
STATUTORY INSTRUMENTS

1999 No. 2212

The Education (Maintained Special Schools) (England) Regulations 1999

PART II

ESTABLISHMENT, ALTERATION AND DISCONTINUANCE OF MAINTAINED SPECIAL SCHOOLS

Alterations for which proposals must be published

3. The alterations specified in Schedule 1 to these Regulations are prescribed as alterations for which proposals must be published under section 31(1)(b) or 31(2)(a).

Information to be contained in published proposals

4.—(1) This regulation prescribes for the purposes of section 31(3)(a) and paragraph 5(2)(a) of Schedule 7 (where the proposals relate to a maintained special school) the information which proposals published under section 31 or paragraph 5 of Schedule 7 must contain.

(2) Proposals published under section 31 or paragraph 5(2) of Schedule 7 must contain the information specified in Part I of Schedule 2 to these Regulations together with—

- (a) the information specified in Part II of that Schedule where the proposals are to establish a new school; or
- (b) the information specified in Part III of that Schedule where the proposals are to make a prescribed alteration to a school; or
- (c) the information specified in Part IV of that Schedule where the proposals are to discontinue a school.

Manner of publication of proposals

5.—(1) This regulation prescribes for the purposes of section 31(3)(b) and for the purposes of paragraph 5(4) of Schedule 6 and paragraph 5(2)(b) of Schedule 7 (in both cases where the proposals relate to a maintained special school) the manner of publication of proposals required to be published under section 31, paragraph 5(4) of Schedule 6 or paragraph 5 of Schedule 7.

(2) Any proposals for the establishment of a school shall be published in at least one newspaper circulating in the area of the local education authority who it is proposed should maintain the school.

(3) Any proposals for the making of a prescribed alteration to a school or for the discontinuance of the school shall be published—

- (a) in at least one newspaper circulating in the area of the local education who maintain the school; and
- (b) by being posted at or near the main entrance to the school or, if there is more than one main entrance, all of them.

(4) Any proposals that paragraph 5(1) of Schedule 6 (requirement to implement proposals) should cease to apply in relation to proposals published under section 31 shall be published—

- (a) in at least one newspaper circulating in the same area as that in which the newspaper in which the original proposals were published circulated; and
- (b) where the proposals relate to an existing school, by being posted at or near the main entrance to the school, or, if there is more than one main entrance, all of them.

Information to be sent to School Organisation Committee and Secretary of State

6.—(1) This regulation prescribes—

- (a) for the purposes of section 31(5)(b) the information in connection with proposals published under section 31, which must be sent to the school organisation committee; and
- (b) for the purposes of paragraphs 2(5) and 3(5) of Schedule 7 the information in connection with proposals published under section 31 pursuant to an order under paragraph 2 or 3 of Schedule 7 which must be sent to the Secretary of State.

(2) Where proposals have been published under section 31 the relevant body shall send to the school organisation committee and, (where the proposals were published pursuant to an order under paragraph 2 or 3 of Schedule 7) to the Secretary of State, the information specified in Part II of Schedule 3 to these Regulations together with—

- (a) such of the information specified in Part III of that Schedule as applies to the proposals, where the proposals are to establish a new school;
- (b) such of the information specified in Part IV of that Schedule as applies to the proposals, where the proposals are to make a prescribed alteration to a school; and
- (c) such of the information specified in Part V of that Schedule as applies to the proposals, where the proposals are to discontinue a school.

Other bodies to whom proposals should be sent

7.—(1) This regulation prescribes, for the purposes of section 31(7) the bodies or persons to whom the relevant body shall also send a copy of any proposals to which section 31(5) applies.

(2) The bodies or persons referred to in paragraph (1) are—

- (a) the Further Education Funding Council for England, if the proposals affect the provision of education to which section 2(1) of the Further and Higher Education Act 1992(1) applies;
- (b) where the proposals are published by the governing body of a foundation special school, the local education authority which maintains the school;
- (c) where the proposals are to make a prescribed alteration to, or discontinue, a school, each local education authority who maintain a statement of special educational needs under Part IV of the Education Act 1996(2) in respect of a registered pupil at the school;
- (d) where the proposals are for the establishment of a new school—
 - (i) each local education authority whose area adjoins that of the authority who it is proposed should maintain the school, and
 - (ii) where it is intended that the school should be situated in the area of a local education authority other than the authority whom it is proposed should maintain the school, the local education authority in whose area the school is proposed to be situated and

(1) 1992 c. 13.

(2) 1996 c. 56.

