

2003 No. 1229

EDUCATION, ENGLAND

**The Education (School Organisation Proposals) (England)
(Amendment) Regulations 2003**

<i>Made</i> - - - -	<i>1st May 2003</i>
<i>Laid before Parliamen</i>	<i>9th May 2003</i>
<i>Coming into force</i> - -	<i>1st June 2003</i>

In exercise of the powers conferred on the Secretary of State by sections 28(1), (2), (3), (6) and (9), 33(4), 138(7) and 144 of, paragraph 5 of Schedule 5, paragraphs 2, 3, 4, and 5 of Schedule 6, paragraphs 7 and 8 of Schedule 7, and paragraph 5 of Schedule 23 to, the School Standards and Framework Act 1998(a) and sections 71(5) and 210(7) of the Education Act 2002(b), the Secretary of State for Education and Skills hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Education (School Organisation Proposals) (England) (Amendment) Regulations 2003 and shall come into force on 1st June 2003.

(2) In these Regulations “the Principal Regulations” means the Education (School Organisation Proposals) (England) Regulations 1999(c).

Amendment of Principal Regulations

2. The Principal Regulations shall be amended in accordance with regulations 3 to 17 below.

3. In regulation 2—

(a) in paragraph (1)—

(i) after the definition of “16-19 institution” there shall be inserted the following definitions—

““admission number” means the number of pupils in any relevant age group that it is intended to admit or (where the context requires) have been admitted, as

(a) 1998 c.31. Section 28(2) and Schedules 6 and 7 are amended respectively by section 73 of, and Schedule 10 to, the Education Act 2002 (c.32). Schedule 23 is repealed by Schedule 22 to the Education Act 2002 but the repeal is subject to savings; see paragraph 5(1) of the Schedule to the Education Act 2002 (Commencement No. 2 and Savings and Transitional Provisions) Order 2002 (S.I. 2002/2439).

(b) 2002 c..32.

(c) S.I. 1999/2213 amended by S.I. 2000/2198 and 2001/1405.

determined by the admission authority in accordance with sections 89 and 89A of the Act (a);

“the capacity guidance” means the Department for Education and Skills Guidance “Assessing the Net Capacity of Schools” issued in August 2002, reference number DfES/0739REV/2001(b);”;

- (ii) the definition of “city academy” shall be omitted;
- (iii) after the definition of further education college there shall be inserted the following definition –

““indicated admission number” means the number of pupils in any relevant age group referred to as such in, and determined in accordance with, the net capacity assessment method set out in the capacity guidance;” and

- (iv) at the end there shall be inserted “and any reference to paragraph 7, 8 or 9 of Schedule 7 includes a reference to any of those paragraphs as they apply, by virtue of section 71(7) of the Education Act 2002, to proposals made under section 71(4) of that Act.”;

- (b) for paragraph (2) there shall be substituted the following paragraph —

“(2) For the purposes of these Regulations, except Part VI of Schedule 3, the capacity of a school shall be the net capacity determined in accordance with the capacity guidance;”.

4. For regulation 3 there shall be substituted the following regulation—

“Alterations for which proposals must be published

3.—(1) The alterations specified in Part I of Schedule 1 to these Regulations are prescribed as alterations for which proposals must be published—

- (a) under section 28(1)(b) or (c); and
- (b) under section 28(2)(b) by the governing body of a foundation or voluntary school.

(2) The alterations specified in Part II of Schedule 1 to these Regulations are prescribed as alterations for which proposals must be published under section 28(2)(b) by the governing body of a community school.”.

5. In regulation 4—

- (a) for paragraph (1) there shall be substituted the following paragraph—

“(1) This regulation prescribes for the purposes of section 28(3)(a), section 29(3)(a), paragraph 5(2)(a) of Schedule 7, section 71(5)(a) of the Education Act 2002 (where the proposals relate to a mainstream school) and paragraph 5(1)(a) of Schedule 23, the information which proposals published under section 28, section 29, or paragraph 5 of Schedule 7, made under section 71(4) of the Education Act 2002 or published under paragraph 5 of Schedule 23 must contain.”;

- (b) in paragraph (2) for “or paragraph 5(2) of Schedule 7” there shall be substituted “paragraph 5(2) of Schedule 7 or section 71(5)(a) of the Education Act 2002.”.

