



Education and Inspections Act 2006

2006 CHAPTER 40

PART 2 **E+W**

ESTABLISHMENT, DISCONTINUANCE OR ALTERATION OF SCHOOLS

VALID FROM 01/04/2007

Alterations to schools

18 Alterations that may be made under section 19 **E+W**

- (1) Regulations may prescribe alterations to maintained schools that may be implemented in pursuance of proposals published under section 19.
- (2) The prescribed alterations must include any alteration that involves one or more of the following—
 - (a) in the case of a school falling within any of the categories set out in section 20(1) of SSFA 1998, any change in the category within which the school falls (other than a change prevented by subsection (4)(c) to (f) of this section),
 - (b) the acquisition by a foundation or foundation special school of a foundation established otherwise than under SSFA 1998, and
 - (c) in the case of a school whose instrument of government does not provide for a majority of the governing body to be foundation governors, any change in the instrument of government which results in the majority of governors being foundation governors.
- (3) The prescribed alterations may include other alterations of any nature (other than those prevented by subsection (4)).
- (4) None of the following alterations may be made to a maintained school—
 - (a) any change in the religious character of the school;
 - (b) any change whereby the school would acquire or lose a religious character;

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- (c) any change of category from foundation or voluntary school to community school;
 - (d) any change of category from foundation special school to community special school;
 - (e) any change of category from mainstream school to community or foundation special school or from community or foundation special school to mainstream school;
 - (f) any change from maintained nursery school to any other kind of maintained school, or from any other kind of maintained school to maintained nursery school.
- (5) In subsection (4)(e) “mainstream school” means community, foundation or voluntary school.

VALID FROM 25/05/2007

19 Publication of proposals for alteration of school E+W

- (1) Where—
- (a) the local education authority propose to make a prescribed alteration to a maintained school, and
 - (b) the prescribed alteration is one that under subsection (2) is capable of being proposed by a local education authority,
- the authority must publish their proposals under this section.
- (2) A prescribed alteration is capable of being proposed by a local education authority if—
- (a) in the case of a community school, a community special school or a maintained nursery school, it is an alteration designated by regulations under this subsection as one capable of being proposed by the local education authority,
 - (b) in the case of a foundation or voluntary school, it consists of any one or more of the following—
 - (i) an enlargement of the premises,
 - (ii) an increase in the number of pupils in any relevant age group,
 - (iii) the establishment or discontinuance of educational provision for pupils with special educational needs, and
 - (iv) the establishment of educational provision suitable to the requirements of pupils over compulsory school age, and
 - (c) in the case of a foundation special school, it consists of any one or more of the following—
 - (i) an enlargement of the premises,
 - (ii) an increase in the number of pupils for whom the school is organised to make provision, and
 - (iii) a change in the type of special educational needs for which the school is organised to make provision.
- (3) Where—

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- (a) the governing body of a maintained school propose to make a prescribed alteration to the school, and
- (b) in the case of a community school, a community special school or a maintained nursery school, the prescribed alteration is designated by regulations under this subsection as one capable of being proposed by the governing body,

the governing body must publish their proposals under this section.

(4) If at any time the governing body of a voluntary aided school are unable or unwilling to carry out their obligations under Schedule 3 to SSFA 1998 (funding of foundation, voluntary and foundation special schools), they must publish proposals under this section for the school to become either a voluntary controlled school or a foundation school, as the governing body may determine.

(5) This section has effect subject to section 20.

(6) In this section—

“prescribed alteration”, in relation to a maintained school, means an alteration prescribed under section 18;

“relevant age group” has the same meaning as in SSFA 1998.

VALID FROM 25/05/2007

20 **Restriction on power of governing body to publish foundation proposals** **E+W**

(1) The governing body of a school specified in the first column of the Table below may not publish proposals under section 19 for a prescribed alteration of a kind specified in the second column, except with the consent of—

- (a) the trustees of the school, and
- (b) the person or persons by whom the foundation governors are appointed.

TABLE

| <i>School</i> | <i>Prescribed alteration</i> |
|---|---|
| 1. A foundation school which, immediately before the commencement date, was a foundation school having a foundation. | A relevant change in the instrument of government. |
| 2. A voluntary school. | A change of category from voluntary controlled school or voluntary aided school to foundation school. |
| 3. A foundation school which, having been a voluntary school immediately before the commencement date, changed category to foundation school on or after that date. | A relevant change in the instrument of government. |

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(2) For the purposes of this section, a “relevant change” in the instrument of government of a school is a change which results in the majority of governors being foundation governors.

