



# Education Act 2002

## 2002 CHAPTER 32

### PART 5

#### SCHOOL ORGANISATION

##### *Proposals to establish, alter or discontinue schools*

#### **70 Proposals for additional secondary schools**

- (1) A local education authority in England may publish a notice under this section inviting proposals for the establishment of any school falling within subsection (2) as an additional secondary school.
- (2) The following schools fall within this subsection—
  - (a) a community school;
  - (b) a foundation school;
  - (c) a voluntary school;
  - (d) an Academy.
- (3) A notice under this section must—
  - (a) identify a possible site for the school,
  - (b) specify a date, being a date after the prescribed interval, by which proposals must be submitted,
  - (c) specify such other matters as may be prescribed, and
  - (d) be published in the prescribed manner.
- (4) Proposals made pursuant to a notice under this section must—
  - (a) contain the prescribed information, and
  - (b) be submitted to the local education authority before the date specified in the notice.
- (5) After the date specified in a notice published by a local education authority under this section the authority—

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- (a) shall publish under this section any proposals submitted pursuant to the notice in accordance with subsection (4), and
  - (b) may publish under this section proposals of their own for the establishment of a community or foundation school as an additional secondary school.
- (6) Regulations may prescribe—
- (a) the manner in which proposals under this section must be published, and
  - (b) the information which proposals within subsection (5)(b) must contain.
- (7) For the purposes of this section, a school is “additional” if it does not replace a secondary school falling within subsection (2) which has been or is to be discontinued; and in determining for the purposes of this section whether one school replaces another regard shall be had to any guidance given from time to time by the Secretary of State.
- (8) For the purposes of this section “secondary school” does not include —
- (a) a middle school, or
  - (b) a school which provides education suitable only to the requirements of persons above compulsory school age.
- (9) Schedule 8 (which makes provision in relation to the consideration, approval and implementation of proposals published under this section) shall have effect.

## **71 Duty of LEAs to secure proposals**

- (1) The Secretary of State may give a direction to a local education authority in England under this section where he is of the opinion that the provision for primary or secondary education—
- (a) in the area of the authority, or
  - (b) in any part of that area,
- is, or is likely to become, insufficient.
- (2) Where a direction is given to a local education authority under this section, the authority shall, within the time specified in the direction, do either or both of the following as the authority think fit—
- (a) exercise their powers under section 28, 29 or 31 of the School Standards and Framework Act 1998 (c. 31) to publish proposals for the establishment, alteration or discontinuance of schools;
  - (b) exercise their power under section 70(1) (notice inviting proposals for establishment of additional secondary schools).
- (3) A local education authority shall comply with a direction under this section—
- (a) with a view to securing that provision is made for such additional number of pupils in the area, or in any such part of the area, as may be specified in the direction, and
  - (b) applying such principles as may be specified in the direction.
- (4) Where the Secretary of State has given a direction to a local education authority under this section and—
- (a) the authority has not complied with the direction within the time specified in it, or
  - (b) the authority has complied with it, but the Secretary of State is not satisfied that the provision referred to in subsection (3)(a) will be secured,

the Secretary of State may make any such proposals as might have been made by the authority under subsection (2)(a) or, by virtue of subsection (2)(b), under section 70(5)(b).

- (5) Proposals made by the Secretary of State under subsection (4) shall—
- (a) contain the prescribed information,
  - (b) be published by the Secretary of State in the prescribed manner, and
  - (c) be sent by the Secretary of State to the school organisation committee for the area to which they relate.
- (6) Paragraph 4 of Schedule 7 to the School Standards and Framework Act 1998 applies in relation to this section as follows—
- (a) sub-paragraphs (1) to (5) apply in relation to a direction given under this section, in relation to the whole or part of the area of a local education authority, as they apply in relation to an order made under paragraph 2(2) or 3(2) of that Schedule, in relation to the area of such an authority;
  - (b) sub-paragraphs (6) and (7) apply in relation to proposals made by a local education authority in the exercise, pursuant to such a direction, of their powers under section 28, 29 or 31 of that Act, as they apply in relation to the proposals referred to in those sub-paragraphs.
- (7) Paragraphs 7 to 10 and 16 of that Schedule apply in relation to proposals made by the Secretary of State under subsection (4) as they apply to proposals published under paragraph 5 of that Schedule, but as if—
- (a) the reference in paragraph 9(2) to the order under paragraph 2(2) or 3(2) were a reference to the direction under this section, and
  - (b) the reference in paragraph 16(2) to paragraph 5(3) were a reference to subsection (5)(c) of this section.

