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STATUTORY INSTRUMENTS

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**2007 No. 1355**

**The School Organisation (Transitional Provisions) (England) Regulations 2007**

**PART 1**

**General**

**Citation, commencement and application**

**1.—(1)** These Regulations may be cited as the School Organisation (Transitional Provisions) (England) Regulations 2007 and come into force on 25th May 2007.

**(2)** These Regulations apply in relation to England only.

**Interpretation**

**2.—(1)** In these Regulations—

“the Act” means the Education and Inspections Act 2006;

“EA 1996” means the Education Act 1996<sup>(1)</sup>;

“EA 2005” means the Education Act 2005<sup>(2)</sup>;

“SSFA 1998” means the School Standards and Framework Act 1998<sup>(3)</sup>;

“the Change of Category Regulations” means Education (Change of Category of Maintained Schools) (England) Regulations 2000<sup>(4)</sup>;

“the Constitution Regulations” means the School Governance (Constitution) (England) Regulations 2007<sup>(5)</sup>;

“discontinuance proposals” means proposals published under section 29 or 31 of SSFA 1998 for the discontinuance of a maintained school;

“excepted expansion” means, in respect of secondary schools except grammar schools, a prescribed alteration falling within paragraphs 1, 2 3 (but in respect of a prescribed alteration falling with paragraph 3, only where the alteration of the upper age limit is being made so as to provide sixth form education) 11, 12 or 13 of Schedule 1 to the Education (School Organisation Proposals) (England) Regulations 1999<sup>(6)</sup>;

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(1) 1996 c.56.

(2) 2005 c.18.

(3) 1998 c.31.

(4) S.I. 2000/2195; relevant amending instruments are S.I. 2003/2136, S.I. 2005/1731, and S.I. 2006/1507. These Regulations were otherwise revoked by the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 (S.I. 2007/1289).

(5) S.I. 2007/957.

(6) S.I. 1999/2213; relevant amending instruments are S.I. 2000/2198, S.I. 2003/1229, S.I. 2005/1801 and S.I. 2005/3342. These Regulations were otherwise revoked by the School Organisation (Establishment and Discontinuance of Schools) (England) Regulations 2007 (S.I. 2007/1288).

“the implementation date” means the date approved or specified by the governing body, local education authority, or school organisation committee (as the case may be) as the date on which it is intended that the change of category or prescribed alteration which falls to be implemented, should take place;

“initial decision” means in relation to Part 2 a decision made by the adjudicator under regulation 7 except a decision made by him following a referral to him by an aggrieved person pursuant to regulation 11;

“mainstream school” means a maintained school which is not a special school;

“the New Secondary School Proposals Regulations” means the Education (New Secondary School Proposals) (England) Regulations 2006(7);

“NHS foundation trust” has the same meaning as in section 30 (1) of the National Health Service Act 2006(8);

“NHS trust” means a body established by the Secretary of State under section 25 of the National Health Service Act 2006 ;

“Primary Care Trust” means a body established or continuing under section 18 of the National Health Service Act 2006;

“relevant authority” has the meaning given by regulation 5 (2) in Parts 2 and 3 of these Regulations;

“representation period” means any period prescribed in these Regulations or the regulations referred to in regulations 4 and 26 in which objections or comments may be made on, or in relation to, the proposals or revocation proposals;

“special school” means a community special or a foundation special school;

“the Special Schools Regulations” means the Education (Maintained Special Schools) (England) Regulations 1999(9);

“the School Organisation Proposals Regulations” means the Education (School Organisation Proposals) (England) Regulations 1999;

“undetermined proposal” means proposals for the establishment, discontinuance or alteration of a maintained school that have been published under section 28, 28A, 29 or 31 of SSFA 1998 or section 66 of EA 2005 before 25th May 2007 and that have not been determined by either the school organisation committee or by the adjudicator;

“the upper and lower age limits” means the highest and lowest ages of pupils for whom it is intended that education is normally provided at the school;

“14-16 education” means educational provision for 14-16 year olds;

and any reference to sections 7, 8, 9, 10, 11, 13 and 15 or to Schedule 2 is a reference to that section of, or Schedule to, the Act.

(2) For the purposes of Part 2 and 4 of these Regulations, proposals are to be treated as published before 25th May 2007, if one or more of the requirements of the following regulations as applicable are satisfied before that date—

- (a) regulation 5 of School Organisation Proposals Regulations and
- (b) regulation 5 of the Special Schools Regulations.

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(7) [S.I. 2006/2139](#), amended by [SI 2007/59](#). These Regulations were otherwise revoked by the School Organisation (Establishment and Discontinuance of Schools) (England) Regulations 2007 ([S.I. 2007/1288](#)).

(8) [2006 c.26](#).

(9) [S.I. 1999/2212](#) amended by [S.I. 2002/2469](#); there is another amending instrument but it is not relevant. These Regulations were otherwise revoked by the School Organisation (Establishment and Discontinuance of Schools) (England) Regulations 2007 ([S.I. 2007/1288](#)).

(3) For the purposes of Part 2 of these Regulations, a notice under section 66 of EA 2005 is to be treated as published before 25th May 2007, if one or more of the requirements of regulation 5 of the New Secondary School Proposals Regulations are satisfied before that date.

## PART 2

### Savings and transitional provisions relating to proposals for the establishment and discontinuance of maintained schools published under SSFA 1998 or EA 2005 and undetermined

#### **Undetermined Proposals published under SSFA 1998 and EA 2005: general**

- 3.—(1) The following provisions of this regulation apply to—
- (a) proposals which were published before 25th May 2007 and which remain undetermined by that date, and
  - (b) the notice and proposals made under section 66 (7) of EA 2005 pursuant to the notice or proposals published under section 66 (8) (b) of EA 2005, where the notice was published before 25th May 2007.
- (2) Where proposals for the establishment or discontinuance of a mainstream school have been published under section 28, 28A or 29 of SSFA 1998 **(10)**, regulations 1, 2, 4, 5 and 7 (1) and (2) of the School Organisation Proposals Regulations continue to apply in relation to the proposals.
- (3) Where a notice inviting proposals for the establishment of a school has been published under section 66 of EA 2005**(11)**, regulations 1 to 5 and 7 to 12 of the New Secondary School Proposals Regulations continue to apply in relation to the notice and proposals made under section 66 (7) of EA 2005 pursuant to the notice or published under section 66(8)(b) of EA 2005.
- (4) Where proposals for the establishment or discontinuance of a special school have been published under section 31 of SSFA**(12)**, regulations 1, 2, 4, 5, 8(1) and (2) of the Special Schools Regulations continue to apply in relation to the proposals.
- (5) Sections 28(6), 29(5), 28A(6) and 31(5) of SSFA 1998, regulation 6 of the School Organisation Proposals Regulations, regulation 13 of the New Secondary School Proposals Regulations and regulation 6 of the Special Schools Regulations continue to apply in relation to information to be sent to the school organisation committee.
- (6) In cases where the provisions for making objections and comments continue in accordance with the regulations referred to in regulation 4 as applicable, the school organisation committee must send copies of the proposals referred to in paragraphs (2) to (4) respectively (together with any objections or comments and other information received by it in accordance with the regulations referred to paragraph 5 as applicable) to the relevant authority as defined by regulation 5(2), or to the adjudicator as provided for in regulation 9 within 1 week of the end of the representation period.
- (7) Except where paragraph (6) or (8) applies, any other proposals referred to in paragraphs (2) to (4) (together with any objections or comments and other information received by it in accordance with the regulations referred to paragraph 5 as applicable) must be sent by the school organisation committee to the relevant authority or to the adjudicator as provided for in regulation 9 by 1st June 2007, and determined in accordance with this Part of these Regulations.

