2006, sections 174 and 192 of, and Schedule 12 to, the Apprenticeships, Skills, Children and Learning Act 2009, and section 26 of, and Schedule 8 to, the Education Act 2011. Section 90 was also amended by S.I. 2010/1158.

(12) 1992 c. 13. Section 16 was amended by section 140(3) of, and Schedule 31 to, SSFA 1998, section 111(1) of the Learning and Skills Act 2000 (c. 21), and S.I. 2010/1158.

(13) Paragraph 13 was amended by section 37 of, and Schedule 11 to, the Education Act 2011.

(14) Paragraph 14 was amended by S.I. 2010/1080.

(2) The local authority must notify the following persons of a decision under paragraph 8 or a determination under paragraph 21(3) of Schedule 2 to the Act together with their reasons—

- (a) the adjudicator;
- (b) the proposers;
- (c) the Secretary of State;
- (d) the Diocesan Board of Education for any diocese of the Church of England any part of which is comprised in the area of the local authority;
- (e) the bishop of a diocese of the Roman Catholic Church any part of which is comprised in the area of the local authority; and
- (f) any other body or person that the local authority think appropriate.

(3) In the case of any determination made by a local authority pursuant to paragraph 19 of Schedule 2 to the Act, the local authority must notify the governing body of the school which is the subject of the proposals and the Secretary of State.

(4) The local authority must notify the persons referred to in sub-paragraphs (b) to (d) of paragraph (2) if they refer any proposals or matter to the adjudicator under paragraph 10, 11 or 13(15) of Schedule 2 to the Act or pursuant to a direction under paragraph 12 of that Schedule.

(5) The adjudicator must notify the persons referred to in sub-paragraphs (b) and (c) of paragraph (2) and the local authority of the adjudicator's decision in relation to a referred proposal or matter, together with reasons for the decision.

(6) The local authority or the adjudicator (as the case may be) must notify the proposers or the local authority (as the case may be) of any further proposals referred to the local authority or the adjudicator (as the case may be) which appear to relate to the original proposals for the purposes of paragraph 9(2)(16) of Schedule 2 to the Act.

Publication of revocation proposals

21.—(1) Schedule 3 has effect for the purpose of applying, with modifications where specified, provisions of Part 1 of Schedule 2 to the Act in relation to revocation proposals.

(2) Revocation proposals must contain—

- (a) a description of the original proposals as published in accordance with sections 7, 10, 11 or 15;
- (b) the date of publication of the original proposals;
- (c) details of who published the original proposals; and
- (d) a statement as to why it is proposed that, in accordance with paragraph 21(3) of Schedule 2 (duty to implement proposals) to the Act, paragraph 21(1) of that Schedule should not apply in relation to the original proposals.

(3) The local authority or the proposers (as the case may be) must publish—

- (a) the revocation proposals on a website; and
- (b) a notification of the revocation proposals (including the address of the website where the proposals are published) in a local newspaper.

(4) Any publication under paragraph (3) must contain a statement detailing—

- (a) how copies of the revocation proposals may be obtained;

(15) Paragraphs 10 and 13 were amended by section 37 of, and Schedule 11 to, the Education Act 2011.

(16) Sub-paragraph (2) was amended by section 37 of, and Schedule 11 to, the Education Act 2011.

- (b) that any person may object to or comment on the revocation proposals and the address of the local authority to which any objections or comments should be submitted; and
 - (c) the date by which such objections or comments must be submitted.
- (5) A proposer must submit their revocation proposals to the local authority that maintain the school within one week of the date of publication.
- (6) Within one week of the date of publication the local authority or the governing body (as the case may be) must send a copy of the proposals together with the statement published under paragraph (4) to—
- (a) the Secretary of State; and
 - (b) any other body or person that the local authority or the governing body (as the case may be) think appropriate.
- (7) Within one week of receiving a request for a copy of the proposals the local authority or the governing body (as the case may be) must send a copy to the person requesting it.
- (8) Where the initial decision in relation to the original proposals was made by the adjudicator, the local authority must refer the revocation proposals, together with any objections or comments in relation to them to the adjudicator, within two weeks of the end of the period for making objections and comments set out in paragraph 5(17) of Schedule 2 to the Act as modified by Schedule 3 to these Regulations.

Modifying proposals or specifying a later date for a conditional approval

22.—(1) In relation to paragraph 21(2) of Schedule 2 (power to modify proposals or specify a later date in respect of conditional approval) to the Act, the local authority must refer to the adjudicator cases where the initial decision in relation to the original proposals was made by the adjudicator, within two weeks of receipt of the request from the proposers, or the decision of the local authority (as the case may be).

(2) Where proposals are modified under paragraph 21(2)(a) of Schedule 2 to the Act, the local authority or the adjudicator (as the case may be) must notify the Secretary of State within one week of the date of the proposals being modified.

References to the adjudicator at the request of a relevant person after determination under paragraph 21(4) of Schedule 2 to the Act

23. Where a reference is made under paragraph 14 of Schedule 2 to the Act as modified by Schedule 3, then within the time specified under paragraph 14(1) of Schedule 2 as modified by Schedule 3 the local authority must send to the adjudicator—

- (a) any objections or comments in relation to the proposals;
- (b) minutes of the meeting at which the proposals published under paragraph 21(4) of Schedule 2 to the Act were considered; and
- (c) any papers considered by the local authority at that meeting.

Schools established outside the area of the relevant local authority

24.—(1) Part 1 of Schedule 4 has effect for specifying the modifications to which section 7 and Schedule 2 to the Act are to be subject where proposals published under section 7 relate to a school which is proposed to be situated in an area other than that of the local authority which published the notice.

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(2) Part 2 of Schedule 4 has effect for specifying the modifications to which section 10 and 11 and Schedule 2 to the Act are to be subject where proposals published under section 10 or 11 relate to a school which it is proposed be established in an area other than that of the local authority which it is proposed should maintain the school.