

**EXPLANATORY MEMORANDUM TO THE
EDUCATION (SCHOOL ORGANISATION PROPOSALS)
(MISCELLANEOUS AMENDMENTS) (ENGLAND) REGULATIONS 2004**

2004 No. 3052

1. This explanatory memorandum has been prepared by the Department for Education and Skills and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

This Statutory Instrument makes certain technical amendments to the Education (School Organisation Proposals) Regulations. It amends the Education (School Organisation Committee) Regulations to provide for nursery schools to be members of the Schools Group on School Organisation Committees (SOCs) in the same way that special schools and middle schools must be represented where there is at least one such school in the area. It amends the Education (References to Adjudicator) Regulations to allow for decisions to be taken by more than one adjudicator.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

None

4. **Legislative Background**

Education (School Organisation Proposals)

4.1 Under the arrangements introduced by the School Standards and Framework Act 1998 certain specified changes to the local organisation of schools must be published as statutory proposals. Most statutory proposals are decided by the local School Organisation Committees (SOCs), or, where the local SOC cannot reach a unanimous decision, a Schools Adjudicator. Before approving proposals, the SOC and adjudicator must be satisfied that there is funding available to enable the proposals to be implemented. Once proposals have been approved those who published them are under a statutory duty to implement them. There are specific provisions whereby a SOC or adjudicator make their approval conditional, for example conditional on securing planning permission, and a date must be specified when the condition should be met. If the condition is met the proposals are regarded as approved without the SOC or adjudicator having to consider the proposals further. If a condition is not met the proposals must be considered afresh by the SOC or adjudicator.

4.2 The first change proposed is to amend an existing conditional approval, reflecting changes which have been made to the Private Finance Initiative (PFI) funding arrangements. The current regulations enable the SOC or adjudicator to make their approval of statutory proposals conditional on the entering into of a PFI transaction “within the meaning of Regulation 16 of the Local Authorities (Capital Finance) Regulations 1997”. The local authority regulations were revoked from April this year and we are therefore amending the regulations so that the approval is subject to the issuing of PFI credits following the signing of the PFI contract by the Local Education Authority (LEA) or, in the case of Voluntary Aided (VA) School projects, agreement to provide grant for the project under equivalent arrangements.

4.3 The Department will confirm that it will issue PFI Credits or VA school grant, when it agrees the project's Final Business Case, which will be developed following the agreement of the Outline Business Case by the Treasury-chaired Project Review Group (PRG). PFI Credits provide additional revenue funding for local education authorities to enable them to meet part of the PFI contract charges over the life of the project. For voluntary aided schools, the school governors are responsible for building work and where a PFI project is approved the Department will pay grant towards the contract payments. This amendment to regulations will ensure that those who published proposals that are dependent upon a PFI project, will only be under a duty to implement when funding is finally agreed and allocated

4.4 A further amendment adds a new condition to take account of the introduction of a policy known as ‘Building Schools for the Future’ (BSF). BSF is the Department’s capital programme which aims to provide 21st-Century facilities for every secondary pupil within 10 to 15 years from 2005-06, subject to future public spending decisions. The first projects were announced in February 2004 with funding being made available from 2005-06 onwards. LEA projects, which cover a particular geographical area, are given initial approval “in principle”, authorising them to develop their schemes. When the Department agrees the project’s final business case, the local authority is able to sign the necessary contract for the building project and the Department formally allocates the appropriate capital support. This amendment will enable a SOC or adjudicator to make their approval conditional on the signing of the BSF project contract, so that those who published the proposals will only be under a duty to implement when they have signed the final contract.

4.5 The regulations also reintroduce the requirement to publish statutory proposals for changes to raise the lower age range of the school. This had been removed in error by The Education (School Organisation Proposals) (England) (Amendment) Regulations 2003 No 1229.