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**(10)** Sections 28, 28A and 29 of SSFA 1998 ceased to apply to England by virtue of being amended by section 30 of and paragraph 18 and 20 of Schedule 3 to the Act.

**(11)** Section 66 of EA 2005 ceased to apply to England by virtue of its being amended by section 30 of and paragraph 49 of Schedule 3 to the Act.

**(12)** Section 31 of SSFA 1998 ceased to apply to England by virtue of its being amended by section 30 of and paragraph 23 of Schedule 3 to the Act.

(8) Where the school organisation committee has failed to reach a decision as provided for in paragraph 3(6) of Schedule 6 to SSFA 1998 or regulation 17(1) of the New Secondary School Proposals Regulations, it must send copies of the proposals referred to in paragraphs (2) to (4) respectively (together with any objections or comments or other information received by it in accordance the regulations referred to paragraph 5 as applicable) to the adjudicator by 1st June 2007 and determined in accordance with regulation 14.

(9) Any proposals as referred to in paragraphs (2) to (4) that have been sent to the adjudicator for determination pursuant to—

- (a) paragraph 3(5), 3(6), 3(6A), or 3 (6D) of Schedule 6 to SSFA 1998, or
  - (b) regulation 17 of the New Secondary School Proposals Regulations,
- must be determined by the adjudicator afresh as provided for in regulation 14.

### **Objections and comments**

4.—(1) Paragraph 2 of Schedule 6 to SSFA 1998 continues to apply in relation to proposals which were published before 25th May 2007 and which remain undetermined on that date.

(2) In relation to proposals published before 25th May 2007 under sections 28, 28A or 29 of SSFA 1998 for the establishment or discontinuance of a mainstream school, regulation 7(1) and (2) of the School Organisation Proposals Regulations continue to apply in relation to the making of objections and comments.

(3) In relation to proposals published under section 66 of EA 2005, regulation 12 of the New Secondary School Proposals Regulations continues to apply in relation to the making of objections and comments.

(4) In relation to proposals published under section 31 of SSFA 1998 for the establishment or discontinuance of a special school, regulations 8(1) and (2) of the Special Schools Regulations continue to apply in relation to making objections and comments.

### **Consideration of proposals published under SSFA 1998 and EA 2005: general**

5.—(1) Proposals published under section 28, 28A, 29 or 31 of SSFA 1998 or section 66 of EA 2005 for the establishment or discontinuance of a maintained school that are undetermined on 25th May 2007 are to be determined by the relevant authority or by the adjudicator as provided for in this Part of these Regulations.

(2) In this Part and Part 3 to these Regulations, the relevant authority is—

- (a) in the case of proposals published under section 28 or 28A, 29 or 31 of SSFA 1998 or revocation proposals relating to those proposals, the local education authority who maintain the school or (in the case of a new school) who it is proposed should maintain the school, and
- (b) in the case of proposals published under section 66 of EA 2005 or revocation proposals relating to those proposals, the local education authority who published the notice under that section.

(3) In this Part “proposers” in relation to any proposals means the persons who made the proposals, but does not include a local education authority.

(4) For the purposes of this Part and Part 3 of these Regulations—

- (a) proposals under section 66 of EA 2005 are to be taken to be made by the person who submitted them to the relevant authority under subsection (7) of that section, or in the case of proposals published by the relevant authority under subsection (8) of that section, by the relevant authority, and

- (b) proposals under section 28, 28A, 29 or 31 of SSFA 1998 for the establishment or discontinuance of a school are to be taken to be made by the person who published them.

### **Proposals requiring consideration under regulation 7**

6.—(1) All proposals under sections 28, 28A, 29 or 31 of SSFA 1998 or section 66 of EA 2005 for the establishment or discontinuance of a maintained school require consideration under regulation 7.

(2) Discontinuance proposals require consideration under regulation 7 unless paragraph (3) applies.

(3) Discontinuance proposals fall to be dealt with under regulation 16 (and do not require consideration under regulation 7) if the proposals were made by the relevant authority and either—

- (a) no objections were made in relation to the relevant proposals in accordance with regulation 7 of the School Organisation Proposals Regulations or regulation 8 of the Special Schools Regulations, or
- (b) all objections so made were withdrawn in writing within the periods prescribed by regulation 7 of the School Organisation Proposals Regulations or regulation 8 of the Special Schools Regulations.

### **Consideration of proposals**

7.—(1) Proposals which require consideration under this regulation, other than proposals to which regulation 16 applies, must be considered in the first instance by the relevant authority, or, where regulation 9 applies, by the adjudicator.

(2) Paragraphs (3) and (4) apply in relation to the relevant authority unless the authority is required by any of regulations 9, 10 or 12 to refer the proposals to the adjudicator.

(3) In a case where the proposals were published under section 66 of EA 2005 and two or more sets of proposals were published, the authority may—

- (a) reject all the proposals,
- (b) approve any of the proposals without modification, or
- (c) approve any of the proposals with such modifications as the authority think desirable, after consulting the following persons:
  - (i) the proposers or the authority who made the proposals; and
  - (ii) where the proposals are to establish a new foundation, foundation special or voluntary school, the authority who it is proposed should maintain the school;

(4) in any other case, the authority may—

- (a) reject the proposals,
- (b) approve any of the proposals without modification, or
- (c) approve any of the proposals with such modifications as the authority think desirable, after consulting the persons specified in regulation 7(3) (c) and—
  - (i) where the proposals were published by the governing body of a school, the authority who maintain the school; and
  - (ii) where the proposals were published by the authority to discontinue a school, the governing body of the school.

(5) Any approval given under this regulation may be expressed to take effect only if one of the following events occurs by a specified date—

- (a) the grant of planning permission under Part 3 of the Town and Country Planning Act 1990 **(13)**;
- (b) the acquisition of the site on which a 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 private finance credit approval given by the Department for Education and Skills following the entering into of a private finance contract by a local education authority;
- (f) the entering into an agreement for any necessary building project supported by the Department for Education and Skills in connection with the programme known as “Building Schools for the Future”;
- (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 EA 2002) 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) the Secretary of State giving approval under regulation 5(4) of the Education (Foundation Body) (England) Regulations 2000**(14)** to an application that a foundation body shall be established and that the school shall form part of a group for which a foundation body shall act;
- (j) the Secretary of State making a declaration under regulation 22(3) of the Education (Foundation Body) (England) Regulations 2000 that the school should form part of a group for which a foundation body acts;
- (k) in the case of mainstream schools, the agreement to any change to admission arrangements of any other school or schools specified in the approval;
- (l) the establishment of any foundation meeting the requirements of section 23A of SSFA 1998**(15)**;
- (m) the making of any agreement under section 482 of EA 1996**(16)** for the establishment of an Academy;
- (n) 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 Education (School Premises) Regulations 1999**(17)** as provided for by section 543 (1) of EA 1996;
- (o) 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 Education (School Premises) Regulations 1999 in respect of school playing fields as provided for by section 543 (1) of EA 1996;
- (p) 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 35A to EA 1996**(18)** or section 77 of SSFA 1998, or determination in accordance with Schedule 22 to the SSFA 1998 as applicable; and

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**(13)** 1990 c.8.

