

SCHEDULE 1

Regulation 7

MODIFICATION OF PART 2 OF THESE REGULATIONS WHERE SCHOOLS ESTABLISHED OUTSIDE AREA OF RELEVANT LEA

Part 1

Proposals published under section 66 of EA 2005 where school is to be established in area other than that of local education authority that published the notice

1. In relation to proposals published under section 66 of EA 2005 which relate to a school proposed to be situated in an area other than that of the local education authority who published the notice under section 66 of EA 2005, Part 2 of these Regulations has effect in accordance with the following modifications.

2. After regulation 3 (9) insert—

“(10) Where the notice published by the local education authority pursuant to section 66 (1) of EA 2005 specifies that the proposed school is to be situated in an area other than their own (“notice specific cases”), the local education authority (“Local Education Authority A”) must send complete copies of all published proposals that have not been withdrawn to the local education authority for the area in which it is proposed that the school will be situated (“Local Education Authority B”).

(11) Where the notice published by the authority pursuant to section 66 (1) of EA 2005 does not specify that the proposed school is to be situated in an area other than their own, but a proposer includes this in his proposals (“non-notice specific cases”), the local education authority (“Local Education Authority A”) must send a copy of the proposals published by that proposer only, to the local education authority for the area in which it is proposed that the school will be situated (“Local Education Authority B”).”

3. After regulation 4 (4) insert—

“(5) Local Education Authority A—

(a) in notice specific cases, must send copies of all objections and comments received together with the proposals it sends in accordance with regulation 3 (10) to Local Education Authority B within 1 week of the expiry of the representation period as prescribed by the regulations referred to in regulation 4, or by 1st June 2007, as applicable; and

(b) in non-notice specific cases, must send copies of any objections and comments received in respect only of the proposals sent by the authority under regulation 3 (11) to Local Education Authority B within 1 week of the end of the representation period as prescribed by the regulations referred to in regulation 4, or by 1st June 2007 as applicable.”

4. For regulation 7 (3) substitute the following—

“(3) Local Education Authority A, after seeking and, unless Local Education Authority B have failed to reach a decision on what recommendation to give, obtaining the recommendation of Local Authority B, may—

(a) reject all the proposals;

(b) approve any of the proposals without modification; or

(c) approve any of the proposals with such modifications as the authority think desirable after consulting the body who published the proposals.”

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

5. For regulation 10 substitute the following—

“10. If within 2 months from the end of the period in which proposals, objections and comments must be forwarded to the relevant authority as provided by regulations 3(6) and 3 (7) as applicable, Local Education Authority A have failed to make a decision, they must refer all the proposals together with any objections or comments received to the adjudicator.

Part 2

Proposals published under section 28, 28A or 31 of SSFA 1998 where school is to be established in area other than that of local education authority who it is proposed should maintain the school

6. In relation to proposals published under section 28,28A or 31 of SSFA 1998 which relate to a school proposed to be situated in an area other than that of the authority who it is proposed should maintain the school, Part 2 of these Regulations has effect with the following modifications.

7. After regulation 3 (9) insert—

“(10) Where the proposed school is to be situated in an area other than that of the authority who it is proposed should maintain the school, the authority who it is proposed should maintain the school (“Local Education Authority A”) must send a copy of the proposals to the authority for the area in which it is proposed that the school will be situated (“Local Education Authority B”).”

8. After regulation 4 (4) insert—

“(5) Local Education Authority A must send copies of all objections and comments received together with the proposals it sends in accordance with regulation 3 (10) to Local Education Authority B within 1 week of the expiry of the period in which objections or comments may be made as prescribed by the regulations referred to in regulation 4 or within 1 week of 25th May 2007 as applicable.”

9. For regulation 7 (4) substitute the following—

“(4) Local Education Authority A, after seeking and, unless Local Education Authority B have failed to reach a decision on what recommendation to give, obtaining the recommendation of Local Authority B may—

- (a) reject all the proposals;
- (b) approve any of the proposals without modification; or
- (c) approve any of the proposals with such modifications as the authority think desirable after consulting the body who published the proposals.”

10. For regulation 10 substitute the following—

“10. If within 2 months from the end of the period in which proposals, objections and comments must be forwarded to the relevant authority as provided by regulations 3(6) and 3 (7) as applicable, Local Education Authority A have failed to make a decision, they must refer all the proposals together with all and any objections or comments received to the adjudicator.”

