

2007 No. 3464

EDUCATION, ENGLAND

**The School Organisation and Governance (Amendment)
(England) Regulations 2007**

<i>Made</i> - - - -	<i>7th December 2007</i>
<i>Laid before Parliament</i>	<i>17th December 2007</i>
<i>Coming into force</i> - -	<i>21st January 2008</i>

The Secretary of State for Children, Schools and Families in exercise of the powers conferred on him by paragraph 5 of Schedule 5 to the School Standards and Framework Act 1998(a), sections 19, 20, 24 and 34 of the Education Act 2002(b), and sections 7, 9, 10, 15, 18, 19, 21, 22, 23, 24, 31, 181 and 183 of, and Schedule 2 to, the Education and Inspections Act 2006(c), makes the following Regulations.

The Secretary of State has consulted the Administrative Justice and Tribunals Council about the provisions contained in regulation 34 of the following Regulations as required by paragraph 24 of Schedule 7 to the Tribunals Courts and Enforcement Act 2007(d).

Citation, commencement and application

1.—(1) These Regulations may be cited as the School Organisation and Governance (Amendment) (England) Regulations 2007 and come into force on 21st January 2008.

(2) These Regulations apply in relation to England only.

Amendments to the School Organisation (Establishment and Discontinuance of Schools) (England) Regulations 2007

2. The School Organisation (Establishment and Discontinuance of Schools) (England) Regulations 2007(e) are amended in accordance with regulations 3 to 16.

3. In regulation 2 in the definition for “APA rating” omit—

“the rating awarded to a local authority for children and young people’s services used by the Audit Commission when categorising local authorities for the purpose of reports produced under section 99 of the Local Government Act 2003(f) or”.

4.—(1) In regulation 5(1) after “must” insert “within 1 week of the date of publication”.

(a) 1998 c.31.

(b) 2002 c.32.

(c) 2006 c.40. See section 142 of the School Standards and Framework Act 1998, section 212 of the Education Act 2002 and section 32 of the Education and Inspections Act 2006 for the relevant definitions of “prescribed” and “regulations”.

(d) 2007 c.15.

(e) S.I. 2007/1288.

(f) 2003 c.26.

- (2) Omit regulation 5(1)(g).
- (3) For regulation 5(2) substitute—
- “(2) In respect of mainstream schools, the details from the competition notice specified in Part 1 of Schedule 5 must be—
- (a) published in an appropriate national newspaper covering education issues and at least one local newspaper circulating in the area to be served by the school, together with details of how complete copies of the competition notice may be obtained;
 - (b) posted in a conspicuous place in the area to be served by the school; and
 - (c) sent to the Secretary of State within 1 week of the date of publication.”

- (4) For regulation 5(3) substitute—
- “(3) In respect of special schools, the details from the competition notice specified in Part 2 of Schedule 5 must be—
- (a) published in an appropriate national newspaper covering education issues and at least one local newspaper circulating in the area to be served by the school, together with details of how complete copies of the competition notice may be obtained;
 - (b) posted in a conspicuous place in the area to be served by the school; and
 - (c) sent to the Secretary of State within 1 week of the date of publication.”

5.—(1) In regulation 8(3) after “one” insert “local”.

(2) In regulation 8(5) omit “, on any website maintained by them” and after “above” insert “, on any website maintained by them”.

6. In regulation 10(6)—

- (a) after “copies of all proposals” insert “within 1 week of the date of publication”; and
- (b) after “requests such a proposal” insert “within 1 week of receipt of the request”.

7.—(1) In regulation 13(3) after “one” insert “local”.

(2) In regulation 13(5)—

- (a) after “copies of their proposals” insert “within 1 week of the date of publication”; and
- (b) omit regulation 13(5)(f).

(3) After regulation 13(5) insert —

“(5A) Proposers or the local education authority (as the case may be) must send to the Secretary of State within 1 week of the date of publication of the proposals—

- (a) a copy of the proposals excluding the information contained in paragraph 5 of Schedule 3 (evidence of consultation); and
- (b) a copy of the information published under paragraph (1) or (2).”

8.—(1) In regulation 15(2) after “one” insert “local”.

(2) In regulation 15(3)—

- (a) after “copies of all proposals” insert “within 1 week of the date of publication”;
- (b) omit sub-paragraph (g); and
- (c) after “requests a copy” insert “within 1 week of the date of the request.”