6. In regulation 5(1)—

- (a) for “and paragraph 5(2)(b) of Schedule 7 (in both cases where the proposals relate to a mainstream school)” there shall be substituted “paragraph 5(2)(b) of Schedule 7 and section 71(5)(b) of the Education Act 2002 (in cases where the proposals relate to a mainstream school)”;
- (b) after “paragraph 5 of Schedule 7” there shall be inserted “section 71(5) of the Education Act 2002”.

7. In regulation 7—

(a) Section 89 was amended by Schedule 4 to, and section 89A was inserted by section 47(2) of, the Education Act 2002.
(b) ISBN 1 84185 610 X.

- (a) in paragraphs (1)(a) and (b), (2) and (3) after “objections to” (in each place where those words occur) there shall be inserted “or comments on”; and
 - (b) in paragraph (2)(a) for “two months” there shall be substituted “six weeks”.
8. Regulation 9 shall be renumbered 9(1), and in regulation 9 (as so renumbered)—
- (a) after paragraph (1)(f) there shall be inserted the following paragraph—
 - “(fa)the formation of any federation (within the meaning of section 24(2) of the Education Act 2002) of which it is intended that a proposed school should form part, or the fulfilling of any other condition relating to the proposed school forming part of a federation;”;
 - (b) for paragraph (1)(g) there shall be substituted the following paragraph—
 - “(g) the making of any agreement under section 482(1) of the 1996 Act (a) for the establishment of an Academy, where the proposals in question provide for some or all of the pupils currently at the school which is the subject of the proposals to transfer to the Academy.”;
 - (c) after paragraph (1)(i) there shall be inserted the following paragraph—
 - “(ia) the agreement to any change in admission arrangements specified in the approval, relating to any other school;”;
 - (d) after paragraph (1) there shall be inserted the following paragraph —
 - “(2) For the purposes of paragraph (1)(ia) above a change in admission arrangements is agreed—
 - (a) in a 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 the Act and either—
 - (i) no objection is made to the change in accordance with section 90 of the Act, or
 - (ii) if an objection to the change is made and referred to the adjudicator in accordance with section 90 of the Act, the objection is not upheld;
 - (b) in a case where the change arises from a variation made under section 89(5) of the Act or made under the Education (Variation of Admission Arrangements)(England) Regulations 2002(b) 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.”.

9. In regulation 10, in paragraphs (2)(a), (2)(b), (3)(c)(ii) and (4) after “objections” (in each place where it occurs) there shall be inserted “or comments”.

10. After regulation 10 there shall be inserted the following regulations—

“Limitations on power of committee to refer matters to adjudicator

10A. The School Organisation Committee may only refer any proposals to the adjudicator under paragraph 3(2)(d) of Schedule 6 or paragraph 8(2A) of Schedule 7, or refer any matter to the adjudicator under paragraph 5(6A) of Schedule 6 if—

- (a) they have voted on the proposals or matter, but

(a) Section 482 was substituted by section 65 of the Education Act 2002 (c. 32).
 (b) S.I. 2002/2898.

- (b) at least two groups of members (within the meaning of regulation 13(1)) did not vote because members of each group had declared an interest in the proposals or matter in question.

Limitation on power of local education authority to refer proposals to School Organisation Committee

10B. A local education authority may only refer any proposals to the School Organisation Committee under paragraph 4(4A) of Schedule 6 where it appears to them that it may be appropriate, if the proposals are approved, for the approval to be expressed (in accordance with paragraph 3(3) of Schedule 6) to take effect only if an event specified in the approval occurs by the date so specified.

