

## SCHEDULE 3

Regulation 6

### PUBLICATION, DETERMINATION AND IMPLEMENTATION OF PROPOSALS OTHER THAN FOUNDATION PROPOSALS

#### **Manner of publication of proposals**

- 1.—(1) The proposer must publish—
  - (a) the proposals on a website; and
  - (b) a notification of the proposals (including the address of the website where the proposals are published) in a local newspaper.
- (2) Any publication under sub-paragraph (1)(a) must contain a statement detailing—
  - (a) how copies of the proposals may be obtained;
  - (b) that any person may object to or comment on the proposals and the address of the local authority to which any objections or comments should be sent; and
  - (c) the date (in accordance with paragraph 2) by which such objections or comments must be sent.
- (3) Within one week of the date of publication under sub-paragraph (1)(a) the proposer must send a copy of the proposals together with the statement published under sub-paragraph (2) to—
  - (a) the governing body or local authority (as appropriate);
  - (b) if proposals involve, or are likely to affect a school which has a religious character—
    - (i) 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;
    - (ii) the bishop of a diocese of the Roman Catholic Church any part of which is comprised in the area of the local authority; or
    - (iii) the relevant faith group in relation to the school;
  - (c) where the school is a special school, to the parents of every registered pupil at the school; and
  - (d) any other body or person that the proposer thinks appropriate.
- (4) Within one week of receiving a request for a copy of the proposals the proposer must send a copy to the person requesting it.
- (5) Where a governing body publish a proposal under sub-paragraph (1)(a) they must post a notification of the proposal in a conspicuous place on the school premises and at or near the main entrance to the school, or, if there is more than one main entrance, all of them.

#### **Objections and comments**

- 2.—(1) Any person may send objections or comments in relation to any proposals to the local authority within four weeks from the date of publication.
- (2) The representation period starts on the date of publication of the proposals and ends four weeks later.

#### **Local authority as decision maker**

- 3.—(1) For the purposes of section 21(2)(f) the local authority is prescribed as the person who (subject to the remaining provisions of this Schedule) must consider and determine the proposals.

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(2) Where paragraph 11 applies (transfer to a different local authority area), the local authority referred to in sub-paragraph (1) is the local authority described in paragraph 11 as Local Authority A.

#### **Withdrawal of proposals**

4. Proposals may be withdrawn by the proposer who published the proposals provided that—
- (a) such proposals are withdrawn before any determination is made;
  - (b) written notice is given to—
    - (i) the governing body or local authority (as appropriate);
    - (ii) in cases where the proposals have been referred to the adjudicator, the adjudicator;and
  - (c) notification is placed on the website where the original proposal was published.

#### **Consideration and determination of proposals by the local authority or adjudicator**

- 5.—(1) In determining proposals to which this Schedule applies the local authority may—
- (a) reject the proposals;
  - (b) approve the proposals without modifications; or
  - (c) approve the proposals with such modifications as the local authority think desirable, having consulted the governing body (unless the modifications are proposed by the governing body).

(2) Where proposals are approved by the local authority (whether with or without modifications), the approval may be conditional on the occurrence of an event prescribed in paragraph 8.

(3) Any determination under sub-paragraph (1) must be made within the period of two months of the end of the representation period.

(4) Where the local authority does not make a determination within the period prescribed by sub-paragraph (3), the proposals must be referred to the adjudicator.

6.—(1) Where proposals have been referred to the adjudicator for determination pursuant to paragraphs 5(4) or 7, the adjudicator may—

- (a) reject the proposals;
- (b) approve the proposals without modifications; or
- (c) approve the proposals with such modifications as the adjudicator thinks desirable, having consulted the governing body and the local authority (unless they proposed the modifications).

(2) Where proposals are approved by the adjudicator (whether with or without modifications), the approval may be conditional on the occurrence of an event prescribed in paragraph 8.