(3) After regulation 15(3) insert—

“(3A) The governing body or the local education authority (as the case may be) must send to the Secretary of State within 1 week of the date of publication of the proposals—

- (a) a copy of the proposals excluding the information contained in paragraph 4 of Schedule 4 (evidence of consultation); and

(b) a copy of the information published under paragraph (1).

(3B) Where the relevant school is a special school the governing body or local education authority (as the case may be) must send a copy of the information specified in paragraph (1) to the parents of every registered pupil at the school.”

9. In regulation 20—

(a) for paragraph (q) substitute—

“(q) in the case of proposals to establish a maintained school, the Secretary of State making a direction under section 90 of EA 2002 that the National Curriculum for England shall not apply or shall apply with modifications; and”;

(b) after paragraph (q) insert—

“(r) where the proposals in question depend upon any of the events specified in paragraphs (a) to (q) occurring by a specified date in relation to proposals relating to any other school or proposed school, the occurrence of such an event.”

10. In regulation 26(3) between “one” and “newspaper” insert “local”.

11. In regulation 27 after paragraph (2) insert—

“(3) Where proposals are modified under paragraph 21(2)(a) of Schedule 2 to the Act, the local education authority, or the adjudicator (as the case may be) must notify the Secretary of State within 1 week of the proposals being modified.”

12. In Schedule 1—

(a) for paragraph 4(j) substitute—

“(j) the estimated capital costs of providing the school (such an estimate to take account of the standards in Building Bulletin 77: Designing for Pupils with Special Educational Needs and Disabilities in Schools; Building Bulletin 98: Briefing Framework for Secondary School Projects and Building Bulletin 99: Briefing Framework for Primary School Projects (a)).”

(b) for paragraph 16 (d) substitute—

“(d) the estimated capital costs of providing the school (such an estimate to take account of the standards in Building Bulletin 77: Designing for Pupils with Special Educational Needs and Disabilities in Schools; Building Bulletin 98: Briefing Framework for Secondary School Projects and Building Bulletin 99: Briefing Framework for Primary School Projects (b)).”

13. In Schedule 2—

(a) for paragraph 35 substitute—

“Special educational needs

35. Where proposals for the new school will include provision that would be recognised by the local education authority as reserved for children with special educational needs, details of the specific educational benefits that will flow from the proposals in terms of—

(a) improved access to education and associated services including the curriculum, wider school activities, facilities and equipment with reference to the local education authority’s Accessibility Strategy;

(b) improved access to specialist staff, both education and other professionals, including any external support and, or, outreach services;

(a) Building Bulletin 77: ISBN 0-11-270796-3, Building Bulletin 98: ISBN 0-11-270052-9, Building Bulletin 99: ISBN 0-11-271153-7. Available from Her Majesty’s Stationery Office and at www.teachernet.gov.uk/schoolbuildings.
(b) Building Bulletin 77: ISBN 0-11-270796-3, Building Bulletin 98: ISBN 0-11-270052-9, Building Bulletin 99: ISBN 0-11-271153-7. Available from Her Majesty’s Stationery Office and at www.teachernet.gov.uk/schoolbuildings.

- (c) improved access to suitable accommodation;
 - (d) improved supply of suitable places; and
 - (e) a statement that special educational needs provision will be in line with that specified in the competition notice, or, where not, the nature of any such provision and the proposed number of pupils for whom such provision is to be made.”
- (b) omit paragraphs 31 and 59.

14. In Schedule 3—

- (a) omit paragraph 32;
- (b) for paragraph 35 substitute—

“Special educational needs

35. Information as to whether the school will have provision that is recognised by the local education authority as reserved for children with special educational needs and, if so, the nature of such provision and the proposed number of pupils for whom such provision is to be made.”

- (c) omit paragraph 67.