Reference to adjudicator of proposals rejected by Committee

10C.—(1) A school falls within paragraph 3(6C)(a) of Schedule 6 (which provides that where the school organisation committee reject proposals to make an alteration to a school and the school is of a prescribed description the committee shall refer the proposals to the adjudicator if the governing body so request) if it is a popular school but not a grammar school.

(2) An alteration falls within paragraph 3(6C)(b) of Schedule 6 (which provides that where the school organisation committee reject proposals to make an alteration to a school and the alteration is of a prescribed description the committee shall refer the proposals to the adjudicator if the governing body so request) if it is an alteration specified in paragraph 1, 2, 11 or 12 of Schedule 1 to these Regulations.

(3) Any request made pursuant to paragraph 3(6A) or (6C) of Schedule 6 by promoters or a governing body for the school organisation committee to refer proposals to the adjudicator shall be made to the committee within 28 days from the date on which the committee notify the promoters or governing body, pursuant to regulation 12(2), that the proposals have been rejected.

(4) For the purposes of this regulation—

- (a) “grammar school” has the same meaning as in Chapter II of Part III of the Act;
- (b) a school is a “popular school” if the number of unsuccessful appeals against a decision refusing an applicable child admission to the school for the school year in which the proposals are rejected by the committee exceeds 10 per cent of the total of the admission numbers for the compulsory school age relevant age groups for that school year, where the school is a secondary school, or 5 per cent of that total, where the school is a primary school;
- (c) an “unsuccessful appeal” is an appeal pursuant to arrangements made under section 94 of the Act (which is not withdrawn) and which is rejected;
- (d) an “applicable child” is a child in a compulsory school age relevant age group; and
- (e) a “compulsory school age relevant age group” is a relevant age group relating to pupils of compulsory school age.”

11. In regulation 12 for paragraph (1) there shall be substituted the following paragraph —

“(1) The school organisation committee shall, within two weeks from the date on which such proposals were sent to them —

- (a) send to the Secretary of State a copy of all published proposals which are sent to them under section 28(6) (including proposals sent to them under section 28(6) as it has effect by virtue of Schedule 4 to these Regulations) or section 29(5), and
- (b) send to the Learning and Skills Council for England a copy of all such proposals if they relate to sixth form education,

where (in either case) the proposals relate to mainstream schools.”

12. In regulation 14 after paragraph (2) there shall be inserted the following paragraph —

“(3) Where by virtue of paragraph 3(6A) or (6C) of Schedule 6 the committee are required to refer any proposals to the adjudicator they shall do so within two weeks of the receipt of the request under either of those sub-paragraphs.”.

13. In Schedule 1—

(a) under the heading “ALTERATIONS FOR WHICH PROPOSALS MUST BE PUBLISHED” there shall be inserted—

“ PART I

ALTERATIONS WHERE PROPOSALS ARE REFERRED TO IN REGULATION 3(1)
”;

(b) in paragraph 2(3) the definitions of “admission number” and “relevant age group” shall be omitted; and

(c) for paragraph 3 there shall be substituted the following paragraph —

“3. The alteration of the upper age limit by a year or more, except —

- (a) an alteration which consists of providing or ceasing to provide education for pupils over compulsory school age who are repeating a course of education completed before they reach compulsory school age; or
- (b) an alteration resulting from persons beginning to be provided with education falling within section 80(1) of the Act.

In this paragraph “the upper age limit” in relation to a school means the highest age of pupils for whom education is normally provided at the school.”;

(d) after paragraph 3 there shall be inserted the following paragraph—

“3A. The alteration of the lower age limit such that, when taken with all previous such alterations (if any) taking place since the appropriate date, the lower age limit is at least a year lower than the lower age limit on the appropriate date.