#### **Referral to the adjudicator post-determination**

7.—(1) For the purposes of section 21(2)(h) the prescribed persons at whose request proposals to which this paragraph applies (after their initial determination by the local authority) must be referred to the adjudicator, are—

- (a) 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;
- (b) the bishop of a diocese of the Roman Catholic Church any part of which is comprised in the area of the local authority; and

- (c) where proposals relate to a foundation, voluntary or foundation special school—
  - (i) the governing body of the school to whom the proposal relates; and
  - (ii) the trustees of the school (if any).
- (2) A request under sub-paragraph (1) must be made within four weeks of the decision by the local authority.
- (3) Where a request is made, the local authority must send the proposals and any objections or comments made in relation to the proposals to the adjudicator within one week of receiving it.

### Conditional approvals

8.—(1) The following events are prescribed as specified events which (if the approval is expressed to take effect only if they occur) must occur by the date specified in the approval—

- (a) the grant of planning permission under Part 3 of the Town and Country Planning Act 1990(1);
  - (b) the acquisition of any site required for the implementation of the proposals;
  - (c) the acquisition of playing fields required for the implementation of the proposals;
  - (d) the securing of any necessary access to a site referred to in Paragraph (b) or playing fields referred to in Paragraph (c);
  - (e) the entering into an agreement for any necessary building project supported by the Department for Education;
  - (f) in the case of mainstream schools, the agreement to any change to the admission arrangements relating to the school or any other school or schools, as specified in the approval;
  - (g) the making of any scheme relating to any charity connected with the school;
  - (h) the formation of any federation (within the meaning of section 24(2) of the Education Act 2002(2)) of which it is intended that the school should form part, or the fulfilling of any other condition relating to the school forming part of a federation;
  - (i) where the proposals are to alter the upper age limit of the school, the decision of the Secretary of State to establish a new further education institution under section 16 or 33C of the Further and Higher Education Act 1992(3);
  - (j) where the proposals in question depend upon any of the events specified in Paragraphs (a) to (i) occurring by a specified date in relation to proposals relating to any other school or proposed school, the occurrence of such an event; and
  - (k) where proposals are related to proposals for the establishment of new schools or discontinuance of schools, and those proposals depend on the occurrence of events specified in regulation 20 of the School Organisation (Establishment and Discontinuance of Schools) Regulations 2013(4) the occurrence of such an event.
- (2) For the purposes of sub-paragraph (1)(f) a change to the admission arrangements is agreed—
- (a) in the case where the change arises from the admission arrangements for the school year in question being different from the admission arrangements for the previous school year, if the admission arrangements are determined under section 88C of SSFA 1998(5) and either—

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(1) 1990 c.8.

(2) 2002 c. 32.

(3) 1992 c.13. Section 33C was inserted by paragraphs 1 and 3 of Schedule 8 to the Apprenticeships, Skills, Children and Learning Act 2009 (c. 22).

(4) S.I. 2013/3109.

(5) Section 88C was inserted by section 151(1) and (4) of the Education and Skills Act 2008 (c. 25).

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- (i) no objection is made to the change in accordance with section 88H of SSFA 1998<sup>(6)</sup>;  
or
- (ii) if an objection to the change is made and referred to the adjudicator in accordance with section 88H of SSFA 1998, the objection is not upheld;
- (b) in a case where the change arises from a variation made pursuant to section 88E of SSFA 1998<sup>(7)</sup> and under the School Admissions (Admissions Arrangements and Co-ordination of Admissions Arrangements) (England) Regulations 2012<sup>(8)</sup>, where the variation is required to be referred to the adjudicator, if the adjudicator determines that the variation should have effect without modifications; and
- (c) in a case where the change arises from a variation made under those regulations where the variation is not required to be referred to the adjudicator, when the variation is made.

### **Provision for notification of decisions**

**9.**—(1) Within one week of making the determination, the local authority must publish their decision and the reasons for it on the website where the original proposal was published.

