

**EXPLANATORY MEMORANDUM TO
THE SCHOOL ORGANISATION (ESTABLISHMENT AND DISCONTINUANCE OF
SCHOOLS) REGULATIONS 2013**

2013 No. 3109

1. This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

2.1 “School organisation” is the term applied to the opening, closing and alteration of maintained schools and the two instruments covered by this Explanatory Memorandum set out modified systems of school organisation in place of those currently applied by school organisation regulations made in 2007.

The School Organisation (Establishment and Discontinuance of Schools) Regulations 2013 (“the Establishment and Discontinuance Regulations 2013”) set out the process for publishing and determining proposals for the opening and closing of schools in England; the School Organisation (Prescribed Alteration to Maintained Schools) Regulations 2013 (“the Prescribed Alteration Regulations 2013”) prescribe the process to be followed for maintained schools and local authorities to propose and implement changes to the size and characteristics of their schools.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None

4. **Legislative Context**

4.1 The statutory process around proposing and implementing changes to maintained schools’ size and characteristics is currently set out in the School Organisation (Prescribed Alterations) (England) Regulations 2007 (“the 2007 PA Regulations”). The statutory process for publishing and determining proposals for the opening and closing a maintained school is set out in Schedule 2 to the Education and Inspections Act 2006 (“EIA 2006”) and in regulations – currently the School Organisation (Establishment and Discontinuance of Schools) (England) Regulations 2007 (“the 2007 E&D Regulations”).

4.2. The Establishment and Discontinuance Regulations 2013 and the Prescribed Alteration Regulations 2013 are based largely on the 2007 Regulations, but remove the requirement for a statutory process to be followed by maintained schools to make certain changes, and streamline the statutory process to be followed to make other changes and to open or close a school.

5. Territorial Extent and Application

5.1 These instruments apply to England.

6. European Convention on Human Rights

6.1 As the instruments are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

7.1 The policy background to both instruments is the Government's intention that the legislative requirements be streamlined. In relation to alterations that schools can make, we want maintained schools to be more autonomous, that is to say more in charge of decisions about their size and characteristics and able to respond to what parents want for their locality without being unduly restricted by process.

7.2 Section 18 of EIA 2006 gives the Secretary of State the power to make regulations that set out alterations that may be implemented in pursuance of proposals published under section 19 EIA 2006. Section 18 sets out a number of alterations that cannot be made and alterations for which a statutory process must be followed. Section 18 also provides a power to prescribe other alterations.

7.3 The 2007 PA Regulations provide that in the case of proposals to expand, add or remove provision (such as SEN, boarding places or sixth form), change their age range, move to single or mixed sex, transfer a site, or close a site (where a school has multiple sites) the governing body, or the local authority on their behalf, must follow an extensive statutory process. That process takes a minimum of 24 weeks requiring both initial consultation and detailed representation periods, and a decision at a local level, usually by the local authority. There are also appeals mechanisms to the independent Schools Adjudicator.

7.4 The process for publishing and determining proposals to establish or close a school in the 2007 E&D Regulations is similar to that for making changes to the size or characteristics of a maintained school.

7.5 The Government have reviewed these processes as part of its policy of simplifying and reducing bureaucracy, and in response to concerns from a number of schools and local authorities about the level of prescription, the complexity and

financial burden that these requirements place on them, and the time it takes to make relatively simple changes.

7.6. We have removed the requirement for schools to follow a statutory process to make three changes: to alter their age range by up to three years (provided that this does not add a sixth form); to expand their premises (provided that relevant planning permissions and funding has been sought); and to add boarding provision (provided that they meet the required standards for boarding schools). This will allow popular schools to make their own decisions about size, and to respond much quicker to what parents want locally.

7.7 The following alterations will still need to be published and follow a prescribed procedure: adding or removing a sixth form; removing boarding provision; adding, removing, or altering SEN provision; single sex school becoming co-educational; co-educational school becoming single sex; transferring to a new site; closure of one site in a split site school; and changes of category (e.g. community to voluntary aided school). These changes have wider financial implications, or equate to the removal of places from the system and so require a greater level of oversight, and so a statutory process remains necessary.

7.8 The revised statutory processes in the Prescribed Alteration Regulations 2013 have been slimmed down from those in the 2007 PA Regulations by reducing the length of the process: we have removed the formal requirement to consult before publishing proposals (usually four to six weeks at present) and reduced the statutory representation period from six to four weeks. Currently many groups respond twice to the same proposals, with the same points. This change will reduce this duplication.