(3) In this section—

“the commencement date” means the day on which this Part comes into force, otherwise than merely for the purpose of enabling orders or regulations to be made;

“prescribed alteration”, in relation to a maintained school, means an alteration prescribed under section 18.

21 Proposals under section 19: procedure E+W

(1) Regulations may make provision about the publication and determination of proposals under section 19 (“proposals”).

(2) The provision that may be made includes provision—

- (a) about the information to be included in, or provided in relation to, the proposals;
- (b) about consultation on the proposals;
- (c) about the manner in which proposals are to be published under section 19;
- (d) for the making of objections to or comments on the proposals;
- (e) requiring the proposals to be considered with related proposals published under section 19 or any other enactment;
- (f) for the consideration and determination of the proposals by a prescribed person (who may be the person who published the proposals);
- (g) for the referral of proposals to the adjudicator in prescribed cases for consideration and determination by him (instead of by a person prescribed by virtue of paragraph (f));
- (h) for the referral of proposals to the adjudicator, at the request of a prescribed person, after their initial determination by a person other than the adjudicator;
- (i) for the approval of proposals with or without modification;
- (j) for the making in prescribed cases of a conditional approval;
- (k) for the withdrawal of proposals;
- (l) as to the manner in which, and time within which, anything required or authorised by the regulations must be done.

(3) The regulations may confer functions on the local education authority, on any other local education authority affected by the proposals, on the governing body of the school concerned and on the adjudicator.

(4) Regulations made by virtue of subsection (2)(g) may enable the Secretary of State by direction to require proposals to be referred to the adjudicator.

(5) In relation to any proposals for a school to cease to be an establishment which admits pupils of one sex only, regulations under this section may enable the local education authority or the adjudicator to make a transitional exemption order for the purposes of section 27 of the Sex Discrimination Act 1975 (c. 65) (exception for single-sex establishments turning co-educational), and to vary or revoke any order so made.

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- (6) The regulations may require any person exercising functions under the regulations to have regard to any guidance given from time to time by the Secretary of State.

22 Right of governing body to determine own foundation proposals **E+W**

- (1) Subsection (3) applies to proposals which are published under section 19 by the governing body of a community, voluntary controlled or community special school and relate only to—
- (a) a change of category from community or voluntary controlled school to foundation school, without the acquisition of a foundation or a relevant change in the instrument of government, or
 - (b) a change of category from community special school to foundation special school, without the acquisition of a foundation.
- (2) For the purposes of this section a “relevant change” in the instrument of government of a school is a change which results in the majority of governors being foundation governors.
- (3) In relation to proposals to which this subsection applies, regulations under section 21—
- (a) must provide for the proposals to be determined by the governing body, and
 - (b) may not make any provision under subsection (2)(g) or (h) of that section enabling the proposals to be referred to the adjudicator.
- (4) Subsection (5) applies to—
- (a) proposals which are published under section 19 by the governing body of a community or voluntary controlled school and relate only to a change of category from community or voluntary controlled school to foundation school, together with the acquisition of a foundation or a relevant change in the instrument of government (or both),
 - (b) proposals which are published under that section by the governing body of a community special school and relate only to a change of category from community special school to foundation special school, together with the acquisition of a foundation or together with both the acquisition of a foundation and a relevant change in the instrument of government, and
 - (c) proposals which are published under that section by the governing body of a foundation or foundation special school and relate only to the acquisition of a foundation or a relevant change in the instrument of government (or both).
- (5) In relation to proposals to which this subsection applies, regulations under section 21—
- (a) must provide for the proposals to be determined by the governing body unless the local education authority exercise the right conferred on them by regulations made by virtue of section 23(1), and
 - (b) may not make any provision under subsection (2)(g) or (h) of section 21 enabling a person other than the local education authority to require the proposals to be referred to the adjudicator.

23 Rights of interested bodies in relation to proposals under section 21 **E+W**

- (1) Any regulations under section 21 which enable any proposals falling within subsection (2) which are published by the governing body of the school to which

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they relate to be determined by the governing body must include provision by virtue of subsection (2)(g) of that section enabling the local education authority to require the proposals to be referred to the adjudicator.