(2) Within one week of making the determination, the local authority must notify the following persons of their decision together with their reasons—

- (a) the adjudicator;
- (b) the governing body;
- (c) the trustees of the school (if any);
- (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;
- (f) where the school is a special school, the parents of every registered pupil at the school; and
- (g) any other body or person that the local authority think appropriate.

(3) In the case of any determination made by the adjudicator pursuant to paragraph 5(4) or 7, the adjudicator must notify the local authority and the persons in Paragraphs (b) to (g) of sub-paragraph (2) of their decision together with reasons within one week of making the determination.

(4) Within one week of receiving notification under sub-paragraph (3), the local authority must publish the adjudicator's decision with reasons on the website where the original proposal was published.

### **Related proposals**

**10.**—(1) Where proposals appear to be related to other proposals the local authority or adjudicator (as the case may be) must consider the related proposals together.

(2) Where the local authority are required under paragraph 5(4) or 7 to refer any proposals to the adjudicator, the local authority must also within one week refer to the adjudicator any other proposals which appear to them to be related.

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<sup>(6)</sup> Section 88H was inserted by section 151(1) and (4) of the Education and Skills Act 2008.

<sup>(7)</sup> Section 88E was inserted by section 151(1) and (4) of the Education and Skills Act 2008.

<sup>(8)</sup> [S.I. 2012/8](#).

### **Determination of proposals where the school is transferring to a different local authority**

**11.**—(1) This paragraph applies to the determination of any proposals for the transfer of the school to a new site falling within paragraph 14 of Schedule 2, where the new site is in an area other than that of the local authority which maintain the school.

(2) The local authority which maintain the school (“Local Authority A”) must send a copy of the proposals, together with any objections and comments received, to the local authority for the area where it is proposed that the school will be situated (“Local Authority B”).

(3) Local Authority A must send the documents required under sub-paragraph (2) within one week of the end of the representation period.

(4) Before determining the proposals in accordance with paragraph 5, Local Authority A must first seek the recommendation of Local Authority B on how the proposals should be determined.

(5) Any determination to which this paragraph applies must be made within the period of two months of the end of the representation period.

### **Transitional exemption orders under the Equality Act 2010**

**12.**—(1) This paragraph applies to proposals for a school to cease to be an establishment which admits pupils of one sex.

(2) Where such proposals are published by the local authority, the local authority must make a transitional exemption order<sup>(9)</sup>.

(3) Where such proposals are published by the governing body, sending the published proposals to the local authority is to be treated as an application to the local authority for a transitional exemption order and the local authority must make such an order accordingly.

(4) Where—

(a) the local authority have failed to make a transitional exemption order; or

(b) the local authority refer the proposals to the adjudicator under paragraph 5(4) or 7,

they must refer the question whether to make a transitional exemption order to the adjudicator.

(5) Where that question is referred to the adjudicator, the adjudicator—

(a) must consider the matter afresh; and

(b) may make a transitional exemption order accordingly.

(6) In this paragraph “make”, in relation to the transitional exemption order, includes (so far as the context permits) vary or revoke.

### **Duty to implement proposals and provide information to the Secretary of State**

**13.**—(1) Subject to the following provisions of this Schedule—

(a) proposals must be implemented in the form in which they were approved or determined; and

(b) within one week of implementation, the proposer must provide information to the Secretary of State about the proposals that have been implemented.

(2) The information in sub-paragraph (1)(b) must be provided through the Department for Education’s register of educational establishments.

(3) For the purposes of the provision of information under sub-paragraph (2), regard must be had to any guidance given from time to time by the Secretary of State.

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(9) For the meaning of “transitional exemption order” see paragraph 3 of Schedule 11 to the Equality Act 2010 (c. 15).

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**Proposals relating to foundation, foundation special or voluntary controlled schools**

14. Proposals relating to a foundation, foundation special, or voluntary controlled school must be implemented by the governing body and the local authority, respectively, to such extent as the proposals provide for each of them to do so.

**Proposals relating to community, community special or maintained nursery schools**

15. Proposals relating to a community, community special or maintained nursery school must be implemented by the local authority.