Education (School Organisation Committees) Regulations

4.6 The Regulations are being amended to provide that maintained nursery schools are now to be added as a category of school for the purposes of the regulations so that school governors of nursery schools can be included in the

membership of the Schools Group of a SOC. Currently a SOC consists of 5 statutory groups, who represent the key local education stakeholders. The Schools Group currently includes representatives of primary, secondary schools and a middle school if there is at least one middle school within the LEA plus a representative of a special school. These amending regulations will provide that there is a member for primary, secondary, special, middle and nursery schools where there is at least one school of any of these types within the LEA. The regulations currently also provide that there is representation for specific school categories (i.e. Community, Foundation, Voluntary schools) where at least 5% of pupils in the LEA attend any of these categories of schools – except voluntary schools that are managed by the local diocese as they are represented by the Church of England and Roman Catholic Groups on the SOC. The regulations also provide that there should not be representation for any category of school which has less than 5% of pupils – however the amendments will provide that this will not apply to nursery and special schools for which, in future, there must be representation if there is at least one school.

4.7 The amendments also remove the requirement that Schools Group members must be governors of schools within the LEA except where representatives must be appointed for each of the school types. This has previously had the effect of requiring LEAs to appoint a special school representative from outside the LEA's area, if there were no special schools in their area. This requirement has not been observed as it has been impracticable and is therefore being removed

Education (References to Adjudicator) Regulations

4.8 The final amendment gives the Chief Schools Adjudicator the power to allocate cases to a panel of Schools Adjudicators as well as to a single adjudicator. In practice a panel is unlikely to be more than 2 adjudicators with one nominated as the 'lead' in case a unanimous decision cannot be reached.

5. Extent

This instrument applies to England.

6. European Convention on Human Rights

Not applicable.

7. Policy background

Education (School Organisation Proposals)

7.1 These amendments are mainly technical and are unlikely to be of interest to the general public. The amendment relating to the conditional approval of PFI projects is needed urgently to remove a reference to out of date legislation. The amendment to provide a new conditional approval for projects to be funded under Building Schools for the Future is needed to

reflect this recent policy development. This will allow SOCs to approve projects so that they can be developed further, but without placing those who published the proposals under a statutory duty to implement before final agreement to the project and funding has been secured. The other amendment is needed to ensure that statutory proposals are published for any changes to raise the lower age range of a school (e.g. to remove a nursery unit) which had been inadvertently removed in 2003. This is in line with Government policy that all significant changes to school organisation should be subject to a statutory process including formal publication of notices which allow for representations to be made.

Education (School Organisation Committees) Regulations

7.2 This amendment will give representatives of nursery schools membership on the SOC. It will enable representatives of nursery schools to participate in the decision making process and offer specialist advice to the SOC on early years matters when the SOC is considering relevant changes to local maintained school provision. Ministers are keen to cement the role of nursery schools in the interests of more local integrated provision and nursery schools now have delegated budgets and local management.

Education (References to Adjudicator) Regulations

7.3 The Chief Adjudicator believes that this amendment, allowing cases to be passed to one or more adjudicators, will improve decision-making particularly for the more complex and sensitive admissions cases and when deciding competing proposals for new schools.

Outcome of Consultation on Amendments

7.4 There has been consultation on all the amendments with LEAs, SOCs, Diocesan Bodies and some relevant umbrella bodies including the Forum for Maintained Nursery Schools.

7.5 The response to the amendments was generally positive. The only amendment which caused some questions/concern was the change to require nursery school representation on the Schools Group of a SOC. Of the 44 responses, 6 disagreed with the proposal, 30 agreed and 8 were not sure. The main concern was that the representation would be disproportionate when compared to other school types and that they might have undue influence in the decision making arrangements. However, the Government believes it is important that all types of schools have the opportunity to be represented on the SOC and in the case of nursery schools the representatives will also bring expertise on early years matters. The nursery school representative will be one member in a group of 7 and will therefore not have undue influence over the SOC.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies

9. Contact

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