- any local education authority not falling within paragraph (i) of this sub-paragraph whose area adjoins the area of that local education authority;
- (e) where the proposals are for the transfer of a school to a new site in a different area—
 - (i) the local education authority in whose area the proposed new site is to be situated, and
 - (ii) each local education authority whose area adjoins the area in which the proposed new site is to be situated;
 - (f) where the proposals are to make a prescribed alteration to or to discontinue a school, the registered parents of every registered pupil at the school;
 - (g) any Local Health Authority which acts for any area which includes any part of the area of the local education authority who maintain or who it is proposed should maintain the school; and
 - (h) any National Health Service Trust who have responsibility for the ownership or management of any hospital or other establishment or facilities in the area of the local education authority who maintain or who it is proposed should maintain the school.

Objections to proposals

- 8.—(1) This regulation—
- (a) prescribes for the purposes of paragraph 2(2)(a) and (3) of Schedule 6 and paragraph 7(2) of Schedule 7 the period within which objections to proposals mentioned in those paragraphs relating to maintained special schools may be sent; and
 - (b) prescribes for the purposes of paragraph 2(2)(b) of Schedule 6 the period within which a local education authority must send copies of objections to proposals relating to maintained special schools.
- (2) Objections to proposals published under section 31 or paragraph 5 of Schedule 7 shall be sent to the local education authority or the relevant school organisation committee (as the case may be)—
- (a) within two months after the date of publication of the proposals, except where sub-paragraph (b) applies; and
 - (b) within one month after the date of publication of the proposals, where—
 - (i) the proposals are published under section 31 to make a prescribed alteration to or to discontinue a school to which section 15 of the Act applies, or
 - (ii) the proposals are published under section 31 to establish a new school on the same site as a school to which section 15 applies and which it is proposed to discontinue.
- (3) The local education authority shall send copies of objections to proposals published under section 31 together with the authority's observations on them to the relevant school organisation committee in accordance with paragraph 2(2)(b) of Schedule 6 within—
- (a) one month after the end of the objection period except where the proposals fall within paragraph (2)(b); and
 - (b) two weeks after the end of the objection period where the proposals fall within paragraph (2)(b).

Approval of proposals with modifications after consultation

- 9.—(1) This Regulation prescribes, for the purpose of paragraph 3(2)(c) of the Schedule 6 or, as the case may be, that sub-paragraph as applied by paragraph 3(7) of that Schedule, the bodies with whom the school organisation committee or, as the case may be, an adjudicator, must consult before approving proposals relating to a maintained special school with modifications.

- (2) The bodies prescribed are the body who published the proposals; and
- (a) where the proposals were published by the governing body of a foundation special school, the local education authority who maintain the school; or
 - (b) where the proposals were published by the local education authority to make a prescribed alteration to, or discontinue a foundation special school, the governing body of the school.

Conditional approvals

10. The following events are prescribed for the purposes of paragraph 3(3) of Schedule 6 and paragraphs 8(3) and 9(4) of Schedule 7 (which provide that approvals given under those paragraphs may be expressed to take effect only if an event specified in the approval occurs by a date so specified) in relation to approval of proposals relating to a maintained special school—

- (a) the grant of planning permission under Part III of the Town and Country Planning Act 1990⁽³⁾;
- (b) the acquisition of a site on which a new school, a proposed enlargement of the premises of a school or other alteration to the premises of the 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 making of any scheme relating to any charity connected with the school or proposed school; and
- (f) the entering into of a private finance transaction within the meaning of regulation 16 of the Local Authorities (Capital Finance) Regulations 1997⁽⁴⁾.

Period after the expiry of which proposals must be referred to the adjudicator if requested

11.—(1) This regulation prescribes periods for the purposes of paragraphs 3(5) and 5(5) of Schedule 6 and paragraph 8(5) of Schedule 7 (which provide that if, by the end of such period as may be specified in or determined in accordance with regulations, a school organisation committee has not voted on certain questions and if the bodies referred to in those paragraphs so request, the committee shall refer the proposals or matter to the adjudicator) where the proposals relate to a maintained special school.

(2) For the purposes of paragraph 3(5) of Schedule 6 the period, subject to paragraph (5), is the period ending—

- (a) where proposals were published by a local education authority, two months from the date on which the committee receive from the local education authority under paragraph 2(2) (b) of Schedule 6 and regulation 8(3), copies of all objections made together with the authority's observations on them; and
- (b) where proposals were published by a governing body, two months from the end of the period within which objections may be sent to the committee in accordance with paragraph 2(3) of Schedule 6 and regulation 8(2);

or, if later, two months from the date on which the committee receive the information referred to in regulation 6.

