

EXPLANATORY MEMORANDUM TO
THE EDUCATION (NEW SECONDARY SCHOOL PROPOSALS)
(ENGLAND) REGULATIONS 2006

2006 No. 2139

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 House of Lords Merits Committee.

2. **Description**

2.1 These regulations make provision for the procedures to be followed where a local authority invites proposals for a new secondary school or schools under Section 66 of the Education Act 2005 (i.e. a secondary school “competition”). The regulations prescribe the process whereby an authority must consult on plans for a new secondary school before then publishing a notice setting out the new school requirement and inviting proposals from proposers who wish to establish a school or schools. After allowing 4 months for proposals the authority must then publish a second notice summarising proposals received, together with any proposals the authority wishes to make itself for a new school or schools. Anyone with comments or objections on any of the proposals may comment or object and the regulations provide a period of 6 weeks for them to do so. All the proposals must then be passed to the School Organisation Committee (SOC) for decision together with any comments or objections. The proposals must be passed to the schools adjudicator if the SOC cannot reach a unanimous decision.

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

3.1 None.

4. **Legislative Background**

4.1 The regulations give effect to provisions in Part 2 of the Education Act 2005.

5. **Extent**

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required..

7. Policy background

7.1 The policy background is set out in the Department for Education and Skills Five Year Strategy for Children and Learners, published in July 2004 and the Government's White Paper "Higher Standards, Better Schools for All". These documents said that the Government was committed to a diverse school system which provided more choice for parents and pupils and a new role for local authorities as commissioners of school provision rather than providers. In order to support that aim, the establishment of new schools should be opened up to greater competition.

7.2 We expect there to be approximately 15 secondary school competitions each year. The Education Act 2002 required "competitions" to be run whenever a local authority wished to establish an "additional" secondary school (i.e. a brand new school, usually to cater for population growth) as a community school. To date no competitions have been run as new schools have tended to be established as foundation or voluntary schools by other providers. Guidance in 2003 encouraged local authorities to run "voluntary competitions" when they were establishing a new secondary school as a result of a reorganisation, particularly in areas where standards were low, but no "voluntary competitions" have been run.

7.3 The Government is keen to see more contestability introduced into the school organisation arrangements, to enable other providers with a wide range of skills and expertise to contribute to raising standards and increased diversity, parental choice and innovation. School Competitions will open up new opportunities for providers other than local authorities to come forward with proposals for secondary schools.

7.4 The Education Act 2005 provides for a local authority or other provider to apply to the Secretary of State for consent to publish proposals for a secondary school without a competition. Each case will be decided on its merits and these arrangements are not subject to regulations.

7.5 The Department consulted local authorities and other stakeholders on these arrangements in February – May 2006. Twelve responses were received. No new matters were raised in consultation. Three changes have been made to the regulations in response to consultation comments: to extend the time for local authorities to send the proposals and representations to the SOC (from one to two weeks); to add representatives of school workforce trade unions to the statutory list of consultees; and to include a requirement that the Authority should invite those who have submitted proposals to attend the public meeting(s) following the second notice.

7.6 Details of the consultation exercise, and a summary of responses, are available on the DfES website at <http://www.dfes.gov.uk/consultations/>

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.

8.2 The impact of the instrument on the public sector falls on local authorities, with some additional responsibilities for the School Organisation and Schools Adjudicator who will decide competitions for all schools. Hitherto the Secretary of State has had responsibility for deciding additional secondary school “competitions”. The effect of this instrument is to establish procedures for all secondary school competitions which will be required with effect from 1 September 2006 when the Section 66 of the Education Act 2005 comes into force.

9. Contact

Chris Crathorne at the Department for Education and Skills Tel: 01325 391275 e-mail: chris.crathorne@dfes.gsi.gov.uk can answer any queries regarding the instrument.