- (2) Proposals fall within this section if the proposed alteration would result in a community, voluntary controlled or foundation school or community or foundation special school becoming either or both of the following—
- (a) a foundation or foundation special school having a foundation established otherwise than under SSFA 1998;
 - (b) a foundation or foundation special school whose instrument of government provides for the majority of governors to be foundation governors.
- (3) Regulations under section 21 may restrict the matters to which a local education authority may have regard in deciding whether to require proposals to be referred to the adjudicator in accordance with provision included in the regulations by virtue of subsection (1).
- (4) If regulations under section 21 provide for any proposals, other than proposals to which section 22(3) or (5) applies, to be determined by a person other than the adjudicator, the regulations must include provision by virtue of section 21(2)(h) enabling each of the following persons to require the proposals to be referred to the adjudicator after their initial determination by the other person—
- (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 any diocese of the Roman Catholic Church any part of which is comprised in the area of the authority, and
 - (c) where the proposals relate to the provision of education for persons aged 14 or over, the Learning and Skills Council for England.
- (5) If regulations under section 21 provide for any proposals published by a local education authority in relation to a foundation or voluntary school or a foundation special school to be determined by the local education authority, the regulations must include provision by virtue of subsection (2)(h) of that section enabling each of the following persons to require the proposals to be referred to the adjudicator after their initial determination by the authority—
- (a) the governing body of the school, and
 - (b) the trustees of the school.
- (6) In this section “proposals” means proposals under section 19.

24 Proposals under section 19: implementation E+W

- (1) Regulations may make provision in connection with the implementation of—
- (a) proposals under section 19 which have been approved in accordance with regulations under section 21, or
 - (b) proposals under section 19 in respect of which approval in accordance with those regulations is not required, and which the person making the proposals has determined to implement.
- (2) Regulations under this section may, in particular—
- (a) enable a prescribed person to determine in prescribed cases that proposals are not to be implemented or are to be implemented with modifications,

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- (b) enable prescribed matters relating to the implementation of proposals to be referred to the adjudicator in prescribed cases, and
 - (c) make provision about the manner in which, and time within which, anything required or authorised by the regulations must be done.
- (3) Regulations under this section relating to an alteration falling within subsection (2) (a), (b) or (c) of section 18 may include provision with respect to—
- (a) the revision or replacement of the school's instrument of government and the reconstitution of its governing body,
 - (b) the transfer of property, rights and liabilities (including such a transfer to or from a foundation body or trustees),
 - (c) the transfer of staff, and
 - (d) any transitional matters.
- (4) Regulations made under this section by virtue of subsection (3)(b) in relation to an alteration falling within section 18(2)(a) may, in particular, make provision with respect to—
- (a) restricting the disposal by a local authority of land which is used or held for the purposes of a school in relation to which proposals to change category are, or may be, published under section 19, as from—
 - (i) the date of publication of such proposals, or
 - (ii) such other time as may be prescribed,
 - (b) restricting the taking of action by virtue of which any such land would cease to be so used or held to any extent,
 - (c) the consequences of any contravention of any such restriction as is mentioned in paragraph (a) or (b), and
 - (d) conferring on any prescribed body such functions as may be prescribed with respect to any such contravention.
- (5) Regulations made under this section by virtue of subsection (3)(b) in relation to an alteration falling within section 18(2)(a) may also make provision with respect to—
- (a) the division and apportionment of property, rights and liabilities any part of which fall to be transferred by or under the regulations where the property has been used or held, or the rights or liabilities have been acquired or incurred, for the purposes of more than one school or for the purposes of one or more schools and for other purposes,
 - (b) excluding from transfer in certain circumstances property, rights and liabilities which would otherwise fall to be transferred under any such transfer,
 - (c) identifying and defining the property, rights and liabilities which fall to be transferred,
 - (d) requiring prescribed persons to enter into agreements and execute instruments,
 - (e) the resolution of disputes relating to a transfer,
 - (f) the construction of agreements,
 - (g) the position of third parties affected by a transfer,
 - (h) the production or delivery of documents, or the provision of information, by a prescribed person to another prescribed person, and

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- (i) enabling a certificate issued by a prescribed person to be conclusive evidence as to whether or not any property, rights or liabilities were transferred by virtue of the regulations.
- (6) Regulations under this section may require any prescribed person, in exercising functions under the regulations, to have regard to any guidance given from time to time by the Secretary of State.
- (7) Regulations under this section may, in particular, make provision corresponding to that made by, or that which may be made by regulations under, any provision of paragraphs 21 to 31 of Schedule 2 (implementation of proposals for establishment or discontinuance).
- (8) A school's change of category in pursuance of proposals published under section 19 is not to be taken as authorising any change in the religious character of the school, or the acquisition or loss of religious character.

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