(3) For the purposes of paragraph 5(5) of Schedule 6 the period, subject to paragraph (5), is the period ending—

(3) 1990 c. 8.

(4) S.I.1997/319; amended by S.I. 1998/371.

- (a) where the matter is a request for modification of proposals, one month from the date which the committee notify persons whom they consult (pursuant to paragraph 5(2) of Schedule 6 and regulation 12(3)) is to be the date by which responses to the consultation must be received;
 - (b) where the matter is a request to specify a later date, one month from the date of the request; and
 - (c) where the matter is a proposal for the committee to make a determination under paragraph 5(3) of Schedule 6 to the Act,
 - (i) where the proposals were published by a local education authority, two months from the date on which the committee receive from the local education authority under paragraph 2(2)(b) of Schedule 6, as it has effect with the modifications specified in Schedule 4 to these Regulations, copies of the objections made together with the authority's observations on them, and
 - (ii) where the proposals were published by a governing body, two months from the end of the period within which objections may be sent to the committee in accordance with paragraph 2(3) of Schedule 6, as it has effect with the modifications specified in Schedule 4 to these Regulations, of, if later, two months from the date on which the committee receive the information specified in section 31(5) as it has effect with the modifications specified in Schedule 4 to these Regulations.
- (4) For the purposes of paragraph 8(5) of Schedule 7 the period, subject to paragraph (5), is two months from the date on which objections must be sent to the committee under paragraph 7 of Schedule 7 and regulation 8(2).
- (5) Where in the opinion of the committee any proposals or matter ("proposal A") is related to other proposals or another matter ("proposal B") and the period relating to proposal A determined in accordance with paragraph (2), (3) or (4) would end earlier than period relating to proposal B, then, despite paragraph (2), (3) or (4) the period relating to proposal A shall expire at the same time as the period relating to proposal B.

Modification of approved proposals

12.—(1) This regulation prescribes, for the purposes of paragraph 5(2) of Schedule 6 to the Act or, as the case may be, that sub-paragraph as applied by paragraph 5(7) of that Schedule the persons or body—

- (a) at whose request the school organisation committee or, as the case may be, the adjudicator may—
 - (i) modify approved proposals relating to a maintained special school, or
 - (ii) where approval of proposals in respect of a maintained special school was given in accordance with paragraph 3(3) of that Schedule (approval expressed to take effect only if an event specified in the approval occurs by a date so specified), specify a later date by which the event in question must occur; and
 - (b) whom a school organisation committee or, as the case may be, an adjudicator must consult before modifying approved proposals relating to a maintained special school.
- (2) A school organisation committee or an adjudicator may modify approved proposals or specify a later date at the request of the persons or body who published the proposals.
- (3) Before modifying approved proposals a school organisation committee or an adjudicator shall consult the body who published the proposals; and
- (a) where the proposals were published by the governing body of a foundation special school, the local education authority who maintain the school; or

(b) where the proposals were published by the local education authority to make a prescribed alteration to, or discontinue a foundation special school, the governing body of the school.

(4) In this regulation references to approved proposals include references to proposals which the local education authority have determined to implement under paragraph 4 of Schedule 6.

Provision of information

13.—(1) The school organisation committee shall, within two weeks of the date on which such proposals were sent to them, send to the Secretary of State a copy of all published proposals which are sent to them under section 31(5) (including proposals sent to the committee under section 31(5) as it has effect by virtue of Schedule 4 to these Regulations).

(2) The school organisation committee shall, within the two weeks of the date on which they are notified of a determination made by a local education authority under paragraph 4(2) of Schedule 6, sent a copy of such notification to the Secretary of State.

(3) The school organisation committee shall notify the following persons of each decision taken under paragraph 3(2) or 5(2) or (3) of Schedule 6 or paragraph 8(2) of Schedule 7 relating to a maintained special school;

- (a) the body who published the proposals;
- (b) (if different) the local education authority who maintain the school or (in the case of a new school) who it is proposed should maintain the school;
- (c) (if different) the governing body of the school to which the proposals relate;
- (d) subject to paragraph (7), each objector; and
- (e) the Secretary of State.

(4) The school organisation committee shall notify the persons referred to in sub-paragraphs (a) to (c) and (e) of paragraph (3) if they refer any proposals or matter relating to a maintained special school to the adjudicator under paragraph 3(5) or (6), or 5(5) or (6) of Schedule 6 or paragraph 8(5) or (6) of Schedule 7.

(5) The adjudicator shall notify the persons referred to in paragraph (3) of each decision taken under paragraph 3(2) or 5(2) or (3) of Schedule 6 (as applied respectively by paragraphs 3(7) and 5(7) of that Schedule) relating to a maintained special school.