SCHEDULE 2

Regulations 18 and 20

IMPLEMENTATION OF ESTABLISHMENT AND DISCONTINUANCE PROPOSALS

Proposals relating to community schools, community special schools or maintained nursery schools

1.—(1) This paragraph applies to proposals which fall to be implemented under regulation 18 or 20 and relate to a community school, a community special school or a maintained nursery school or to a proposed such school.

(2) The proposals must be implemented by the relevant authority.

Proposals relating to foundation or voluntary controlled schools

2.—(1) This paragraph applies to proposals which fall to be implemented under regulation 18 or 20 and relate to a foundation or voluntary controlled school, or a proposed such school.

(2) Proposals made by the relevant authority must be implemented by the authority.

(3) Proposals made by proposers (including, in particular, such proposals so far as relating to the provision of the site for a proposed school) must be implemented by the relevant authority and by the proposers, respectively, to such extent as the proposals provide for each of them to do so.

Proposals relating to voluntary aided schools

3.—(1) This regulation applies to proposals which fall to be implemented under regulation 18 or 20 and relate to a voluntary aided school, or a proposed voluntary aided school.

(2) The proposals must be implemented—

- (a) so far as relating to the provision of any relevant premises for a proposed school, by the relevant authority,
- (b) in the case of discontinuance proposals made by proposers, by the proposers and the relevant authority, and
- (c) otherwise by the proposers or, in the case of proposals made by the relevant authority, by the relevant authority.

(3) In sub-paragraph (2) “relevant premises” means—

- (a) in the case of proposals published under section 66 of EA 2005, the site specified in the notice under that section, or playing fields, and
- (b) in any other case, playing fields.

(4) Nothing in sub-paragraph (2) requires the relevant authority to provide any playing fields where—

- (a) a new voluntary aided school is to be established in place of one or more existing independent, foundation or voluntary schools falling to be discontinued on or before the date of implementation of the proposals, and
- (b) those playing fields—
 - (i) were part of the premises of any of the existing schools (whether it was an independent school or a foundation or voluntary school), and
 - (ii) (if it was a foundation or voluntary school) were not provided by the authority.

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Proposals relating to foundation special schools

4.—(1) This paragraph applies to proposals which fall to be implemented under regulation 18 or regulation 20 and relate to a foundation special school or a proposed foundation special school.

(2) Where the proposals were made by the relevant authority, they must be implemented by the authority.

(3) Proposals made by proposers (including, in particular, proposals so far as relating to the provision of the site for a proposed school) must be implemented by the relevant authority and by the proposers, respectively, to such extent as the proposals provide for each of them to do so.

Proposals relating to Academies

5. Where proposals published under section 66 of EA 2005 to establish an Academy are implemented by the Secretary of State making an agreement under section 482 of EA 1996, subsection (3) of that section (requirement to consult certain LEAs about the establishment of the school) does not apply.

Provision of site and buildings for proposed foundation, voluntary controlled or foundation special school

6.—(1) This paragraph applies where a local education authority are required—

- (a) by virtue of paragraph 2 (2) or (3) to provide a site for a proposed foundation or voluntary controlled school, or
- (b) by virtue of paragraph 4 (2) or (3) to provide a site for a proposed foundation special school.

(2) The authority must transfer their interest in the site and in any buildings on the site which are to form part of the school's premises—

- (a) to the school's trustees, to be held by them on trust for the relevant purposes of the school, or
- (b) if the school has no trustees, to the school's foundation body or (in the absence of such a body) to the governing body, to be held by that body for the relevant purposes.

(3) If any doubt or dispute arises as to the persons to whom the authority are required to make the transfer, it must be made to such persons as the adjudicator thinks proper.

(4) The authority must pay to the persons to whom the transfer is made their reasonable costs in connection with the transfer.

(5) Where—

- (a) a transfer is made under this paragraph, and
- (b) the transfer is made to persons who possess, or are or may become entitled to, any sum representing proceeds of the sale of other premises which have been used for the purposes of the school,

those persons must notify the local education authority that sub-paragraph (b) applies to them; and they or their successors must pay to the authority so much of that sum as, having regard to the value of the interest transferred, may be determined to be just, either by agreement between them and the authority or, in default of agreement, by the adjudicator.