In this paragraph —

“the lower age limit” in relation to the school means the lowest age of pupils for whom education is normally provided at the school; and

“the appropriate date” means whichever is the latest of the following dates —

- (a) the date falling five years before the date on which the local education authority or, as the case may be, the governing body, form the intention to make the alteration in question;
- (b) the date on which the school was established;
- (c) where any proposals for the making of a significant change of character of the school or a prescribed alteration to the school consisting of a change in the lower age limit has been approved under any of the provisions mentioned in paragraph 1 above, the date (or latest date) on which any such proposals were implemented; and
- (d) where the local education authority have determined to implement any proposals for the making of a significant change in the character of the school or a prescribed alteration to the school consisting of a change in the lower age limit under section 12(7) of the Education Act 1980(a), section 38 of the Education Act 1996(b) or paragraph 4 of Schedule 6, the date (or latest date) on which any such proposals were implemented.”;

(a) 1980 c. 20.
(b) 1996 c. 56.

(e) after paragraph 10 there shall be inserted the following—

“ PART II

ALTERATIONS WHERE PROPOSALS ARE REFERRED TO IN REGULATION 3(2)

11. An enlargement such as is mentioned in paragraph 1.

12. An increase in the number of pupils such as is mentioned in paragraph 2.

13. The alteration of the upper age limit so as to provide sixth form education other than such an alteration resulting from persons being provided with education falling within section 80(1) of the Act.

In this paragraph “the upper age limit” in relation to a school means the highest age of pupils for whom education is normally provided at the school”.

14. In Schedule 2 —

(a) for paragraph 5 there shall be substituted —

“5. The category of school (that is to say, community school, foundation school, voluntary aided school, voluntary controlled school or maintained nursery school) into which the proposed school will fall.”;

(b) after paragraph 7 there shall be inserted the following paragraph —

“7A. A description of what the proposals are intended to deliver in terms of community cohesion.”;

(c) after paragraph 9 there shall be inserted the following paragraph—

“9A. Details of any proposals for the school to be federated with one or more schools (by virtue of sections 24 and 74(1) of the Education Act 2002).”;

(d) paragraph 10 shall be renumbered paragraph 10(1) and after that sub-paragraph as so renumbered there shall be inserted the following sub-paragraph —

“(2) Where the number of such pupils in any relevant age group is lower than the indicated admission number for that relevant age group a statement to this effect and details of the indicated admission number in question.”

(e) in paragraph 12 at the beginning there shall be inserted —

“Except where the proposed school is to be a maintained nursery school”;

(f) paragraph 16 shall be renumbered paragraph 16(1) and after that sub-paragraph as so renumbered there shall be inserted the following sub-paragraph —

“(2) Where the number of such pupils in any relevant age group is lower than the indicated admission number for that relevant age group a statement to this effect and details of the indicated admission number in question.”.

15. In Schedule 3—

(a) in paragraph 1(1)—

(i) in the definition of “GCE ‘A’ level examinations” and “GCE ‘AS’ examinations” for “supplementary” there shall be substituted “subsidiary”;

(ii) after the definition of “NVQ” there shall be inserted—

“VCE” means Vocational Certificate of Education;

(b) in paragraph 4 for “and foundation schools” there shall be substituted “foundation and maintained nursery schools”;

(c) for paragraph 5(a) there shall be substituted “the admission number for each relevant age group;”;

(d) after paragraph 9 there shall be inserted the following paragraphs—

“9A. The following information relating to the proposals —

- (a) the objectives which the local education authority or promoters intend to set to further the aims of inclusiveness and partnership working;
- (b) what activities are planned to achieve the objectives specified in sub-paragraph (a); and
- (c) measures proposed to be taken to ensure that the governing body, teachers, pupils and parents are aware of their role in contributing to inclusiveness and partnership working.

9B. (a) Except where the proposed school is to be a maintained nursery school, an indication of the admission arrangements and over-subscription criteria which the local education authority or promoters consider appropriate for the proposed school; and

- (b) where the proposed school is to be a foundation or voluntary school which it is proposed should have a religious character—
 - (i) an indication of the extent to which the promoters consider it appropriate for priority to be given to children of the school’s faith or denomination, and
 - (ii) an indication of the extent to which the promoters consider it appropriate for any priority to be given for any places to children of other faiths or denominations or to children in specified groups regardless of their faith or denomination.