**(14)** S.I. 2000/2872.

**(15)** Section 23A was inserted by section 33 of the Act.

**(16)** Section 482 was inserted by section 65 of the Education Act 2002 (c.32)

**(17)** S.I. 1999/2.

**(18)** Schedule 35A was inserted by Schedule 7 to the Education Act 2002 (c.32).

- (q) where the proposals in question depend upon any of the events specified in paragraphs (a) to (p) occurring by a specified date in relation to proposals relating to any other school or proposed school, the occurrence of such an event.

(6) Part 1 of Schedule 1 to these Regulations has effect for specifying the modifications to which this Part of these Regulations are to be subject where proposals published under section 66 of EA 2005 relate to a school which is proposed to be situated in an area other than that of the authority who published the notice.

(7) Part 2 of Schedule 1 to these Regulations has effect for specifying the modifications to which this Part of these Regulations are to be subject where proposals published under section 28, 28A, or 31 of SSFA 1998 relate to a school which is proposed to be established in an area other than that of the authority who it is proposed should maintain the school.

### **Consideration of proposals that are related to other proposals**

8.—(1) The requirement to consider proposals under regulation 7 only applies if, at the time when the proposals fall to be considered, the relevant authority are satisfied that the proposals do not relate to any proposals under section 113A of the Learning and Skills Act 2000(19) which fall to be determined by the Secretary of State but have not yet been determined by him.

(2) Where proposals published under section 28, 28A, 29 or 31 of SSFA 1998 or section 66 of EA 2005 for the establishment or discontinuance of a maintained school appear to the relevant authority to be related to—

- (a) other proposals published under any of those sections or under sections 7, 10, 11 or 15 and not yet determined, or
- (b) proposals published under Schedule 7 to the Learning and Skills Act 2000 and not yet determined,

the authority must consider the proposals together.

### **Duty to refer to the adjudicator certain proposals made by or involving relevant authority**

9.—(1) The relevant authority or the school organisation committee, as the case may be, must refer to the adjudicator—

- (a) all proposals published under section 66 of EA 2005 in response to a notice under that section, if they consist of or include any proposals which are made by the relevant authority, or
- (b) any proposals under section 28, 28A or 31 of SSFA 1998 which are made by the relevant authority,

within 1 week from the end of the representation period as prescribed by the regulations referred to in regulation 4, or by 1st June 2007 as provided for in regulations 3(6) and 3(7).

### **Duty to refer proposals to the adjudicator where determination delayed**

10.—(1) If by the end of 2 months from the date of expiry of the period in which proposals, objections and comments must be forwarded to the relevant authority as provided by regulations 3(6) and 3(7) as applicable, the authority have not determined whether to give any approval under regulation 7(3) or (4), they must within 2 weeks refer to the adjudicator—

- (a) in the case mentioned in regulation 7(3), all the proposals published under section 66, and
- (b) in the case mentioned in regulation 7(4), the proposals concerned,

together with comments made on the proposals by the authority and any other comments and objections in relation to the proposals that they have received.

### **Reference to the adjudicator at request of aggrieved person after determination under regulation 7 (4)**

**11.**—(1) The relevant authority must if so requested by any relevant person within 4 weeks from the date of the notification of the determination pursuant to regulation 17 refer to the adjudicator any proposals which the relevant authority have determined under regulation 7 together with any reasons given by the authority for their determination.

(2) The persons specified in paragraph 14 of Schedule 2 are relevant persons for the purposes of paragraph (1).

(3) References to the adjudicator falling within paragraph (1) must be made within 1 week from the date on which the authority receives notice of a request for a referral.

### **Duty to refer related proposals**

**12.** Where the relevant authority are required under any of regulations 9 to 11 or under Schedule 7 to the Learning and Skills Act 2000 to refer any proposals (“the relevant proposals”) to the adjudicator, the authority must also within 1 week from the date of expiry of the period in which proposals, objections and comments must be forwarded to them as provided by regulations 3(6) and 3(7), refer to the adjudicator—

- (a) any other proposals under section 28, 28A, 29 or 31 of SSFA 1998 or section 66 of EA 2005 which relate to the area of the relevant authority and which by virtue of regulation 8(2) fall to be considered with the relevant proposals, and
- (b) where the relevant proposals are referred to the adjudicator by virtue of regulation 11, any other proposals under section 28, 28A, 29 or 31 of SSFA 1998 which by virtue of regulation 8(2) were determined by the relevant authority with the relevant proposals.

### **Withdrawal of proposals before determination**

**13.**—(1) Nothing in regulations 7(1) to (4) prevents the proposers by whom any proposals have been made from withdrawing those proposals by notice in writing—

- (a) to the relevant authority, and
- (b) in a case where the proposals have been referred to the adjudicator, also to the adjudicator,

at any time before the proposals are determined under regulation 7 by the authority or by the adjudicator.

(2) Nothing in regulation 7(1) to (4) prevents the relevant authority from withdrawing any proposals made by the authority themselves by notice in writing to the adjudicator at any time before the proposals are determined under regulation 7 by the adjudicator.

### **Effect of referring proposals to adjudicator**

**14.**—(1) Where any proposals are referred to the adjudicator under any provision of this Part of these Regulations—

- (a) he must consider the proposals or, in a case where the proposals have previously been determined by the relevant authority, must consider them afresh,
- (b) the following provisions of regulation 7 apply to him in connection with his decision on the proposals as they apply to the relevant authority—
  - (i) paragraph (3) or (4) (as the case requires), and



- (ii) paragraph (5), and
- (c) regulation 8 applies to him as it applies to the relevant authority.

### **Proposals to establish Academies**

**15.**—(1) Where proposals submitted to a local education authority in accordance with section 66(7) of EA 2005 consist of or include proposals to establish an Academy, the authority must within 1 week of receiving those proposals consult the Secretary of State before taking any decision under regulation 7.

(2) The relevant authority may not approve under regulation 7 proposals to establish an Academy unless the Secretary of State, on being consulted under paragraph (1), has given a statement in writing that, if the proposals were approved, he would be willing to commence negotiations with a view to entering into an agreement [under section 482 of EA 1996] for the establishment of an Academy.

(3) If the proposals have been referred to the adjudicator under regulation 9, 10 or 12, the reference in paragraph (1) to the authority is to be read as a reference to the adjudicator.

(4) Paragraph (2) has effect in relation to a decision of the adjudicator under regulation 7 as it has effect in relation to a decision of the relevant authority under that regulation.

(5) Approval under regulation 7 by the relevant authority or the adjudicator of proposals to establish an Academy does not oblige the Secretary of State to enter into, or seek to enter into, an agreement under section 482 of EA 1996.

### **Determination whether to implement discontinuance proposals not requiring consideration under regulation 7**

**16.**—(1) Where any discontinuance proposals have been made and regulation 6 does not require the proposals to be considered under regulation 7, the authority must (subject to the following provisions of this paragraph) determine whether the proposals should be implemented.

(2) Any determination under paragraph (1) must be made within 2 months from the date of expiry of the period in which proposals, objections and comments must be forwarded to them as provided by regulations 3(6) and 3(7).