(6) In sub-paragraph (5)(b) the reference to proceeds of the sale of other premises includes a reference to—

- (a) consideration for the creation or disposition of any kind of interest in other premises, including rent, and

(b) interest which has accrued in respect of any such consideration.

(7) Any sum paid under sub- paragraph (5) is to be treated for the purposes of section 14 of the Schools Sites Act 1841⁽¹⁾ (which relates to the sale or exchange of land held on trust for the purposes of a school) as a sum applied in the purchase of a site for the school.

(8) A determination may be made under sub-paragraph (5) in respect of any property subject to a trust which has arisen under section 1 of the Reverter of Sites Act 1987⁽²⁾ (right of reverter replaced by trust for sale) if and only if—

- (i) the determination is made by the adjudicator, and
- (ii) he is satisfied that steps have been taken to protect the interests of the beneficiaries under the trust.

(9) Sub-paragraph (5) is to apply for the purpose of compensating the authority notified under that sub-paragraph only in relation to such part of the sum mentioned in paragraph (5)(b) (if any) as remains after the application of paragraphs A1 to A16 or 1 to 3 of Schedule 22 to SSFA 1998⁽³⁾ to that sum.

(10) In this paragraph—

“the relevant purposes” means—

- (a) in relation to a transfer to a school’s foundation body, the purposes of the schools comprising the group for which that body acts, and
- (b) in relation to a transfer to a school’s governing body, the purposes of the school;

“site” does not include playing fields but otherwise includes any site which is to form part of the premises of the school in question.

“trustees of the school” means any person (other than the foundation body or governing body) holding property on trust for the purposes of the school.

Grants in respect of certain expenditure relating to proposed voluntary aided school

7.—(1) This paragraph applies where any proposers are required by virtue of paragraph 3 (2) to implement proposals involving the establishment of a new voluntary aided school.

(2) Paragraph 5 of Schedule 3 to SSFA 1998 applies in relation to the new school as it applies in relation to an existing voluntary aided school.

(3) In the application of that paragraph in relation to a new voluntary aided school—

- (a) the references to the governing body, in relation to any time before the governing body are constituted, are to be read as references to the proposers;
- (b) where requirements are imposed in relation to grant paid by virtue of this paragraph to the proposers, the requirements must be complied with by the governing body, when they are constituted, as well as by the proposers.

Assistance for proposers of proposed voluntary aided school

8. A local education authority may give to persons required by virtue of paragraph 3 (2) to implement proposals involving the establishment of a voluntary aided school such assistance as the authority think fit in relation to the carrying out by those persons of any obligation arising by virtue of that provision.

(1) 1841 c. 38.

(2) 1987 c 15.

(3) Paragraphs A1 to A16 were inserted by Schedule 4 to the Act.

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Duty to transfer interest in premises provided under paragraph 8

9.—(1) Where assistance under paragraph 8 consists of the provision of any premises for use for the purposes of a school, the local education authority must transfer their interest in the premises

- (a) to the trustees of the school to be held on trust for the purposes of the school; or
- (b) if the school has not trustees, to the school’s foundation body, to be held by that body for the relevant purpose.

(2) If any doubt or dispute arises as to the persons to whom the authority are required to make the transfer it must be made to such persons as the adjudicator thinks proper.

(3) The authority must pay to the persons to whom the transfer is made their reasonable costs in connection with the transfer.

(4) In this paragraph “the relevant purposes” means, in relation to a transfer to a school’s foundation body, the purposes of the schools comprising the group for which that body acts.

SCHEDULE 3

Regulations 40 and 46

PROVISIONS APPLICABLE TO PROPOSALS RELATING TO A CHANGE OF CATEGORY

Revision or replacement of the school’s instrument of government

1.—(1) The governing body and the local education authority must secure that by the end of the implementation period a new instrument of government is made for the school in accordance with the Constitution Regulations.

(2) The implementation period is the period commencing on the date a proposal is approved under paragraph 3 or 4 of Schedule 6 to SSFA 1998 or regulation 27 as applicable and ending on the implementation date.

(3) The new instrument of government is to take effect from the date of making for the purpose of reconstituting the governing body but does not affect the constitution of the governing body conducting the school pending the implementation date.

(4) For all other purposes the new instrument of government is to take effect from the implementation date.