7.9 In order to ensure that local authorities are able to fulfil their duties of providing sufficient school places, they will still be able to propose the changes that schools are able to make but will only need to follow a streamlined statutory process to do so.

7.10 Due to the sensitive nature of opening and closing maintained schools, we have retained the two opportunities for local input into proposals in the Establishment and Discontinuance Regulations 2013.

7.11 In both instruments, the level of detail set out in the statutory process has been reduced from that set out in the current regulations. The detail that proposals must contain, the publication requirements, the specific requirement to hold a public meeting when establishing or closing a school; and the list of bodies to

whom proposals must be sent, have been reduced or removed altogether leaving this largely to the discretion of local authorities and schools to ensure that this reflects their local circumstances.

7.12 The revised processes will allow schools and local authorities to react more quickly to local demand for school places, and the reduction in publication requirements and duplication of consultation should also equate to a reduction in costs for local authorities.

8. Consultation outcome

8.1 A six week public consultation on these regulations was conducted between 12th September and 24th October 2013. An exception was made to the conventional 12 week consultation period, as the consultation sought views primarily on the detail of the changes rather than the principle which had already been extensively discussed with the sector. In particular, key stakeholders, such as the Local Government Association, the Association of Directors of Children's Services, were consulted well in advance of the formal consultation period to enable us to refine our proposals. During the formal consultation period further stakeholder engagement was carried out, such as discussions with interested groups (e.g. headteachers and governors) and organisations (e.g. National Association of Small Schools, National Middle Schools' Forum). During these discussions many local authority representatives emphasised their support for introducing a shorter process for changes to help address the shortage of school places in some areas.

8.2 One hundred and two responses to the consultation were received. The majority of responses were from local authorities, with some responses from individual schools and academies, and some from national representative groups. The proposals were broadly welcomed as an improvement on the current system.

8.3 Key points from the consultation responses were:

- many respondents welcomed proposals to make it easier for maintained schools to make significant changes, whilst emphasising the importance of working in partnership with other schools in the area;
- there was strong support for slimming down the statutory processes, provided there was sufficient opportunity for parents and other members of the community to feed in their views;
- there was broad support for the proposed reduction in red tape associated with making changes, provided that there was still adequate oversight of proposals from within the department;
- there were representations from dioceses and faith organisations that they must continue to be consulted and notified when a school decides to make any alterations, regardless of whether the school was designated with a religious character;

- some respondents were concerned that proposals to limit publication of intended changes to the local authority website and a local newspaper might risk parents and other community members without internet access not being made aware of plans that could affect them.

8.4 The Department for Education has made some changes to the Prescribed Alteration Regulations 2013 in response to the consultation. The most notable changes to this instrument are to:

- retain the 2007 Regulations' requirement to display a copy of any statutory notice published in a conspicuous location near the school; and
- retain the 2007 Regulations' requirement to notify religious authorities of decisions on proposals.

We will highlight the importance of local consultation and working in partnership with other schools in the guidance that accompanies the regulations.

8.5. The most notable changes to the Establishment and Discontinuance Regulations as a result of the consultation are to:

- retain the 2007 Regulations' requirement to send copies of proposals for opening and closing schools to religious authorities once published; and
- retain the 2007 Regulations' requirement to notify religious authorities of decisions on proposals.

8.6. A full analysis of responses to the consultation is available on the Department's website: www.gov.uk/government/consultations/changes-to-the-system-of-school-organisation.

9. Guidance

9.1 Guidance accompanying these regulations, and the underlying policy, will be issued online at the same time as these regulations come into force. Schools and local authorities will be alerted to it through departmental email communications.

10. Impact

10.1 There is no impact foreseen on business, charities or voluntary bodies.

10.2 The main impact on the public sector is a reduction in the time taken for local authorities and governing bodies to make changes to schools, and the reduction in publication requirements should also equate to financial savings.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 Meetings will be held with local authorities and schools in 2014 to review the new processes, and to establish whether these have met the required intention of creating a less burdensome and bureaucratic framework for making changes to school size and composition whilst ensuring that appropriate checks and balances are retained. Through our regular contact with schools and local authorities we will continue to informally monitor the impact of these regulations.

13. Contact

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