(3) The requirement to make a determination under paragraph (1) only applies if, at the time when the proposals fall to be considered, the relevant authority are satisfied that the proposals do not relate to any proposals under section 113A of the Learning and Skills Act 2000 which fall to be determined by the Secretary of State but have not yet been determined by him.

(4) The requirement to make a determination under paragraph (1) does not apply where the proposals appear to the relevant authority to be related to—

- (a) other discontinuance proposals published under section 29 or section 31 of SSFA 1998 or section 15 and not yet determined,
- (b) proposals for the establishment of a maintained school published under section 28, 28A or 31 of SSFA 1998 or section 66 of EA 2005 or section 10 or 11 and not yet determined, or
- (c) proposals published under Schedule 7 to the Learning and Skills Act 2000 and not yet determined.

(5) Where, in the case of any proposals falling within paragraph (1)—

- (a) the authority fail to make a determination under that sub-paragraph within the period mentioned in paragraph (2), or
- (b) the requirement to make such a determination does not apply by virtue of paragraph (3) or (4),

the proposals require consideration under regulation 7 and, in a case falling within sub-paragraph (a), must be referred to the adjudicator.

### **Provision of information**

**17.—(1)** The local education authority must notify the following persons of each decision taken under regulation 7 together with their reasons—

- (a) the persons or body who submitted the proposals;
- (b) subject to paragraph (5), each objector;
- (c) the Secretary of State;
- (d) where proposals include provision for 14-16 education or sixth form education, the Learning and Skills Council for England;
- (e) the Diocesan Board of Education for any diocese of the Church of England any part of which is comprised in the area of the authority;
- (f) the bishop of a diocese of the Roman Catholic Church any part of which is comprised in the area of the authority;
- (g) where the proposals concern a special school, the relevant Primary Care Trust, NHS trust and NHS foundation trust, and
- (h) the adjudicator.

(2) In the case of any determination made by an authority pursuant to regulation 16, the relevant authority must notify the governing body of the school which is the subject of the proposals, and the Secretary of State.

(3) The authority must notify the persons referred to in sub-paragraphs (a) to (c) of paragraph (1) if they refer any proposals or matter to the adjudicator under regulation 10.

(4) The adjudicator must notify the persons referred to in sub-paragraphs (1)(a) to (g) and the relevant authority of each decision together with his reasons.

(5) 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 authority or the adjudicator as the case may be may comply with paragraph (1) (b) 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
- (b) if there is no such person, notifying the objector whose name appears first on the petition.

(6) Where proposals have been sent to the decision-maker and further proposals are sent to the decision maker which in the opinion of the decision-maker pursuant to regulation 8(2) are related, the decision-maker must notify the proposers or the local education authority as the case may be of that fact.

### **Requirement to implement proposals, revocation and modification**

**18.—(1)** Where—

- (a) any proposals have been approved under regulation 7, or
- (b) the relevant authority have determined under regulation 16 to implement any proposals,

then the proposals must be implemented, in the form in which they were so approved or determined, in accordance with this Part of, and Schedule 2 to, these Regulations.

(2) Subject to paragraphs (9) and (12), the relevant authority may, at the request of the proposers who made the proposals referred to in paragraph (1), or, where the proposals were made by the authority themselves on their own initiative—

- (a) modify the proposals after consulting—
    - (i) the proposers or the local education authority who made the proposals,
    - (ii) where the proposals are to establish a new foundation, foundation special or voluntary school, the local education authority who it is proposed should maintain the school,
    - (iii) where the proposals were published by the governing body of a school, the authority who maintain the school, and
    - (iv) where the proposals were published by the authority to discontinue a school, the governing body of the school, and
  - (b) where any approval was given in accordance with regulation 7(5), specify a later date by which the event in question must occur.
- (3) If the relevant authority or the adjudicator (where the original proposals were referred to him under paragraph (9) or (12)) are satisfied—
- (a) that implementation of the proposals would be unreasonably difficult, or
  - (b) that circumstances have so altered since approval was given under regulation 7 that implementation of the proposals would be inappropriate,
- the authority or the adjudicator may determine that paragraph (1) is to cease to apply to the proposals.
- (4) The relevant authority or the adjudicator may only make a determination under paragraph (3) where proposals that they or he should do so have been published by the proposers or a local education authority (“revocation proposals”).
- (5) Revocation proposals must contain—
- (a) a description of the original proposals as published in accordance with sections 28, 28A, 29 or 31 of SSFA 1998 or section 66 of EA 2005;
  - (b) the date of publication of the original proposals;
  - (c) details of who published the proposals; and
  - (d) a statement as to why it is proposed that, in accordance with paragraph (3), paragraph (1) should not apply in relation to the original proposals.
- (6) Revocation proposals must be published by—
- (a) posting them in a conspicuous place in the area to be served by the school,
  - (b) where the original proposals were discontinuance proposals, by posting them at or near the main entrance to the school, or if there is more than one entrance, all of them, and
  - (c) publishing them in at least one newspaper circulating in the area to be served by the school.
- (7) The proposers must submit their revocation proposals within 1 week of the date of publication to the relevant authority.
- (8) In relation to revocation proposals—
- (a) any person may object to or comment on such proposals and such objections and comments must be sent to the local education authority within 6 weeks of the date of publication of such proposals;
  - (b) any determination by the authority must be made within 2 months of the end of the representation period.
  - (c) in cases where the authority does not make a determination within the time specified in sub-paragraph (b), they must refer the proposals to the adjudicator within 1 week from the end of that period .

(9) The relevant authority must refer to the adjudicator any matter falling within paragraph (2) and any revocation proposals, together with objections and comments in relation to them, where the initial decision was made by the adjudicator within—

- (a) 2 weeks of the request from the proposer or from the authority making a decision on its own initiative in relation to matters falling within paragraph (2), or
- (b) 2 weeks of the end of the representation period.

(10) The relevant authority must notify the following persons of each decision taken under paragraph (3) and their reasons—

- (a) the persons or body who submitted the proposals;
- (b) subject to paragraph (12), each objector;
- (c) the Secretary of State;
- (d) where proposals include provision for 14-16 education or sixth form education, the Learning and Skills Council for England;
- (e) the Diocesan Board of Education for any diocese of the Church of England any part of which is comprised in the area of the authority;
- (f) the bishop of a diocese of the Roman Catholic Church any part of which is comprised in the area of the authority;
- (g) the adjudicator; and
- (h) where the proposals relate to a special school,
  - (i) the relevant Primary Care Trust, for the area in which the school is situated, and
  - (ii) any NHS trust or NHS foundation trust responsible for a hospital or other provision in the area in which the school is situated.

(11) 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 authority or the adjudicator as the case may be may comply with paragraph (1) (b) 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
- (b) if there is no such person, notifying the objector whose name appears first on the petition.

(12) If by the end of the period of 2 months from the date of the request from the proposer, 2 months of a decision taken on the authority's own initiative or 2 months from the date of publication of the proposals as referred to in paragraph (9) as the case may be, the relevant authority have failed to make a determination, the authority must refer the matter to the adjudicator.

(13) The relevant authority must if so requested by any relevant person within 4 weeks from the date of the notification of the determination pursuant to regulation 17 refer any revocation proposals which the relevant authority have determined under paragraph (3) together with any reasons given by the authority for their determination.