Reconstitution or replacement of the governing body

2.—(1) The governing body and the local education authority must secure that as soon as reasonably practicable after the commencement of the implementation period (and in any event within a period of 3 months beginning on the implementation date) the governing body are reconstituted in accordance with the new instrument of government, and the Constitution Regulations.

(2) The current governing body must exercise their functions under the Act and these Regulations in a manner calculated to enable the authority to fulfil their duties under sub-paragraph (1).

Current governors continuing in office

3.—(1) Paragraph (2) applies to any member of a current governing body in respect of which a new instrument of government has been made under these Regulations.

(2) Subject to paragraph 4 a governor to whom this paragraph applies is to continue from the implementation date (or the making of the new instrument of government if later) as a governor of the corresponding category required by the new instrument of government (if any such category exists).

(3) A member of a current governing body who continues as a governor under paragraph (2) must hold office for the remainder of the term for which he was originally appointed or elected.

(4) The proceedings of the governing body are not invalidated by the school having more governors of a particular category than are provided for by the new instrument of government pending removal of the surplus governors pursuant to paragraph 4.

Surplus governors

4.—(1) Where —

- (a) on or after the implementation date a school has more governors of any of the categories of governors than are required as governors of the corresponding category by the new instrument of government; and
- (b) the excess is not eliminated by the required number of governors resigning,

such number of that category as is required to eliminate the excess must cease to hold office in accordance with sub-paragraphs (2) and (3).

(2) The governors who are to cease to hold office are determined on the basis of seniority, the governor whose current period of continuous service (whether as a governor of one or more than one category) is the shortest being the first to cease to hold office.

(3) Where it is necessary for the purposes of paragraph (2) to select one or more governors from a group of equal seniority, it must be done by drawing lots.

(4) For the purposes of this paragraph, sponsor governors nominated by a particular category of person are treated as if they constituted a separate category of governor.

(5) Any procedure set out in the new instrument of government for the removal of excess foundation governors does not apply to the reconstitution of the governing body under these Regulations.

Transfer of staff

5. Where a voluntary aided or foundation school changes category to a voluntary controlled or community school, or from a foundation special school to a community special school—

- (a) the contract of employment between a person to whom this paragraph applies and the governing body has effect from the implementation date as if originally made between him and the local education authority;
- (b) all the governing body's rights, powers, duties and liabilities under, or in connection with, the contract of employment transfer by virtue of this paragraph to the authority on the implementation date; and
- (c) anything done by that date by or in relation to the governing body in respect of that contract or the employee is deemed from that date to have been done by or in relation to the authority.

6.—(1) Subject to sub-paragraph (2), paragraph 5 applies to any person who immediately before the implementation date is employed by the governing body to work at the school which is the subject of the proposal.

(2) Paragraph 5 does not apply to any person whose contract of employment terminates on the day immediately preceding the implementation date.

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7. Any person who before the implementation date has been appointed by the governing body to work at the school as from the implementation date or a date thereafter must be treated for the purpose of paragraph 5 as if he had been employed by the governing body immediately before the implementation date to do such work at the school as he would have been required to do on or after the date under his contract of employment with the governing body.

8. Where a school changes category from a voluntary controlled or community school to a foundation or voluntary aided school, or from a community special school to a foundation special school—

- (a) the contract of employment between a person to whom this paragraph applies and the local education authority has effect from the implementation date as if originally made between him and the governing body;
- (b) all the authority's rights, powers, duties and liabilities under or in connection with the contract of employment transfer by virtue of this paragraph to the governing body on the implementation date; and
- (c) anything done before that date by or in relation to the authority in respect of that contract or the employee is deemed from that date to have been done by or in relation to the governing body.

9.—(1) Subject to sub-paragraph (2), paragraph 8 applies to any person who immediately before the implementation date is employed by the local education authority to work at the school which is the subject of the proposal.

(2) Paragraph 5 does not apply to any person whose contract of employment terminates on the day immediately preceding the implementation date, or to any person employed by the authority to work at the school solely in connection with the provision of school meals.

10. Any person who before the implementation date has been appointed by the authority to work at the school as from the implementation date or a date thereafter must be treated for the purpose of paragraph 8 as if he had been employed by the authority immediately before the implementation date to do such work at the school as he would have been required to do on or after the date under his contract of employment with the authority.