15. In paragraph 19(b) of Schedule 4 for “body’s” substitute “local education authority’s”.

16. In Schedule 5—

- (a) in paragraph 3—
 - (i) omit “and” at the end of sub-paragraph (h),
 - (ii) insert “and” at the end of sub-paragraph (i), and
 - (iii) after sub-paragraph (i) insert—
 - “(j) the estimated capital costs of providing the school (such an estimate to take account of the standards in Building Bulletin 77: Designing for Pupils with Special Educational Needs and Disabilities in Schools; Building Bulletin 98: Briefing Framework for Secondary School Projects and Building Bulletin 99: Briefing Framework for Primary School Projects (a)).”
- (b) in paragraph 9—
 - (i) omit “and” at the end of sub-paragraph (b);
 - (ii) insert “and” at the end of sub-paragraph (c); and
 - (iii) after sub-paragraph (c) insert—
 - “(d) the estimated capital costs of providing the school (such an estimate to take account of the standards in Building Bulletin 77: Designing for Pupils with Special Educational Needs and Disabilities in Schools; Building Bulletin 98: Briefing Framework for Secondary School Projects and Building Bulletin 99: Briefing Framework for Primary School Projects(b)).”
- (c) in paragraph 32 for “or a community school” substitute “a community school, or a maintained nursery school”.

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Amendments to the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007

17. The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007(a) are amended in accordance with regulations 18 to 25.

18. In regulation 2 insert, where they fall alphabetically, the definitions—

““presumption for the expansion of successful and popular schools” has the same meaning as given to it in the Department for Children, Schools and Families Guidance “Expanding a Mainstream School or Adding a Sixth form” issued in May 2007;

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

“transferor” and “transferee” means the transferor and transferee under any transfer to which these Regulations apply;”

19. In regulation 7 after “category” insert “or acquires a foundation.”.

20. In Schedule 1—

(a) in sub-paragraph 1(c) after “explaining” insert “that any person may object to, or comment on, the proposals and”, and after “making” insert “such”;

(b) for sub-paragraph 5(1)(b) substitute—

“families of pupils at the school”;

(c) after sub-paragraph 5(1)(b) insert—

“(bb) teachers and other staff at the school”;

(d) in sub-paragraph 5(1)(d)—

(i) after “families” insert “of pupils”; and

(ii) for “parents” substitute “families”;

(e) in sub-paragraph 6(2)(b) after “one” insert “local”;

(f) omit sub-paragraph 6(3)(b);

(g) in sub-paragraph 6(3)(c) for “the date” substitute “receipt”;

(h) after paragraph 6(3) insert—

“(3A) The governing body must send to the Secretary of State within 1 week of the date of publication—

(a) a complete set of the proposals excluding the information relating to consultation prescribed in sub-paragraph 1(d); and

(b) a copy of the information published under sub-paragraph (1).”;

(i) omit sub-paragraph 21(3)(d);

(j) in sub-paragraph 21(4)(b) after “one” insert “local”;

(k) after paragraph 22(2) insert—

“(3) The governing body must send the Secretary of State details of any modifications made to the proposals, within 1 week of modifying them.”

(l) after paragraph 32 insert—

“Transitional admission arrangements

33. Where a community or voluntary controlled school changes category to become a foundation school, anything done before the implementation date by the local education authority as admission authority under any provision in Chapter 1 of Part 3 of SSFA 1998

(a) S.I. 2007/1289.

(admission arrangements) will, from the implementation date, have effect as if done by the governing body.”

21. In Schedule 2—

- (a) for both paragraph 1(3) and paragraph 12(3) substitute—

“Where there have been any enlargements for which proposals have been published and approved under section 28 of SSFA 1998 or section 19 of the Act (“approved proposals”), in the five years preceding the date when the new enlargement will be made, an enlargement only includes those made after the latest approved proposals.”

- (b) in paragraph 2(2) and 13(2) after “highest admission number” insert “by 27 or more”.

22. In Schedule 3—

- (a) in paragraph 5(1) for “12 to 14 and 18 to 21” substitute “and 12 to 14”;

- (b) for sub-paragraph 5(1)(b) substitute—

“(b) details of the current number of pupils admitted to the school in each relevant age group, and where this number is to change, the proposed number of pupils to be admitted in each relevant age group in the first school year in which the proposals will have been implemented.”;

- (c) in paragraph 5(2) for “13 and 18 to 21” substitute “and 13”;

- (d) for sub-paragraph 15(a) substitute—

“(a) details of the early years provision including—

- (i) the number of full-time and part-time pupils,
- (ii) the number and length of sessions in each week, and
- (iii) the services for disabled children that will be offered.”;