(14) The persons specified in paragraph 14 of Schedule 2 are relevant persons for the purposes of paragraph (13).

(15) References to the adjudicator falling within paragraph (13) must be made within 1 week from the date on which the authority receives notice of a request for a referral.

(16) Where any matter is referred to the adjudicator under this regulation—

- (a) the relevant authority may refer to the adjudicator with the matter their comments on it,
- (b) the adjudicator must consider the matter afresh, and
- (c) such of the provisions of paragraphs (2) and (3) as are relevant shall apply to him in connection with his decision on that matter as they apply to the authority.

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

**19.**—(1) Where, by virtue of regulation 18(3), regulation 18(1) (duty to implement) ceases to apply to any proposals, those proposals are to be treated for the purposes of this Part of these Regulations as if they had been rejected under regulation 7.

(2) Where—

- (a) any approval under regulation 7 was given in accordance with regulation 7(5), and
- (b) the event specified under regulation 7(5) does not occur by the date in question (whether as specified under that provision or as specified under regulation 18(2)(b)),

regulation 18(1) ceases to apply to the proposals.

(3) Where, by virtue of paragraph (2), regulation 18(1) ceases to apply to any proposals approved by the relevant authority under regulation 7 and not referred to the adjudicator, those proposals must be considered afresh by the authority under that regulation.

(4) Where, by virtue of paragraph (2), regulation 18(1) ceases to apply to any proposals approved by the adjudicator under regulation 7, those proposals must be considered afresh by him under that paragraph (and regulation 14 applies accordingly).

## **PART 3**

### **Savings and transitional provisions relating to proposals for the establishment and discontinuance of maintained schools published and determined under SSFA 1998 or EA 2005**

#### **Requirement to Implement Proposals**

**20.**—(1) This regulation applies to proposals for the establishment or discontinuance of a maintained school published under section 28, 28A, 29 or 31 of SSFA 1998 or section 66 of EA 2005 and approved or determined under paragraph 3 or 4 of Schedule 6 to SSFA 1998 or paragraph 4 or 9 of Schedule 10 to EA 2005 as applicable.

(2) The proposals referred to in paragraph (1) must be implemented (insofar as not already implemented), in the form in which they were so approved or determined, in accordance with this Part of, and Schedule 2 to, these Regulations.

#### **Modification post determination**

**21.** The adjudicator may, at the request of the relevant authority or proposers who made the proposals—

- (a) modify the proposals after consulting—
  - (i) the proposers or the local education authority who made the proposals;
  - (ii) where the proposals are to establish a new foundation, foundation special or voluntary school, the local education authority who it is proposed should maintain the school;
  - (iii) where the proposals were published by the governing body of a school, the local education authority who maintain the school; and
  - (iv) where the proposals were published by the local education authority to discontinue a school, the governing body of the school, and

- (b) where any approval was given in accordance with paragraph 3(3) of Schedule 6 to the SSFA or paragraph 4(5) of Schedule 10 to EA 2005, specify a later date by which the event in question must occur.

### **Revocation of proposals**

**22.**—(1) Subject to paragraph (5), if the adjudicator is satisfied—

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

the adjudicator may determine that regulation 20(2) is to cease to apply to the proposals.

(2) The adjudicator may only make a determination under paragraph (1) where proposals that he should do so have been published by the proposers or a local education authority (“revocation proposals”).

(3) Revocation proposals must contain—

- (a) a description of the original proposals as published in accordance with sections 28, 28A, 29 or 31 of SSFA 1998 or section 66 of EA 2005;
- (b) the date of publication of the original proposals;
- (c) details of who published the proposals; and
- (d) a statement as to why it is proposed that, in accordance with paragraph (1), regulation 20 (2) should not apply in relation to the original proposals.

(4) Revocation proposals must be published by—

- (a) posting them in a conspicuous place in the area to be served by the school,
- (b) where the original proposals were discontinuance proposals, by posting them at or near the main entrance to the school, or if there is more than one entrance, all of them, and
- (c) publishing them in at least one newspaper circulating in the area to be served by the school.

(5) The local education authority or the proposers as the case may be must submit the revocation proposals within 1 week of the date of publication to the adjudicator.

(6) Any person may object to or comment on revocation proposals and such objections and comments must be sent to the adjudicator within 6 weeks after the date of publication of such proposals.

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

**23.**—(1) Where, by virtue of regulation 22(1), regulation 20(2) (duty to implement) ceases to apply to any proposals, those proposals are to be treated for the purposes of this Part of these Regulations as if they had been rejected.

(2) Where—

- (a) any approval under paragraph 3 of Schedule 6 to SSFA 1998 was given in accordance with paragraph 3 (3) of Schedule 6 to SSFA 1998 or any approval under paragraph 4 of Schedule 10 to EA 2005 was given in accordance with paragraph 4 (5) of Schedule 10 to EA 2005, and
- (b) the event specified does not occur by the date in question (whether as specified under either of those provisions or as specified under paragraph 5 (2) (b) of Schedule 6 to SSFA 1998 or paragraph 10 (2)(b) of Schedule 10 to EA 2005),

regulation 20 (2) ceases to apply to the proposals.

(3) Where, by virtue of paragraph (2), regulation 20(2) ceases to apply to any proposals, those proposals must be considered afresh by the adjudicator under paragraph 8 of Schedule 2.

## PART 4

Savings and transitional provisions relating to proposals for the making of prescribed alterations to maintained schools and to changes of category where the proposals have been published under SSFA 1998 and are undetermined

### Undetermined Proposals published under SSFA 1998 Act: general

**24.**—(1) The following provisions of this regulation apply to proposals which were published before 25th May 2007 and which remain undetermined by that date.

(2) Where proposals to make any prescribed alteration to a maintained school have been published under section 28 of SSFA 1998(20), regulations 1, 2, 4, 5 and 7(1) and (2) of and paragraphs 1, 2, 3, 11, 12 and 13 of Schedule 1 to the School Organisation Proposals Regulations continue to apply in relation to the proposals.

(3) Where proposals to make any prescribed alteration to a special school have been published under section 31 of SSFA 1998, regulations 1, 2, 4, 5 and 8(1) and (2) of the Special Schools Regulations continue to apply to in relation to the proposals.

(4) Where proposals for changing the category of a maintained school have been published under paragraph 2 or 3 of Schedule 8 to SSFA 1998(21), regulations 1, 2 and 4 of the Change of Category Regulations and paragraph 2 of Schedule 6 to SSFA 1998(22) continue to apply in relation to the proposals.

(5) Sections 28(6) and 31(5) of SSFA 1998, regulation 6 of the School Organisation Proposals Regulations, and regulation 6 of the Special Schools Regulations 1999 continue to apply in relation to information to be sent to the school organisation committee.

(6) Where the provisions for making objections and comments continue in accordance with the regulations referred to in regulation 26 as applicable, the school organisation committee must send copies of the proposals referred to in paragraphs (2) to (4) respectively (together with any objections or comments and other information received by it in accordance with the regulations referred to in paragraph 5 as applicable) to the relevant authority within 1 week of the end of the representation period, being in each case the period prescribed by the regulations referred to in regulation 26 which apply to those proposals.