11. Paragraphs 5 to 10 are without prejudice to any right of an employee to terminate his contract if a substantial change is made to his detriment in his working conditions, but no such right arises by reason only of the change in employer affected by these Regulations.

12.—(1) This paragraph applies where a voluntary controlled school with a religious character changes category to become a voluntary aided school with a religious character.

(2) Where immediately before the implementation date a teacher in a voluntary controlled school enjoyed by virtue of section 60(2) of SSFA 1998, rights not conferred on him on or after the implementation date by section 60 as a teacher at a voluntary aided school, he must continue to enjoy those rights until he ceases to be employed as a teacher at the voluntary aided school.

SCHEDULE 4

Regulations 40 and 46

LAND TRANSFERS WHEN A SCHOOL CHANGES CATEGORY

1. Where any land is transferred to and vests in any body in accordance with this Schedule, any rights or liabilities—

- (a) enjoyed or incurred by the transferor in connection with the land; and

(b) subsisting immediately before the implementation date,
also transfer to, and by virtue of these Regulations, vest in, that body.

Rules relating to transfer

2.—(1) This paragraph applies where any proposals that a community school should become a foundation school have been approved.

(2) In such a case, any land which, immediately before the implementation date, was held or used by a local authority for the purposes of the community school must on that date transfer to, and by virtue of this paragraph vest in —

- (a) the trustees of the school, to be held by them on trust for the purposes of the school; or
- (b) if the school has no trustees, the governing body, to be held by that body for the relevant purposes.

3.—(1) This paragraph applies where any proposals that a community school should become a voluntary aided school have been approved.

(2) In such a case, any land other than playing fields which, immediately before the implementation date, was held or used by a local authority for the purposes of the community school must on that date transfer to, and by virtue of this paragraph vest in, the trustees of the school, to be held by them on trust for the purposes of the school.

4.—(1) This paragraph applies where any proposals that a community school should become a voluntary controlled school have been approved.

(2) In such a case, any land other than playing fields which, immediately before the implementation date, was held or used by a local authority for the purposes of the community school must on that date transfer to, and by virtue of this paragraph vest in, the trustees of the school, to be held by them on trust for the purposes of the school.

5.—(1) This paragraph applies where any proposals that a voluntary aided school should become a foundation school have been approved.

(2) In such a case, any land which, immediately before the implementation date, was held by the local authority for the purposes of the voluntary aided school must on that date transfer to, and by virtue of this paragraph vest in—

- (a) the trustees of the school, to be held by them on trust for the purposes of the school; or
- (b) if the school has no trustees, the governing body to be held by that body for the relevant purposes.

6.—(1) This paragraph applies where any proposals that a voluntary controlled school should become a foundation school have been approved.

(2) In such a case, any land which, immediately before the implementation date, was held by the local authority for the purposes of the voluntary controlled school must on that date transfer to, and by virtue of this paragraph vest in—

- (a) the trustees of the school, to be held by them on trust for the purposes of the school; or
- (b) if the school has no trustees, the governing body to be held by that body for the relevant purposes.

7.—(1) This paragraph applies where any proposals that a community special school should become a foundation special school have been approved.

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(2) In such a case, any land which, immediately before the implementation date, was held or used by a local authority for the purposes of the community special school must on that date transfer to, and by virtue of this paragraph vest in—

- (a) the trustees of the school, to be held by them on trust for the purposes of the school; or
- (b) if the school has no trustees, the governing body to be held by that body for the relevant purposes.

Outstanding transfers

8. Where immediately before the implementation date in relation to any change of category—

- (a) any land vested in a local authority is by virtue of any statutory provision required to be transferred to the governing body or any trustees of a school, but
- (b) the land has not yet been so transferred,

paragraphs 2 to 7 are to apply to the school as if it had been so transferred by that time.

Transfers of right to use land

9. Where paragraph 2, 3, 4 or 7 applies to a school and any land held by a person or body other than a local authority was, immediately before the implementation date, used for the purposes of the school, any rights or liabilities—

- (a) enjoyed or incurred by the local authority in connection with the use of the land, and
- (b) subsisting immediately before the implementation date,

on that date transfers to, and by virtue of these Regulations vests in, the trustees of the school or, if there are no trustees, the governing body.