**Proposals relating to voluntary aided schools**

16. Proposals relating to a voluntary aided school must be implemented—
- (a) so far as relating to the provision of any playing fields for the school, by the local authority; and
  - (b) otherwise by the governing body.

**Provision of site and buildings for foundation, foundation special or voluntary controlled schools**

17.—(1) Where a local authority are required by virtue of the provisions contained in the proposals to provide a site for a foundation, foundation special or voluntary controlled school, the local authority must—

- (a) transfer their interest in the site and in any buildings on the site which are to form part of the school's premises to the trustees of the school, to be held by them on trust for the purposes of the school; or
- (b) if the school has no trustees, to the governing body, to be held by that body for the purposes of the school.

(2) If any doubt or dispute arises as to the persons to whom the local authority are required to make the transfer, it must be made to such persons as the adjudicator thinks appropriate.

(3) The local authority must pay to the persons to whom the transfer is made their reasonable costs in connection with the transfer.

- (4) Where—
- (a) a transfer is made under this paragraph; and
  - (b) the transfer is made to persons who possess, or are or may become entitled to, any sum representing proceeds of the sale of other premises which have been used for the purposes of the school,

those persons must notify the local authority that Paragraph (b) applies to them, and they or their successors must pay to the local authority so much of that sum as, having regard to the value of the interest transferred, may be determined to be just, either by agreement between them and the local authority or, in default of agreement, by the adjudicator.

(5) In sub-paragraph (4)(b) the reference to proceeds of the sale of other premises includes a reference to—

- (a) consideration for the creation or disposition of any kind of interest in other premises, including rent; and
- (b) interest which has accrued in respect of any such consideration,

and for the purposes of any agreed determination under sub-paragraph (4) regard must be had to any guidance given from time to time by the Secretary of State.

(6) Any sum paid under sub-paragraph (4) is to be treated for the purposes of section 14 of the School Sites Act 1841<sup>(10)</sup> (which relates to the sale, or exchange of land held on trust for the purposes of the school) as a sum applied in the purchase of a site for the school.

(7) A determination may be made under sub-paragraph (4) in respect of any property subject to a trust which has arisen under section 1 of the Reverter of Sites Act 1987<sup>(11)</sup> (right of reverter replaced by trust for sale) only if—

- (a) the determination is made by the adjudicator; and
- (b) the adjudicator is satisfied that steps have been taken to protect the interests of the beneficiaries under the trust.

(8) Sub-paragraph (4) is to apply for the purposes of compensating the local authority notified under that sub-paragraph only in relation to such part of the sum mentioned in sub-paragraph (4) (b) (if any) as remains after the application of paragraphs A1 to A16<sup>(12)</sup> or paragraphs 1 to 3 of Schedule 22 to SSFA 1998 to that sum.

#### **Assistance for voluntary aided schools**

**18.** A local authority may give to the governing body implementing proposals relating to voluntary aided schools such assistance as the local authority think fit in relation to the carrying out by the governing body of any obligation arising by virtue of the provision of any playing fields for the school by the local authority.

#### **Duty to transfer interest in premises provided under paragraph 18**

**19.**—(1) Where assistance under paragraph 18 consists of the provision of any premises for use for the purposes of a school, the local authority must transfer their interest in the premises to the trustees of the school to be held on trust for the purposes of the school.

(2) If any doubt or dispute arises as to the persons to whom the local authority are required to make the transfer it must be made to such persons as the adjudicator thinks appropriate.

(3) The local authority must pay to the persons to whom the transfer is made their reasonable costs in connection with the transfer.

#### **Revocation of proposals (after approval)**

**20.**—(1) If the local authority, or adjudicator (where the original proposals were referred under paragraph 5(4) only, or a referral is made to the adjudicator under sub-paragraph (10)) are satisfied that—

- (a) implementation of the proposals would be unreasonably difficult; or
- (b) circumstances have so altered since approval was given that implementation would be inappropriate,

the local authority or adjudicator (as appropriate) may determine at any time before implementation that paragraph 13 (duty to implement) is to cease to apply to the proposals.