9C. Where the proposed school is to be established in substitution for an independent school or maintained school of a different religious character details of any existing arrangements to further the aims of inclusiveness and partnership working and details of proposals to develop such arrangements further.”;

- (e) in paragraph 13 at the beginning there shall be added “Except where the proposed school is to be a maintained nursery school”;
- (f) in paragraph 18A(b)(i) for “city academies” there shall be substituted “Academies”;
- (g) after paragraph 18A there shall be inserted the following paragraph –

“18B. Where the proposed school will be a maintained nursery school —

- (a) details of how the education to be provided at the school will be organised, including the number of full-time and part-time pupils and the number of sessions in each week,
- (b) the extent to which the school will integrate the education provided with child care services or the extent to which the proposals for the establishment of the school are consistent with the integration of nursery education with child care,
- (c) evidence of demand for additional provision of nursery education including the number of pupils receiving such education at schools maintained by the local education authority within the relevant radius of the proposed school,
- (d) if any of the schools within the relevant radius of the proposed school has unused capacity to accommodate children under compulsory school age a statement of the reasons why such school cannot make provision for any forecast increase in the number of such children,
- (e) an estimate of the proportion of children under compulsory school age in the area of the local education authority who are educated at schools maintained by the local education authority,
- (f) an estimate of the proportion of children referred to in sub-paragraph (e) who are educated at schools not maintained by the local education authority,

- (g) an estimate of the proportion of children referred to in sub-paragraph (e) who are educated at schools maintained by the local education authority other than in reception classes (within the meaning of section 142(1) of the Act),
- (h) an estimate of the extent of deprivation in the area served by the school, and
- (i) whether child care will be provided outside school hours if the proposals are approved.”;
- (h) in paragraphs 24(e) and 25(g) for “city academy” there shall be substituted “Academy”;
- (i) in paragraph 25 for sub-paragraph(e)(ii) there shall be substituted —
 - “ (ii) courses leading to VCE examinations,”; and
- (j) for paragraph 36(a) there shall be substituted “the admission number for each relevant age group”.

16. In Schedule 4, in the provisions in the right hand column which make modifications to paragraph 2(2)(a) and (3) of Schedule 6 to the School Standards and Framework Act 1998, for “two months” (in each case where those words occur) there shall be substituted “six weeks”.

17. In paragraph 3 of Schedule 5, in the modified paragraph 3(2) of Schedule 6 to the School Standards and Framework Act 1998 –

- (a) “or” shall be omitted at the end of paragraph (a) and inserted at the end of paragraph (c); and
- (b) after paragraph (c) there shall be inserted the following paragraph –
 - “(d) refer them to the adjudicator if —
 - (i) they have voted on the proposals, but
 - (ii) at least two groups of members (within the meaning of the Education (School Organisation Committees) (England) Regulations 1999) did not vote because members of each group had declared an interest in the proposals and if they think it appropriate to do so.”.

Transitional Provisions

18.—(1) The provisions of paragraphs (2) and (3) below shall apply despite regulation 3(b) above.

(2) Where a local education authority or governing body have before 1st June 2003 decided to make an enlargement to the premises of a school which —

- (a) does not fall within paragraph 1(1) of Schedule 1 to the Principal Regulations by reference to the meaning of capacity in regulation 2(2) as originally made, but
- (b) does fall within paragraph 1(1) of that Schedule by reference to the meaning of capacity in regulation 2(2) of the Principal Regulations as amended by regulation 3(b) above,

the enlargement shall not be treated as falling within paragraph 1(1) of that Schedule.

(3) Where a local education authority have before 1st June 2003 published proposals to make an enlargement to the premises of the school —

- (a) which falls within paragraph 1(1) of Schedule 1 to the Principal Regulations by reference to the meaning of capacity in regulation 2(2) as originally made, but
- (b) which does not fall within paragraph 1(1) of that Schedule by reference to the meaning of capacity in regulation 2(2) of the Principal Regulations as amended by regulation 3(b) above,

those proposals, if they have not been determined before 1st June 2003 shall be treated as withdrawn.