Land excluded from transfers

10.—(1) Nothing in paragraphs 2 to 8 of this Schedule has the effect of transferring to, or vesting in, any body—

- (a) any land, rights or liabilities excluded under sub-paragraph (2) or (3);
- (b) any liability of a local authority, governing body or trustees in respect of the principal of, or any interest on, any loan; or
- (c) any liability in tort.

(2) If after the proposal has been approved, but before the implementation date in relation to any change of category, the prospective transferee and transferor have agreed in writing that any land should be excluded, that land (and any rights or liabilities relating to it) is excluded.

(3) Where the prospective transferee and transferor cannot agree what land should be excluded they must refer the matter to the adjudicator.

(4) If in default of agreement under sub-paragraph (2)—

- (a) the prospective transferee or transferor have applied to the adjudicator to exclude any land from the operation of paragraphs 2 to 8 of this Schedule; and
- (b) the adjudicator has by order directed its exclusion;

the land (and any rights or liabilities relating to it) is excluded.

(5) An agreement under sub-paragraph (2) may provide for the land to be used or held for the purposes of the school on such terms as may be specified in or determined in accordance with the agreement; and directions under sub-paragraph (4)—

- (a) may confer any rights or impose any liabilities that could have been conferred or imposed by such an agreement, and
- (b) must have effect as if contained in such an agreement.

Restrictions on disposal of land when proposals are pending

11.—(1) For the purposes of paragraphs 11 to 13 of this Schedule the procedure for becoming a school of another category is pending in relation to a school when it has been initiated by the governing body in relation to the school on any occasion and not terminated (as initiated on that occasion).

(2) For those purposes, that procedure is to be regarded as initiated in relation to a school on any occasion on the date written notice of a meeting of the governing body at which a motion for a resolution to consult about proposals to change category is to be considered, is given.

(3) For those purposes, that procedure, as initiated on any occasion, is to be regarded as terminated—

- (a) if the meeting is not held;
- (b) if the meeting is held but the motion is not moved or, though the motion is moved, the resolution is not passed;
- (c) if consultation is not initiated in accordance with section 28 (5) of SSFA 1998 as modified by the Change of Category Regulations;
- (d) if the proposals in respect of which consultation was initiated are not published;
- (e) if the proposals are rejected by the governing body, the authority or the adjudicator or withdrawn on or before the date of implementation of such proposals;
- (f) if the governing body decide not to implement the proposals; or
- (g) if revocation proposals are approved.

12.—(1) During any period when the procedure for becoming a school of another category is pending in relation to a school, a local authority must not—

- (a) dispose of any land used wholly or partly for the purposes of the school, or
- (b) enter into a contract to dispose of any such land,

except with the consent of the adjudicator.

(2) Sub-paragraph (1) does not apply in relation to a disposal which is made in pursuance of a contract entered into, or an option granted, before the procedure for becoming a school of another category was initiated in relation to the school.

(3) Where proposals for becoming a school of another category have been approved, the procedure for becoming a school of another category is not to be treated as terminated for the purposes of this paragraph in relation to any land, where agreement is required to be reached under paragraph 16 of this Schedule on any matter relating to that land, until the date on which that matter is finally determined.

(4) A disposal or contract is not to be invalid or void by reason only that it has been made or entered into in contravention of this paragraph and a person acquiring land, or entering into a contract to acquire land, from a local authority need not be concerned to enquire whether any consent required by this paragraph has been given.

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(5) This paragraph has effect notwithstanding anything in section 123 of the Local Government Act 1972(4) (general power to dispose of land) and the consent required by this paragraph is in addition to any consent required by subsection (2) of that section.

(6) In this paragraph—

- (a) references to disposing of land include granting or disposing of any interest in land, and,
- (b) references to entering into a contract to dispose of land include granting an option to acquire land or such an interest.

13.—(1) During any period when the procedure for becoming a school of another category is pending in relation to a school, a local authority must not, in relation to any land of the authority used or held for the purposes of the school, take without the consent of the adjudicator any action (including appropriation of the land for any purpose) by which the land ceases to any extent to be so used or held.

(2) If in the case of any school—

- (a) proposals that a school become a school of another category have been approved, and
- (b) a local authority have, in relation to any land, taken any action in contravention of sub-paragraph (1),

the provisions relating to the transfer of property in this Schedule have effect as if, immediately before the implementation date in relation to the change of category, the property were used or held by the authority for the purposes for which it was used or held when the procedure for becoming a school of another category was initiated.