## 72 Proposals relating to sixth forms

(1) After section 113 of the Learning and Skills Act 2000 (c. 21) there is inserted—

### “113A Restructuring of sixth-form education

- (1) The Learning and Skills Council for England may make proposals under this section—
- (a) with a view to meeting recommendations made in the report of an area inspection under section 65,
  - (b) with a view to promoting one or more of the relevant objectives, or
  - (c) if—
    - (i) they are made in addition to proposals relating to education or training other than in schools, and
    - (ii) the combined proposals are made with a view to promoting one or more of the relevant objectives.
- (2) The National Council for Education and Training for Wales may make proposals under this section—
- (a) with a view to meeting recommendations made in the report of an area inspection under section 83,
  - (b) with a view to promoting one or more of the relevant objectives, or

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- (c) if—
  - (i) they are made in addition to proposals relating to education or training other than in schools, and
  - (ii) the combined proposals are made with a view to promoting one or more of the relevant objectives.
- (3) For the purposes of this section, the following are “relevant objectives”—
  - (a) an improvement in the educational or training achievements of persons who are above compulsory school age but below the age of 19;
  - (b) an increase in the number of such persons who participate in education or training suitable to the requirements of such persons;
  - (c) an expansion of the range of educational or training opportunities suitable to the requirements of such persons.
- (4) Proposals under this section are proposals for one or more of the following—
  - (a) the establishment by a local education authority of one or more new community, foundation, community special or foundation special schools to provide secondary education suitable to the requirements of persons who are above compulsory school age but below the age of 19 (and no other secondary education);
  - (b) an alteration to one or more maintained schools which relates to the provision of secondary education suitable to the requirements of such persons and is of a description prescribed by regulations;
  - (c) the discontinuance of one or more maintained schools which provide secondary education suitable to the requirements of such persons (and no other secondary education).
- (5) Proposals under this section are to be published and submitted to the relevant authority, which shall—
  - (a) approve them, with or without modification or subject to the occurrence of any event, or
  - (b) reject them.
- (6) Schedule 7A (implementation of proposals) has effect.
- (7) In exercising any function conferred by or under this section, the Learning and Skills Council for England and the National Council for Education and Training for Wales must have regard to any guidance given from time to time by the relevant authority.
- (8) Proposals under this section may be made either alone or in addition to proposals under section 51 of the Further and Higher Education Act 1992 (c. 13) (proposals for further education corporations).
- (9) Regulations may make provision about proposals under this section and may in particular make provision about—
  - (a) the information to be included in, or provided in relation to, the proposals;
  - (b) publication of the proposals;
  - (c) consultation on the proposals (before or after publication);
  - (d) the making of objections to or comments on the proposals;

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- (e) withdrawal or modification of the proposals;
  - (f) approval of the proposals by the relevant authority.
- (10) For the purposes of sections 496 and 497 of the Education Act 1996 (c. 56) (powers to prevent unreasonable exercise of functions and general default powers), the provisions of this section and Schedule 7A shall be treated as if they were provisions of that Act.
- (11) For the purposes of this section and Schedule 7A—
- “alteration” means an alteration of whatever nature, including the transfer of the school to a new site but excluding any change—
    - (a) in the religious character of the school, or
    - (b) whereby the school would acquire or lose a religious character;
  - “maintained school” means a community, foundation or voluntary school or a community or foundation special school;
  - “regulations” means—
    - (a) in relation to proposals by the Learning and Skills Council for England, regulations made by the Secretary of State, and
    - (b) in relation to proposals by the National Council for Education and Training for Wales, regulations made by the National Assembly for Wales;
  - “relevant authority” means—
    - (a) in relation to the Learning and Skills Council for England, the Secretary of State; and
    - (b) in relation to the National Council for Education and Training for Wales, the National Assembly for Wales;
  - “secondary education” has the same meaning as in section 2 of the Education Act 1996.”
- (2) Schedule 9 (which inserts a new Schedule 7A into that Act) shall have effect.

### **73 Proposals by governing bodies of community schools**

In section 28 of the School Standards and Framework Act 1998 (c. 31) (proposals for establishment or alteration of schools), in subsection (2)(b) (requirement of publication where the governing body of a foundation or voluntary school propose to make a prescribed alteration to the school), after “foundation or voluntary school” there is inserted “, or of a community school maintained by a local education authority in England.”

### **74 Proposals for establishment of federated school**

- (1) Proposals under—
- (a) section 28 or 31 of the School Standards and Framework Act 1998 (c. 31),
  - (b) paragraph 5 of Schedule 7 to that Act,
  - (c) section 113A of the Learning and Skills Act 2000 (c. 21), or
  - (d) section 70 or 193 of this Act,
- for the establishment of a new school may relate to the establishment of the school as a federated school.
- (2) Regulations may make provision modifying any provision contained in—

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- (a) section 28 or 31 of, or Schedule 6 or 7 to, the School Standards and Framework Act 1998,
- (b) section 113A of, or Schedule 7A to, the Learning and Skills Act 2000, or
- (c) section 70 of, or Schedule 8 to, this Act,

in its application to proposals to establish a school as a federated school, or to the establishment of a school as a federated school.

- (3) In this section “federated school” has the meaning given by section 24(2).

## **75 Changes to existing procedures**

Schedule 10 (which makes amendments to the School Standards and Framework Act 1998 and the Learning and Skills Act 2000 in respect of the procedures for the establishment, alteration and discontinuance of certain maintained schools) shall have effect.