- (e) paragraph 16 is renumbered as sub-paragraph (1) of that paragraph;

- (f) after paragraph 16(1) as so renumbered insert—

“(2) Where the proposals are to alter the upper age limit of the school so that the school will provide sixth form education, the proposed number of sixth form places to be provided.”;

- (g) for paragraph 18(a) substitute—

“(a) a description of the proposed types of learning difficulties in respect of which education will be provided and, where provision for special educational needs already exists, the current type of provision.”;

- (h) omit “and” at the end of paragraph 18(g);

- (i) at the end of paragraph 18(h) insert “and”;

- (j) after paragraph 18(h) insert—

“(i) the number of places reserved for children with special educational needs, and where this number is to change, the proposed number of such places.”;

- (k) after paragraph 25 insert—

“Expansion of successful and popular schools

25A.—(1) Proposals must include a statement of whether the governing body consider that the presumption for the expansion of successful and popular schools should apply and where the governing body consider the presumption applies, evidence to support this.

(2) Sub-paragraph (1) applies to proposals in respect of primary and secondary schools, (except grammar schools) falling within paragraphs—

- (a) 1 and 2 of Part 1 to Schedule 2;
- (b) 12 and 13 of Part 2 to Schedule 2.”

- (l) for sub-paragraph 27(1)(b) substitute—
 - “(b) families of pupils at the school.”;
- (m) after sub-paragraph 27(1)(b) insert—
 - “(bb) teachers and other staff at the school.”;
- (n) in sub-paragraph 27(1)(d)—
 - (i) after “families” insert “of pupils”, and
 - (ii) for “parents” substitute “families”;
- (o) in sub-paragraph 28(1)(a)—
 - (i) after “9(a)” insert “, 15(a)(i), 16(2), 18(a), 18(c)”;
 - (ii) insert “and” at the end of sub-paragraph (b); and
 - (iii) after sub-paragraph (b) insert—
 - “(c) a statement explaining that any person may object to, or comment on, the proposals including the address to which objections or comments should be sent and the date by which they should be submitted.”
- (p) in sub-paragraph 28(2)(b) after “one” insert “local”;
- (q) omit sub-paragraph 28(3)(b);
- (r) in sub-paragraph 28(3)(c) after “week of” insert “receipt of”;
- (s) after paragraph 28(3) insert—
 - “(3A) The governing body must send to the Secretary of State within 1 week of the date of publication—
 - (a) a complete set of the proposals, excluding the information contained in paragraph 11 of this Schedule (evidence of consultation); and
 - (b) a copy of the information published under sub-paragraph (1).”;
- (t) omit sub-paragraph 28(4)(e);
- (u) insert a new paragraph 28(5)—
 - “(5) Where the proposals relate to a special school, the governing body must also send a copy of the information contained in sub-paragraph (1) to parents of children who attend the special school.”;
- (v) in paragraph 32(1) for “34” substitute “33”;
- (w) in paragraph 33(1) after sub-paragraph (d) insert—
 - “(e) where proposals relate to a voluntary or foundation school or a foundation special school—
 - (i) the governing body, and
 - (ii) the trustees of the school.”;
- (x) in paragraph 38(1)—
 - (i) omit “and” at the end of sub-paragraph (k),
 - (ii) in sub-paragraph (l) for “(g)” substitute “(k)” and insert “and” at the end of the sub-paragraph,
 - (iii) after sub-paragraph (l) insert—
 - “(m) where proposals are related to proposals for the establishment of new schools or discontinuance of schools, and those proposals depend on the occurrence of events specified in regulation 20 of the School Organisation (Establishment and Discontinuance of Schools) (England) Regulations 2007(a) the occurrence of such an event.”;

(a) S.I. 2007/1288.

(y) for paragraph 40 substitute—

“40. Where any proposals have been approved under paragraph 31 or 32 then the proposals must be implemented in the form in which they were so approved or determined, in accordance with this Schedule.”;

(z) after paragraph 40 insert the following paragraphs—

“Proposals relating to foundation, foundation special or voluntary controlled schools

40A. Proposals relating to a foundation, foundation special, or voluntary controlled school must be implemented by the governing body and the local education authority, respectively, to such extent as the proposals provide for each of them to do so.