Provision of information

14. Any local authority and governing body of a maintained school must give the adjudicator such information as he may require for the purposes of the exercise of his functions under these Regulations.

Division and apportionment of property

15.—(1) Any property, rights and liabilities of a transferor held or used or subsisting—

- (a) for purposes wider than that of the school; or
- (b) partly for the purposes of the school and partly for other purposes

where the nature of the property, right or liability permits, is to be divided or apportioned between the transferor and the transferee, in such proportions as may be appropriate.

(2) Where any estate or interest in land falls to be divided in accordance with sub-paragraph (1)—

- (a) any rent payable under a lease in respect of that estate or interest, and
- (b) any rent charged on that estate or interest,

must be correspondingly divided or apportioned so that each part is payable in respect of, or charged on, only one part of the estate or interest and the other part or parts are payable in respect of, or charged on, only the other part or parts of the estate or interest.

(3) Any such property, right or liability as is mentioned in sub-paragraph (1) the nature of which does not permit its division or apportionment as so mentioned must be transferred to the transferee or retained by the transferor according to—

- (a) in the case of an estate or interest in land, whether on the transfer date the transferor or the transferee appears to be in greater need of the security afforded by that estate or interest or,

(4) 1972 c.70.

where neither of them appears to be in greater need of that security, which of them appears on that date to be likely to make use of the land to the greater extent, or

- (b) in the case of any other right or liability, which of them appears on the transfer date to be likely to be affected by the right or liability to the greater extent

subject (in either case) to such arrangements for the protection of the other person concerned as may be agreed between the transferor and the transferee or determined by the adjudicator under paragraph 17.

Identification of property, rights and liabilities

16.—(1) The transferor and the transferee must arrive at such written agreements, and execute such other instruments, as are necessary or expedient to identify or define the property, rights and liabilities transferred to the transferee or retained by the transferor, or for making any such arrangements as are mentioned in paragraph 15 as will afford to the transferor and the transferee as against one another such rights and safeguards as they may require for the proper discharge of their respective functions.

(2) Any such agreement may provide so far as it is expedient—

- (a) for the granting of leases and for the creation of other liabilities and rights over land whether amounting in law to interests in land or not, and whether involving the surrender of any existing interest or the creation of a new interest or not;
- (b) for the granting of indemnities in connection with the severance of leases and other matters;
- (c) for responsibility for registration of any matter in any description of statutory register.

(3) If and to the extent that he is requested to do so by the transferor or the transferee, the adjudicator may—

- (a) assist the transferor, the transferee and any other interested person in identifying or defining the property, rights and liabilities transferred to the transferee or retained by the transferor;
- (b) advise such persons as to the terms of any agreement or instrument falling to be made under sub-paragraph (1) above;
- (c) assist such persons to negotiate any such agreement or instrument and mediate in any such negotiations;
- (d) prepare drafts of any such agreement or instrument; and
- (e) assist the parties in executing and giving effect to any such agreement or instrument.

(4) Any transfer of any estate or interest in land under these Regulations (whether by virtue of an agreement or instrument entered into before or after the implementation date) is to be regarded as having taken place on the implementation date.

Resolution of disputes

17.—(1) In the case of any matter on which agreement is required to be reached under paragraph 15 or 16, if such an agreement has not been reached within a period of six months from the implementation date, the adjudicator may give a direction determining that matter, and may include in the direction any provision which may have been included in an agreement under paragraph 15 or 16.

(2) Any property, rights or liabilities required by a direction under this paragraph to be transferred to the transferee must be regarded as having been transferred to, and by virtue of this Schedule vested in, the transferee on the implementation date.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(3) The adjudicator must consult the transferor, the transferee and any other interested person before giving a direction under this paragraph.

Right to production of documents of title

18.—(1) Where a transfer to which this Schedule applies relates to registered land, the transferor must execute any instrument under the Land Registration Acts 1925 to 2002⁽⁵⁾, deliver any certificate under those Acts, and do such other things under those Acts as he would be required to execute, deliver or do in the case of a transfer by agreement between the transferor and the transferee.