(2) The local authority or adjudicator (as the case may be) may only make a determination under sub-paragraph (1) where proposals have been published by the proposer under sub-paragraph (3) (“revocation proposals”).

(3) Revocation proposals must contain—

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<sup>(10)</sup> 1841 c.38.

<sup>(11)</sup> 1987 c.15.

<sup>(12)</sup> Part A1 to Schedule 22 to the School Standards and Framework Act 1998 was inserted by Schedule 4 to the Education and Inspections Act 2006.

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- (a) a description of the original proposals as published in accordance with section 19(1) or 19(3) (as appropriate);
  - (b) the date of publication of the original proposals; and
  - (c) a statement as to why it is proposed that, in accordance with sub-paragraph (1), paragraph 13 should not apply in relation to the original proposals.
- (4) The proposer 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.
- (5) Any publication under sub-paragraph (4)(a) must contain a statement detailing—
- (a) how copies of the revocation proposals may be obtained;
  - (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 sent; and
  - (c) the date by which such objections or comments must be sent.
- (6) The governing body (if appropriate) must send the revocation proposals within one week of the date of publication to the local authority.
- (7) Any objections and comments must be sent to the local authority within four weeks of the date of publication of the proposals.
- (8) Where the original proposals were decided by the adjudicator pursuant to a reference under paragraph 5(4), 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 representation period.
- (9) Where the local authority determine revocation proposals, any determination must be made within a period ending two months after the end of the representation period.
- (10) If the local authority do not make a determination within the period specified in sub-paragraph (9) they must refer the proposals to the adjudicator within one week of the end of that period.
- (11) The local authority must publish the determination on the website where the original proposal was published.
- (12) The local authority must notify the following persons of the decision taken under sub-paragraph (1) together with their reasons—
- (a) 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;
  - (b) the bishop of a diocese of the Roman Catholic Church any part of which is comprised in the area of the local authority; and
  - (c) where the proposals relate to a voluntary, foundation or foundation special school—
    - (i) the governing body; and
    - (ii) the trustees of the school (if any).
- (13) The persons at whose request revocation proposals must after their determination by the local authority be referred to the adjudicator are—
- (a) 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;
  - (b) the bishop of a diocese of the Roman Catholic Church any part of which is comprised in the area of the local authority; and



(c) where the proposals relate to a voluntary, foundation or foundation special school—

(i) the governing body; and

(ii) the trustees of the school (if any).

(14) A request under sub-paragraph (13) must be made within four weeks of the initial determination of the revocation proposals by the local authority.

(15) Where a request is made under sub-paragraph (13) the local authority must send the revocation proposals, and any objections or comments relating to the proposals to the adjudicator within one week of receiving the request.

### **Modification post-determination**

**21.**—(1) Where the local authority have determined the proposals, the local authority may at the request of the governing body which made the proposals, modify the proposals or, where there has been a conditional approval, specify a later date, after determination but before implementation, by which the event specified in the approval must occur.

(2) Where the adjudicator has determined the proposals, the adjudicator may, at the request of the governing body which made the proposals and after consulting the local authority, modify the proposals or, where there has been a conditional approval, specify a later date, after determination but before implementation, by which the event specified in the approval must occur.

(3) Details of the modification must be published on the website where the original proposals were published.

### **Proposals not falling to be implemented**

**22.**—(1) Where by virtue of paragraph 20(1), paragraph 13 (duty to implement) ceases to apply to any proposals, those proposals are to be treated for the purposes of this Schedule as if they had been rejected.

(2) Where a conditional approval is given, and an event specified in that approval does not occur by the required date—

(a) paragraph 13 ceases to apply to the proposals; and

(b) the proposals must be considered afresh by the local authority or adjudicator (as the case may be) and paragraphs 3 to 21 apply accordingly.