Proposals relating to community, community special or maintained nursery schools

40B. Proposals relating to a community, community special or maintained nursery school must be implemented by the local education authority.

Proposals relating to voluntary aided schools

40C. Proposals relating to a voluntary aided school must be implemented—

- (a) so far as relating to the provision of any playing fields for the school, by the local education authority; and
- (b) otherwise by the governing body.

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

40D.—(1) Where a local education authority are required by virtue of paragraph 40A and the provisions contained in the proposals to provide a site for a foundation, foundation special or voluntary controlled school, the authority must—

- (a) transfer their interest in the site and in any buildings on the site which are to form part of the school’s premises to 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 to the governing body, to be held by that body for the purposes of the school.

(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) 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 paragraph (b) applies to them; and they or their successors must pay to the local education 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.

(5) In sub-paragraph (4)(b) the reference to proceeds of 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;

and for the purpose of any agreed determination under sub-paragraph (4) regard must be had to any guidance given from time to time by the Secretary of State.

(6) Any sum paid under sub-paragraph (4) is to be treated for the purposes of section 14 of the School Sites Act 1841^(a) (which relates to the sale, or exchange of land held on trust for the purposes of the school) as a sum applied in the purchase of a site for the school.

(7) A determination may be made under sub-paragraph (4) in respect of any property subject to a trust which has arisen under section 1 of the Reverter of Sites Act 1987^(b) (right of reverter replaced by trust for sale) if, and only if—

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

(8) Sub-paragraph (4) 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 sub-paragraph (4)(b) (if any) as remains after the application of paragraphs A1 to A16^(c) or 1 to 3 of Schedule 22 to SSFA 1998 to that sum.

Assistance for voluntary aided schools

40E. A local education authority may give to persons required by virtue of paragraph 40C to implement proposals relating to voluntary aided schools 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.

Duty to transfer interest in premises provided under paragraph 40E

40F.—(1) Where assistance under paragraph 40E 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 to the trustees of the school to be held on trust for the purposes of the school.

(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.”;

(aa) in paragraph 41—

- (i) omit sub-paragraph (3)(d),
- (ii) in sub-paragraph (4)(b) after “one” insert “local”,
- (iii) omit “and” at the end of sub-paragraph (10)(d),
- (iv) in sub-paragraph (10)(e) insert “and” after “the governing body”,
- (v) after sub-paragraph (10)(e) insert—
“ (f) the Secretary of State.”;

(bb) for paragraph 42 substitute—

“**42.**—(1) Where the local authority has determined the proposals, the authority may at the request of the governing body who made the proposals—

(a) c.38.

(b) c.15.

(c) Part A1 to Schedule 22 SSFA 1998 was inserted by Schedule 4 to EIA 2006.

- (a) modify the proposals; or
 - (b) where there has been a conditional approval specify a later date, after determination but before implementation, by which the event in question must occur.
- (2) Where the adjudicator has determined the proposals, the adjudicator may at the request of the governing body who made the proposals—
- (a) modify the proposal after consulting the governing body and the local authority; and
 - (b) where there has been a conditional approval, specify a later date, after determination but before implementation, by which the event in question must occur.
- (3) Where proposals are modified under sub-paragraph (1) or (2) the local authority or adjudicator must notify the Secretary of State within 1 week of the proposals being modified.”;
- (cc) in paragraph 55 omit “the School Standards and Framework Act 1998” and replace with “SSFA 1998”;
- (dd) insert a new paragraph 56—

“Transitional admission arrangements

56.—(1) Where a community or voluntary controlled school changes category to become a voluntary aided school, anything done before the implementation date by the local education authority as admission authority under any provision in Chapter 1 of Part 3 of SSFA 1998 (admission arrangements) will, from the implementation date have effect as if done by the governing body.

(2) Where a foundation or voluntary aided school changes category to become a voluntary controlled school, anything done before the implementation date by the governing body as admission authority under any provision in Chapter 1 of Part 3 of SSFA 1998 (admission arrangements) will, from the implementation date have effect as if done by the local education authority.”

23. In Schedule 4—

- (a) for both paragraph 1(3) and paragraph 18(3) substitute—
 - “(3) Where there have been any enlargements from which proposals have been published and approved under section 28 of SSFA 1998 or section 19 of the Act (“approved proposal”) in the five years preceding the date when the new enlargement will be made, an enlargement only includes those made after the latest approved proposals.”
- (b) in both paragraph 2(2) and paragraph 19(2) after “highest admission number” insert “by 27 or more”.