(7) Copies of any proposals that have been published under section 28 or 31 of, or paragraph 2 or 3 of Schedule 8 to, SSFA 1998 and which relate to—

- (a) making a prescribed alteration to a maintained school, or
- (b) changing the category of a maintained school

must be sent by the school organisation committee (together with any objections or comments and other relevant information it has received) to the adjudicator by 1st June 2007 in any case where the school organisation committee have failed to reach a decision on the proposals by 25th May 2007 in accordance with paragraph 3(6) of Schedule 6 to SSFA 1998.

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(20) Section 28 of SSFA 1998 ceased to apply to England by virtue of its being amended by section 30 of, and paragraph 18 of Schedule 3 to the Act.

(21) Section 35 of and Schedule 8 to SSFA 1998 ceased to apply to England by virtue of being amended by section 30 of, and paragraph 26 of Schedule 3 to the Act.

(22) Paragraph 2 of Schedule 6 to SSFA 1998 (as modified by Schedule 1 and 2A to the Education (Change of Category of Maintained Schools) (England) Regulations 2000 (S.I. 2000/2195)) is otherwise repealed by section 30 of, and paragraph 33 of Schedule 3 to the Act, subject to the saving provisions in regulation 25.

(8) Except as provided for in paragraphs (6) and (7), copies of any other proposals which were published under section 28 or 31 of, or paragraph 2 or 3 of Schedule 8 to, SSFA 1998 before 25th May 2007 must be sent by the school organisation committee to the relevant authority by 1st June 2007 for determination in accordance with this Part of these Regulations.

(9) Proposals which are sent to the adjudicator pursuant to paragraph (7) must be determined by him afresh under regulation 27.

(10) Where any proposals that have been published under section 28 or 31 of SSFA 1998 or paragraph 2 or 3 of Schedule 8 to SSFA 1998 have been sent to the adjudicator pursuant to paragraph 3(5), 3(6), 3(6A) or 3(6D) of Schedule 6 to SSFA 1998(23) before 25th May 2007, they must be determined by the adjudicator afresh under regulation 27.

(11) In this regulation, references to paragraphs 3(5) and 3(6) of Schedule 6 to the SSFA 1998 include reference to those paragraphs as modified by Schedules 1 and 2 of the Change of Category Regulations.

### **Consideration of proposals published under SSFA 1998: general**

**25.**—(1) Subject to paragraph (2), proposals published under section 28 or 31 of SSFA 1998 or paragraph 2 or 3 of Schedule 8 to SSFA 1998 for the making of a prescribed alteration to a maintained school or the changing of the category of a maintained school that are undetermined on 25th May 2007 must be determined by the local education authority or by the adjudicator in accordance with this Part of these Regulations.

(2) Proposals made by a governing body under paragraph 2 of Schedule 8 to SSFA 1998 that either a community or a voluntary controlled school should become a foundation school must be determined in accordance with the provisions of Part 1 of Schedule 6 to SSFA 1998 as modified by Schedule 2A to the Change of Category Regulations and for these purposes Part 1 of Schedule 6 to SSFA 1998 continues to apply.

(3) Insofar as proposals referred to in paragraph (2) are unimplemented, such proposals must be implemented in accordance with Schedules 3 and 4 to these Regulations.

(4) If at the time when the proposals were published, sections 15, 17 or 51 of, or Schedule 15 to, SSFA 1998(24) applied to the school or it was eligible for intervention under sections 60, 61 or 62 of the Act, paragraph (3) does not apply.

### **Objections and Comments**

**26.**—(1) Paragraph 2 of Schedule 6 to SSFA 1998 continues to apply in relation to proposals which were published before 25th May 2007 and which remain undetermined on that date.

(2) In relation to proposals published under section 28 of SSFA 1998 for the making of prescribed alterations, the periods prescribed by regulation 7(2) of the School Organisation Proposals Regulations for the making of objections to, or comments on, the proposals continue to apply.

(3) In relation to proposals published under section 31 of SSFA 1998 for the making of a prescribed alteration to a special school, the periods prescribed by regulation 8(2) of the Special Schools Regulations for the making of objections to, or comments on, the proposals continue to apply.

(4) In relation to proposals published under paragraph 2 or 3 of Schedule 8 to SSFA 1998 for changing the category of a maintained school, the periods prescribed by paragraph 2 of Schedule 6 to SSFA 1998 (as modified by Schedule 1 to the Change of Category Regulations) and paragraph 2

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(23) Paragraph 3 of Schedule 6 to SSFA 1998 was amended by Schedule 12 to EA 2005 and is repealed by section 30 of and paragraph 33 of Schedule 3 to the Act, subject to the saving provisions in regulation 25.

(24) Sections 15 and 17 ceased to apply in England on 1st April 2007 by virtue of being amended by Schedule 7 to the Act.



of Schedule 6 to SSFA 1998 (as modified by Schedule 2A of the Change of Category Regulations) for the making of objections to, or comments on, the proposals continue to apply.

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

**27.**—(1) Where any proposals have been published by the governing body or a local education authority, the authority may —

- (a) reject the proposals;
- (b) approve the proposals without modification, or
- (c) approve the proposals with such modifications as the authority think desirable.

(2) Before approving any proposals with modifications under sub-paragraph (1)(c) the authority must consult the relevant governing body (unless the modifications are proposed by the governing body).

(3) Where proposals are approved by the authority (whether with or without modifications) the approval may be conditional on the occurrence of an event prescribed by regulation 33.

(4) Any determination under paragraph (1) must be made within the period of 2 months from the end of the period in which proposals, objections and comments must be forwarded to the local education authority, as provided by regulations 24(6) or 26(8), as applicable.

(5) Where the authority does not make a determination within the period specified in paragraph (4), the proposals must be referred to the adjudicator.

(6) Where any proposals have been referred to the adjudicator pursuant to paragraph (5) or regulations 24 (7), 24 (10) or 29, 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

(7) Before modifying and determining any proposal, the adjudicator must consult the relevant governing body and the local education authority (unless they proposed the modification).

(8) Where the proposals are approved by the adjudicator (whether with or without modifications) the approval may be conditional on the occurrence of an event prescribed in regulation 33.

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

**28.**—(1) The local education authority must notify the following persons of each decision under regulation 27, together with their reasons—

- (a) the governing body;
- (b) the trustees of the school (if any);
- (c) the Secretary of State;
- (d) where proposals include provision for 14-16 education or sixth form education, the Learning Skills Council for England;
- (e) 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 education authority;
- (f) the bishop of any diocese of the Roman Catholic Church any part of which is comprised in the area of the authority;
- (g) where the proposals relate to a special school,
  - (i) the relevant Primary Care Trust, for the area in which the school is situated, and

- (ii) any NHS trust or NHS foundation trust responsible for a hospital or other provision in the area in which the school is situated;
  - (h) subject to paragraph (3), each objector to the proposals; and
  - (i) the adjudicator.
- (2) The adjudicator must notify the persons referred to in sub-paragraphs (1) (a) to (h) and the local education authority of each decision together with his reasons.
- (3) 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 local education authority or the adjudicator as the case may be, may comply with paragraph 1 (h) 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
  - (b) if there is no such person, notifying the objector whose name first appears on the petition.
- (4) Where proposals have been sent to the authority or adjudicator as the case may be, they or he must notify the proposers or the local education authority, as the case may be, if any further proposals sent to them or him appear to them or him to be related.