(4) Despite regulation 7 above, regulation 7 of the Principal Regulations (objections to proposals) as originally made shall continue to apply in relation to any proposals published before 1st June 2003.

(5) The amendments made by regulation 15(d) above shall not apply where proposals have been published before 1st June 2003.

1st May 2003

David Miliband
Minister of State
Department for Education and Skills

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make further amendments to the Education (School Organisation Proposals) (England) Regulations 1999 (the “Principal Regulations”).

The principal changes are:–

- (a) the definition of “capacity” is amended so that capacity is determined by reference to Department for Education and Skills Guidance (regulation 3(b)). Copies of this Guidance may be obtained from DfES Publications, PO Box 5050, Sherwood Park, Annesley, Nottingham NG15 0DJ Email dfes@prolog.uk.com;
- (b) provision is made for prescribing alterations which must be published by the governing body of a community school in the light of the amendment made to section 28 of the School Standards and Framework Act 1998 by section 73 of the Education Act 2000 (regulations 4 and 13(e));
- (c) the period within which objections to or comments on the proposals may be submitted which was two months is shortened to six weeks (regulations 7 and 16);
- (d) regulation 9 of the Principal Regulations is amended to add the agreement to a specified change in admission arrangements relating to any other school as an event which can be referred to in a conditional approval (regulation 8(c) and (d));
- (e) new provision is made (regulations 10A and 10B of the Principal Regulations inserted by regulation 10 with a consequential provision in regulation 17) imposing limitations on the School Organisation Committee’s new power to refer matters to the adjudicator and on the local education authority’s powers to refer matters to the School Organisation Committee;
- (f) new provision is made (regulation 10C of the Principal Regulations inserted by regulation 10) covering references to the adjudicator if certain proposals are rejected by the School Organisation Committee. These provisions relate to paragraph 3(6A) to (6C) of Schedule 6 to the School Standards and Framework Act 1998 inserted by Schedule 10 to the Education Act 2002;
- (g) regulation 12 of the Principal Regulations is amended to require the School Organisation Committee to send copies of proposals to the Learning and Skills Council for England if they relate to sixth form education (regulation 11);
- (h) the provisions in Schedule 1 to the Principal Regulations prescribing a change to the lower age limit as a “prescribed alteration” are amended (regulation 13(c) and (d));
- (i) Schedule 2 to the Principal Regulations is amended so as to require the published notice of proposals to state if any admission number is lower than the “indicated admission number” and if so to state the “indicated admission number” (regulation 14(d) and (f));
- (j) Schedules 2 and 3 to the Principal Regulations are amended so as to require any body publishing proposals to establish a new school to include in the published notice and in the information sent to the School Organisation Committee certain information relating to community cohesion (regulations 14(b) and 15(d));
- (k) Schedule 3 to the Principal Regulations is also amended to reflect the introduction of the VCE examination (regulation 15(a) and (i)).

Other minor amendments are consequential on the Education Act 2002. They include changes consequential on the conversion of city academies into Academies, changes consequential on the coming to an end of standard numbers, the extension of provisions relating to information to be included in a published notice or provided to the School Organisation Committee to proposals under section 71(5) of the Education Act 2002, changes consequential on the extension of the provisions relating to objections to cover comments, on provision for new schools to be able to be part of federations and on the requirement that proposals should be published to establish a maintained nursery school.

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EDUCATION, ENGLAND

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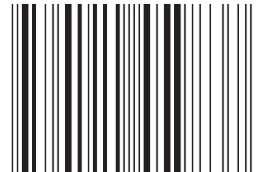
£2.50

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Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of Her Majesty's
Stationery Office and Queen's Printer of Acts of Parliament.

E0705 05/2003 130705 19585

ISBN 0-11-045983-0



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