24. In Schedule 5—

- (a) in paragraph 1 omit “and a contact address for the local education authority who are publishing the proposals”;
- (b) in paragraph 3(a) for “33” substitute “29”;
- (c) in paragraph 5(1) for “and paragraph 7 and 8” substitute “paragraphs 7, 8, 18, 19 and 21”;
- (d) for sub-paragraph 5(1)(b) substitute—
 - “(b) details of the current number of pupils admitted to the school in each relevant age group, and where this number is different, the proposed number of pupils to be admitted in each relevant age group in the first school year in which the proposals will have been implemented;”;
- (e) in paragraph 5(2) for “1 to 4 and 7 and 8” substitute “1, 2, 8, 18, and 19”;
- (f) for paragraph 15(a) substitute—

- “(a) details of the early years provision including—
 - (i) the number of full-time and part-time pupils,
 - (ii) the number and length of sessions in each week, and
 - (iii) the services for disabled children that will be offered”.
- (g) paragraph 16 is renumbered as sub-paragraph (1) of that paragraph;
- (h) after paragraph 16(1) as so renumbered insert—
 - “(2) Where the proposals are to alter the upper age limit of the school so that the school will provide sixth form education, the proposed number of sixth form places to be provided.”;
- (i) for paragraph 18(a) substitute—
 - “a description of the proposed types of learning difficulties in respect of which education will be provided and where provision for special educational needs already exists, the current types of provision;”;
- (j) omit “and” at the end of paragraph 18(g);
- (k) at the end of paragraph 18(h) insert “and”;
- (l) after paragraph 18(h) insert—
 - “(i) the number of places specially reserved for children with special educational needs, and where this number is to change, the proposed number of such places.”
- (m) after paragraph 25 insert—

“Expansion of successful and popular schools

- 25A.**—(1) Proposals must include a statement of whether the local authority consider that the presumption for the expansion of successful and popular schools should apply and where the local authority consider the presumption applies, evidence to support this.
- (2) Sub-paragraph (1) applies to proposals in respect of primary and secondary schools, (except grammar schools), falling within paragraphs—
- (a) 1 and 2 of Part 1 to Schedule 4;
 - (b) 12 of Part 2 to Schedule 4.”
- (n) for sub-paragraph 27(1)(c) substitute—
 - “(c) families of pupils at the school;”;
 - (o) after sub-paragraph 27(1)(c) insert—
 - “(cc) teachers and other staff at the school;”
 - (p) in sub-paragraph 27(1)(e)—
 - (i) after “families” insert “of pupils”,
 - (ii) for “parents” substitute “families”;
 - (q) in paragraph 28(1)—
 - (i) in sub-paragraph (a) for “9(a) and 9(a); and” substitute “9(a), 15(a)(i), 16(2), 18(a), 18(c) and 19(a),”
 - (ii) insert “and” at the end of sub-paragraph (b), and
 - (iii) after sub-paragraph (b) insert—
 - “(c) a statement explaining that any person may object to, or comment on, the proposals, including the address to which objections or comments should be sent and the date by which they must be submitted.”;
 - (r) in sub-paragraph 28(2)(b) after “one” insert “local”;
 - (s) in paragraph 28(3)—

- (i) omit sub-paragraph (3)(b),
- (ii) in sub-paragraph (3)(c) after “week of” insert “receipt of”, and
- (t) after paragraph 28(3) insert—
 - “(3A) The governing body must send to the Secretary of State within 1 week of the date of publication—
 - (a) a complete set of the proposals, excluding the information contained in paragraph 11 of this Schedule (evidence of consultation); and
 - (b) a copy of the information published under sub-paragraph (1).”;
- (u) at the end of sub-paragraph 28(5)(c) insert “and”;
- (v) omit “and” at the end of sub-paragraph 28(5)(d);
- (w) omit sub-paragraph 28(5)(e);
- (x) after paragraph 28(5) insert—
 - “(6) Where the proposals relate to a special school, the governing body must also send a copy of the information contained in sub-paragraph (1) to parents of children who attend the special school.”;
- (y) in paragraph 38(1)—
 - (i) omit “and” at the end of sub-paragraph (k),
 - (ii) in sub-paragraph (l) for “(g)” substitute “(k)” and insert “and” at the end of that sub-paragraph.
- (z) after sub-paragraph (l) insert—
 - “(m)where proposals are related to proposals for the establishment of new schools, or discontinuance of schools and those proposals depend on the occurrence of events specified in regulation 20 of the School Organisation (Establishment and Discontinuance of Schools) (England) Regulations 2007, the occurrence of such an event.”;
- (aa) for paragraph 40 substitute—
 - “**40.** Where any proposals have been approved under paragraph 31 or 32 then the proposals must be implemented in the form in which they were so approved or determined, in accordance with this Schedule.”;
- (bb) after paragraph 40 insert the following paragraphs—