(6) Where, pursuant to paragraph (3) the school organisation committee notify the persons referred to that paragraph of a decision they shall also give reasons for that decision.

(7) Where objections to a proposal take the form of a petition (that is to say a document containing the text of one objection signed by more than one objector) the school organisation committee or the adjudicator may comply with paragraph (3) or (5) as the case may be by—

- (a) notifying the person (if any) who appears to them to have arranged for the petition to be sent to the local education authority or school organisation committee; or
- (b) if there is no such person, notifying the objector whose name appears first on the petition.

(8) Where the proposals (“proposals A”) have been sent to a school organisation committee under section 31(5) or paragraph 5(3) of Schedule 7, and subsequently further proposals are sent to the committee under any of those provisions or under section 28(6) or 29(5) of the Act, which in the opinion of the committee are related to proposals A, the school organisation committee shall notify the body who published proposals A of that fact and of the effect of regulation 11(5).

(9) Paragraph (5) shall not apply in relation to any decision provision for the notification of which is made by regulation 15 of the Education (Adjudicator’s Inquiry Procedure etc.) Regulations 1999(5).

Voting of committee on proposals

14.—(1) In this Regulation references to a group of members of the committee shall be construed in accordance with the Education (School Organisation Committees) (England) Regulations 1999(6).

(2) Each group of members shall collectively have a single vote in relation to any decision of the committee as to whether or not—

(a) in the relation to proposals relating to a maintained special school, to give any approval under paragraph 3 of Schedule 6 or to—

- (i) modify any proposals,
- (ii) specify a later date, or
- (iii) make any determination,

under paragraph 5(2)(a) or (b) or (3) of that Schedule,

(b) to make, vary or revoke a transitional exemption order under paragraph 21 of Schedule 6 or paragraph 16 of Schedule 7 in relation to proposals relating to a maintained special school;

(c) to give any approval under paragraph 8 of Schedule 7 in relation to proposals relating to a maintained special school; or

(d) to defer consideration of whether to make any decision or recommendation on any of the matters referred to in sub-paragraphs (a) to (c) above.

(3) Each decision on any question referred to in paragraph (2) shall be a unanimous decision of those voting.

Time within which reference must be made to the adjudicator

15.—(1) Where by virtue of paragraph 3(5) or 5(5) of Schedule 6 or paragraph 8(5) of Schedule 7 to the Act the committee are required to refer any proposals or matter relating to a maintained special school to the adjudicator they shall do so within two weeks of the receipt of the request under any of those paragraphs.

(2) Where by virtue of paragraph 3(6), 5(6) or 21(4)(a) of Schedule 6, or paragraph 8(6) of Schedule 7, the committee is required to refer any proposals or matter relating to a maintained special school to the adjudicator they shall do so within two weeks of the date on which the committee voted but failed to reach a unanimous decision or (in the case of proposals required to be referred to the adjudicator under paragraph 8(6)(b) of Schedule 7) within two weeks of the date on which the committee decided not to give any approval under paragraph 8 of the Schedule.

Application of and modification of provisions of the Act in special cases

16. Schedule 4 to these Regulations has effect for the purpose of applying, with modifications where specified, provisions of section 31 and Part I of Schedule 6 in relation to proposals published under paragraph 5(4) of Schedule 6 relating to a maintained special school.

Construction of certain references to School Organisation Committee, Adjudicator etc.

17.—(1) Where regulation 19(4) of the Transition Regulations applies, the reference in regulation 12 to the school organisation committee or, as the case may be, the adjudicator shall have effect as a reference to the Secretary of State.

(2) Where Chapter II of Part II of the Act has effect with the modifications specified in the Schedule to the Transition Regulations—

- (a) references in regulations 6 and 8 to the school organisation committee shall have effect as references to the Secretary of State;
- (b) regulation 6(1)(b), the words “and (where the proposals were published pursuant to an order under paragraph 2 or 3 of Schedule 7) to the Secretary of State” in regulation 6(2) and regulations 11 and 15 shall not have effect.
- (c) references in regulations 9 and 12 to the school organisation committee or, as the case may be, the adjudicator shall have effect as references to the Secretary of State; and
- (d) the reference, in paragraph 3 of Schedule 2 to these Regulations, to paragraph 2 of Schedule 6 or, as the case may be, paragraph 7 of Schedule 7 shall have effect as a reference to those paragraphs with the modifications so specified and accordingly the reference in paragraph 3(b) of Schedule 2 to these Regulations to the school organisation committee shall have effect as a reference to the Secretary of State.