### **Appeals to adjudicator**

- 29.**—(1) The persons at whose request proposals must, after their initial determination by the local education 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 education authority where the school is located;
  - (b) the local bishop of a diocese of the Roman Catholic Church any part of which is comprised in the area of the local education authority where the school is located;
  - (c) where proposals relate to a school providing or proposing to provide education for pupils aged 14 and over, the Learning and Skills Council for England;
  - (d) where proposals are made by a authority and relate to a foundation or voluntary school or a foundation special school—
    - (i) the governing body of the school to whom the proposal relates; and
    - (ii) the trustees of the school;
  - (e) where proposals are made by a authority and relate to a community school, and is an excepted expansion, the governing body of the school to whom the proposal relates.
- (2) A request under sub-paragraph (1) must be made within 4 weeks of the initial determination of the proposal by the authority.
- (3) Where a request is made under sub-paragraph (1) the authority must submit the proposals and any objections and comments made in relation to the proposals to the adjudicator within 1 week of receiving the request.

### **Related Proposals**

- 30.**—(1) Where proposals appear to be related to other proposals the local education authority or adjudicator must consider the related proposals together.
- (2) Where the authority are required under regulation 27(5) to refer any proposals to the adjudicator, the authority must also within 1 week refer to the adjudicator any other proposals which appear to them to be related.

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

**31.**—(1) This regulation applies to the determination of any proposals for the transfer of the school to a new site where the new site is in an area other than that of the local education authority who it is proposed should maintain the school.

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

(3) Local Education Authority A must send the documents required under paragraph (2) within 1 week of the period in which proposals, objections and comments must be forwarded to them as provided by regulations 24 (6) and (8), as applicable.

(4) Before determining the proposals in accordance with regulation 27, Local Education Authority A must first seek the recommendation of Local Education Authority B on how the proposals should be determined.

(5) Any determination made under paragraph (1) must be made within the period of 2 months from the end of the periods referred to in regulations 24 (6) and (8) as applicable.

### **Transitional exemption orders under the Sex Discrimination Act 1975**

**32.**—(1) This regulation applies to proposals for a school in England to cease to be an establishment which admits pupils of one sex only.

(2) Where proposals are published by a governing body, the sending of the published proposals to the local education authority is to be treated as an application for the making by the local education authority of a transitional exemption order under section 27 of the Sex Discrimination Act 1975<sup>(25)</sup>, and the local education authority must make such an order accordingly.

(3) Where proposals are published by an authority, the authority must make a transitional exemption order under section 27 of the Sex Discrimination Act 1975.

(4) Where—

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

(b) the authority refer the proposals to the adjudicator under regulation 29,

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

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

(a) he must consider the matter afresh, and

(b) he may make a transitional exemption order accordingly.

(6) In this paragraph—

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

### **Conditional approvals**

**33.**—(1) The following events are 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<sup>(26)</sup>;

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<sup>(25)</sup> 1975 c.65. Section 27 is amended by paragraph 3 of Schedule 3 to the Act.

<sup>(26)</sup> 1990 c.8.

- (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 sub-paragraph (b) or playing fields referred to in sub-paragraph (c);
  - (e) the private finance credit approval given by the Department for Education and Skills following the entering into of a private finance contract by a local education authority;
  - (f) the entering into an agreement for any necessary building project supported by the Department for Education and Skills in connection with the programme known as “Building Schools for the Future”;
  - (g) in the case of mainstream schools, the agreement to any change to the admission arrangements of any other school or schools, as specified in the approval;
  - (h) the making of any scheme relating to any charity connected with the school;
  - (i) the formation of any federation (within the meaning of section 24(2) of EA 2002) of which it is intended that the proposed school should form part of, or the fulfilling of any other condition relating to the proposed school forming part of a federation;
  - (j) the Secretary of State giving approval under regulation 5(4) of the Education (Foundation Body)(England) Regulations 2000<sup>(27)</sup> to an application that a foundation body must be established and that the school must form part of a group for which a foundation must act;
  - (k) the Secretary of State making a declaration under regulation 22(3) of the Education (Foundation Body) (England) Regulations 2000 that the school should form part of a group for which a foundation body acts; and
  - (l) where the proposals in question depend upon any of the events specified in paragraphs (a) to (g) occurring by a specified date in relation to proposals relating to any other school or proposed school, the occurrence of such an event.
- (2) For the purposes of paragraph (g) above 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 89(4) of SSFA 1998 and either—
    - (i) no objection is made to the change in accordance with section 90 of SSFA 1998, or
    - (ii) if an objection to the change is made and referred to the adjudicator in accordance with section 90 of SSFA 1998, the objection is not upheld;
  - (b) in a case where the change arises from a variation made under section 89(5) of SSFA 1998 or made under The School Admissions (Alteration and Variation of, and Objections to, Arrangements) (England) Regulations 2007<sup>(28)</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.

### **Withdrawal of Proposals**

**34.** Proposals may be withdrawn by the governing body or local education authority which published the proposals provided that—

- (a) such proposals are withdrawn before any determination is made,

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<sup>(27)</sup> S.I. 2000/2872.

<sup>(28)</sup> S.I. 2007/496.

- (b) written notice is given to the local education authority in cases where the proposals have been made by the governing body, and in cases where the proposals have been referred to the adjudicator, to the adjudicator and the Secretary of State; and
- (c) written notice is placed at the entrance to the school or, if there is more than one main entrance, all of them.

### **Requirement to Implement Proposals**

**35.**—(1) Subject to the following provisions of this Part of these Regulations, the proposals must be implemented in the form in which they were approved.

- (2) Where—
  - (a) the local authority have approved any proposal; or
  - (b) an adjudicator has approved any proposal

the proposal 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.

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

**36.**—(1) If the authority or the adjudicator (where the original proposals were referred to him under regulation 27 (5) only, or a referral is made to him under paragraph (9)) are satisfied that—

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

the authority or the adjudicator may determine that regulation 35(2) (duty to implement) is to cease to apply to the proposals.

(2) The authority or the adjudicator (as the case may be) may only make a determination under paragraph (1) where proposals that they or he should do so have been published by the governing body or the local education authority under paragraph (3) (“revocation proposals”).

- (3) Revocation proposals must contain—
  - (a) a description of the original proposals as published in accordance with section 28 or 31 of SSFA 1998 or paragraph 2 or 3 of Schedule 8 to SSFA 1998;
  - (b) the date of publication of the original proposals;
  - (c) a statement as to why it is proposed that, in accordance with paragraph (1), regulation 35(2) (duty to implement proposals) should not apply in relation to the original proposals.
- (4) Revocation proposals must be published by—
  - (a) posting them in a conspicuous place in the area served by the school, and at or near the main entrance to the school or, if there is more than one main entrance, all of them, and
  - (b) publishing them in at least one newspaper circulating in the area served by the school.

(5) The governing body must submit the revocation proposals within 1 week of the date of publication to the authority.

(6) Any person may object to or comment on revocation proposals and such objections and comments must be sent to the local education authority who published the proposals within 6 weeks of the date of publication of the proposals.

(7) Where the original proposals were decided by the adjudicator pursuant to a reference under regulation 27 (5), the authority must refer the revocation proposals, together with any objections or comments in relation to them, to the adjudicator within 2 weeks of the end of the representation period.

(8) Where the authority determine revocation proposals, any determination must be made within a period ending 2 months after the representation period.