(2) Where on any transfer to which this Schedule applies the transferor is entitled to retain possession of any documents relating in part to the title to any land or other property transferred to the transferee, the transferor must be treated as having given to the transferee an acknowledgment in writing of the right of the transferee to production of that document and to delivery of copies of it; and section 64 of the Law of Property Act 1925⁽⁶⁾ has effect accordingly, and on the basis that the acknowledgment did not contain any such expression of contrary intention as is mentioned in that section.

Proof of title by certificate

19. The adjudicator may issue a certificate stating that any property specified in the certificate, or any interest in or right over any such property as may be so specified, or any right or liability so specified, was or was not transferred by virtue of these Regulations to any body corporate or persons so specified; and any such certificate is to be conclusive evidence for all purposes of that fact.

Construction of agreements

20.—(1) Where in the case of any transfer to which this Schedule applies any rights or liabilities transferred are rights or liabilities under an agreement to which the transferor was a party immediately before the transfer date, the agreement, unless the context otherwise requires, has effect on and after the transfer date as if—

- (a) the transferee had been a party to the agreement;
- (b) for any reference (whether express or implied and, if express, however worded) to the transferor there were substituted, as respects anything falling to be done on or after the transfer date, a reference to the transferee;
- (c) any reference (whether express or implied and, if express, however worded) to a specified officer of the transferor or a person employed by the transferor in a specified capacity were, as respects anything falling to be done on or after the transfer date, a reference to such person as the transferee may appoint or, in default of appointment, to an officer or employee of the transferee who corresponds as closely as possible to the person referred to in the agreement;
- (d) where the agreement refers to property, rights or liabilities which fall to be apportioned or divided between the transferor and the transferee, the agreement constituted two separate agreements separately enforceable by and against the transferor and the transferee as regards the part of the property, rights or liabilities retained by the transferor or (as the case may be) the part vesting in the transferee, and not as regards the other part;

and paragraph (d) applies in particular to the covenants, stipulations and conditions of any lease by or to the transferor.

(5) 1925 c.21, 1987 c.2, and 2002 c.9.

(6) 1925 c.21.

(2) This paragraph applies to any agreement whether in writing or not and whether or not of such a nature that rights and liabilities under it could be assigned by the transferor.

21.—(1) Without prejudice to the generality of paragraph 20, the transferee under a transfer to which this Schedule applies and any other person must, as from the implementation date, have the same rights, powers and remedies (and in particular the same rights and powers as to the taking or resisting of legal proceedings or the making or resisting of applications to any authority) for ascertaining, perfecting or enforcing any right or liability transferred to and vested in the transferee by virtue of these regulations as he would have had if that right or liability had at all times been a right or liability of the transferee.

(2) Any legal proceedings or applications to any authority pending on the transfer date by or against the transferor, in so far as they relate to any property, right or liability transferred to the transferee by virtue of these regulations, or to any agreement relating to any such property, right or liability, must be continued by or against the transferee to the exclusion of the transferor.

Third parties affected by vesting provisions

22.—(1) Without prejudice to the generality of paragraphs 20 to 21, any transaction effected between a transferor and a transferee in pursuance of paragraph 15 or of a direction under paragraph 17 is binding on all other persons, even if it would, apart from this sub-paragraph, have required the consent or concurrence of any person other than the transferor and the transferee.

(2) If as a result of any such transaction any person's rights or liabilities become enforceable as to part by or against the transferor and as to part by or against the transferee, the adjudicator must give that person written notification of that fact.

(3) If in consequence of a transfer to which this Schedule applies or of anything done in pursuance of the provisions of this Schedule—

(a) the rights or liabilities of any person other than the transferor or the transferee which were enforceable against or by the transferor become enforceable as to part against or by the transferor and as to part against or by the transferee; and

(b) the value of any property or interest of that person is thereby diminished;

such compensation as may be just must be paid to that person by the transferor, the transferee or both.

(4) Any dispute as to whether and if so how much compensation is payable under sub-paragraph (3), or as to the person to whom it must be paid, must be referred to and determined by the adjudicator.

23. In this Schedule—

“relevant purposes” means—

(a) in relation to a transfer to a school's foundation body, the purposes of the schools comprising the group for which the body acts; or

(b) in relation to a transfer to a school's governing body, the purposes of the school;

“transferor” and “transferee” mean the transferor and transferee under any transfer to which this Schedule applies;

“trustees of the school” means any person (other than the governing body) holding property on trust for the purposes of the school.