(9) If the authority does not make a determination within the time specified in paragraph (8), they must refer the proposals to the adjudicator within 1 week from the end of that period.

(10) The authority must notify the following persons of each decision taken under 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 authority;
- (b) the bishop of a diocese of the Roman Catholic Church any part of which is comprised in the area of the authority ;
- (c) where proposals relate to a school providing or proposing to provide education for pupils aged 14 and over, the Learning and Skills Council for England;
- (d) where proposals are made by an authority and relate to a foundation or voluntary school or a foundation special school—
  - (i) the governing body ; and
  - (ii) the trustees of the school (if any); and
- (e) where the school is a community school and the proposal is made by the authority and is an excepted expansion, the governing body .

(11) The persons at whose request proposals must, after their determination by the authority pursuant to paragraph (1), 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 authority ;
- (b) the bishop of a diocese of the Roman Catholic Church any part of which is comprised in the area of the authority;
- (c) where proposals relate to a school providing education for pupils aged 14 and over, the Learning and Skills Council for England;
- (d) where proposals are made by a authority and relate to a foundation or voluntary school or a foundation special school—
  - (i) the governing body ; and
  - (ii) the trustees of the school (if any); and
- (e) where the school is a community school and the proposal is made by the authority and is an excepted expansion, the governing body .

(12) A request under paragraph (11) must be made within 4 weeks of determination of the revocation proposals.

(13) Where a request is made under paragraph (11) the local authority must submit the proposals and any comments and objections on the proposals to the adjudicator within 2 weeks of receiving the request.

### **Modification post determination**

**37.—**(1) The authority or the adjudicator (where the adjudicator has determined the original proposals following a reference under regulation 27(5)) may, at the request of the governing body who published the proposals, or, where the proposals were published by the authority themselves, on their own initiative—

- (a) modify the proposals, and

(b) where there has been a conditional approval, specify a later date by which the event in question must occur.

(2) Before modifying any proposals the authority or the adjudicator as the case may be must consult the relevant governing body and the adjudicator must consult the local education authority (unless they proposed the modification).

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

**38.**—(1) Where by virtue of regulation 36(1), regulation 35(2) (duty to implement proposals) ceases to apply to any proposals, those proposals are to be treated as if they had been rejected.

(2) Where any approval under regulation 27 was given, and the event specified in regulation 33 does not occur by the date in question, regulation 35(2) ceases to apply to the proposals.

(3) Where by virtue of paragraph (2), regulation 35(2) ceases to apply to any proposals approved by the authority under regulation 27 and not referred to the adjudicator, those proposals must be considered afresh by the authority under that regulation.

(4) Where by virtue of paragraph (2), regulation 35(2) ceases to apply to any proposals approved by the adjudicator under regulation 27, those proposals must be considered afresh by the authority under that regulation.

### **Unimplemented statutory proposals**

**39.**—(1) Where a school changes category and there are other proposals for prescribed alterations falling to be implemented in respect of that school which have not been implemented—

(a) in the case of a school which has changed category from a community or voluntary aided school to become a voluntary controlled school, the proposals must to the extent that they have not been implemented, be implemented by the local education authority;

(b) in the case of a school which has changed category from a foundation or voluntary controlled school to become a voluntary aided school, the proposals must continue to be implemented by the governing body and local education authority (as the case may be) as if the school had remained a foundation or voluntary controlled school.

### **Provisions applicable to proposals relating to change of category only**

**40.** Schedules 3 and 4 to these Regulations have effect for specifying the provisions applicable to proposals relating to a change of category published under paragraph 2 or 3 of Schedule 8 to SSFA 1998.

## **PART 5**

Savings and transitional provisions relating to proposals for the making of prescribed alterations to maintained schools and to changes of category where the proposals have been published and determined under SSFA 1998

### **Requirement to Implement Proposals**

**41.**—(1) This regulation applies to proposals relating to a prescribed alteration or to a change of category of a maintained school published under section 28 or 31 of SSFA 1998 or paragraph 2 or 3 of Schedule 8 to SSFA and approved or determined under paragraph 3 of Schedule 6 to SSFA 1998 or paragraph 4 of Schedule 6 to SSFA 1998 as applicable.

(2) The proposals referred to in paragraph (1) must be implemented (insofar as not already implemented), in the form in which they were so approved or determined, in accordance with this Part of these Regulations.

#### **Modification post determination**

**42.**—(1) The adjudicator may at the request of the authority or governing body who made the proposals—

- (a) modify the proposals, and
- (b) where any approval was given in accordance with paragraph 3 (3) of Schedule 6 to SSFA 1998 specify a later date by which the event in question must occur.

(2) Before modifying any proposals the adjudicator must consult the relevant governing body and the local education authority (unless they proposed the modification)

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

**43.**—(1) If the adjudicator is 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 adjudicator may determine that regulation 41(2) (duty to implement) is to cease to apply to the proposals.

(2) The adjudicator may only make a determination under paragraph (1) where proposals that he should do so have been published by the governing body or the local authority as appropriate under paragraph (3) (“revocation proposals”).

(3) Revocation proposals must contain—

- (a) a description of the original proposals as published in accordance with section 28, 31 of, or paragraph 2 or 3 of Schedule 8 to, SSFA 1998;
- (b) the date of publication of the original proposals;
- (c) a statement as to why it is proposed that, in accordance with paragraph (1), regulation 41(2) should not apply in relation to the original proposals.

(4) Revocation proposals must be published by—

- (a) posting them in a conspicuous place in the area to be served by the school, and at or near the main entrance to the school or, if there is more than one main entrance, all of them, and
- (b) publishing them in at least one newspaper circulating in the area to be served by the school.

(5) The local education authority or the governing body as the case may be must submit the revocation proposals within 1 week of the date of publication to the adjudicator.

(6) Any person may object to or comment on revocation proposals and such objections and comments must be sent to the adjudicator within 6 weeks from the date of publication of the proposals.

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

**44.**—(1) Where by virtue of regulation 43(1), regulation 41(2) (duty to implement) ceases to apply to any proposals, those proposals are to be treated as if they had been rejected.

(2) Where any approval was given in accordance with paragraph 3 (3) of Schedule 6 to SSFA 1998 and the event specified in the approval does not occur by the date in question, regulation 41 (2) ceases to apply to the proposals.



(3) Where by virtue of sub-paragraph (2), regulation 41 (2) ceases to apply to any proposals, those proposals must be considered afresh by the adjudicator under regulation 27.

#### **Unimplemented statutory proposals**

**45.**—(1) Where a school changes category and there are other proposals for prescribed alterations falling to be implemented in respect of that school which have not been implemented—

- (a) in the case of a school which has changed category from a community or community special school, the proposals must be to the extent to which they have not been implemented, be implemented by the local education authority;
- (b) in the case of a school which has changed category from a community or voluntary aided school to become a voluntary controlled school, the proposals must to the extent that they have not been implemented, be implemented by the authority;
- (c) in the case of a school which has changed category from a foundation or voluntary controlled school to become a voluntary aided school, the proposals must continue to be implemented by the governing body and local education authority (as the case may be) as if the school had remained a foundation or voluntary controlled school.

#### **Provisions applicable to proposals relating to change of category only**

**46.** Insofar as proposals relating to a change of category are unimplemented, such proposals must be implemented in accordance with provisions as specified in Schedules 3 and 4 to these Regulations.

26th April 2007

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