“Proposals relating to foundation, foundation special or voluntary controlled schools

40A. Proposals relating to a foundation, foundation special, or voluntary controlled school must be implemented by the governing body and the local education authority, respectively, to such extent as the proposals provide for each of them to do so.

Proposals relating to community, community special or maintained nursery schools

40B. Proposals relating to a community, community special or maintained nursery school must be implemented by the local education authority.

Proposals relating to voluntary aided schools

40C. Proposals relating to a voluntary aided school are to be implemented—

- (a) so far as relating to the provision of any playing fields for the school by the local education authority; and
- (b) otherwise by the governing body.

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

40D.—(1) Where a local education authority are required by virtue of paragraph 40A and the provisions contained in the proposals to provide a site for a foundation, foundation special or voluntary controlled school, the authority must—

- (a) transfer their interest in the site and in any buildings on the site which are to form part of the school's premises to 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 to the governing body, to be held by that body for the purposes of the school.

(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 their transfer is made their reasonable costs in connection with the transfer.

(4) 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 paragraph (b) applies to them; and they or their successors must pay to the local education 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.

(5) In sub-paragraph (4)(b) the reference to proceeds of 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;

and for the purpose of any agreed determination under sub-paragraph (4) regard must be had to any guidance given from time to time by the Secretary of State.

(6) Any sum paid under sub-paragraph (4) is to be treated for the purposes of section 14 of the School Sites Act 1841 (which relates to the sale or exchange of land held on trust for the purposes of the school) as a sum applied in the purchase of a site for the school.

(7) A determination may be made under sub-paragraph (4) in respect of any property subject to a trust which has arisen under section 1 of the Reverter of Sites Act 1987(a)(right of reverter replaced by trust for sale) if, and only if—

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

(8) Sub-paragraph (4) 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 sub-paragraph (4)(b) (if any) as remains after the application of paragraphs A1 to A16 or 1 to 3 of Schedule 22 to SSFA 1998 to that sum.

(a) c.15.

Assistance for voluntary aided schools

40E. A local education authority may give to persons required by virtue of paragraph 40C to implement proposals relating to voluntary aided schools such assistance as the authority think fit in relation to the carrying out by those persons of any obligations arising by virtue of that provision.

Duty to transfer interest in premises provided under paragraph 40E

40F.—(1) Where assistance under paragraph 40E 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 to the trustees of the school to be held on trust for the purposes of the school.

(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.”;

(cc) in paragraph 41—

- (i) omit sub-paragraph (3)(d);
- (ii) in sub-paragraph (4)(b) after “one” insert “local”;
- (iii) omit “and” at the end of sub-paragraph (10)(d);
- (iv) insert “and” at the end of sub-paragraph (10)(e); and
- (v) after sub-paragraph (10)(e) insert—
“ (f) the Secretary of State.”;

(dd) for paragraph 42 substitute—

“**42.—**(1) Where the local authority have determined the proposals, the authority may—

- (a) modify the proposals after consulting the governing body; and
- (b) where there has been a conditional approval specify a later date, after determination but before implementation, by which the event in question must occur.

(2) Where the adjudicator has determined the proposals, the adjudicator may at the request of the authority who made the proposals—

- (a) modify the proposals after consulting the governing body; and
- (b) where there has been a conditional approval, specify a later date, after determination but before implementation, by which the event in question must occur.

(3) Where proposals are modified under sub-paragraph (1) or (2) the local authority or adjudicator must notify the Secretary of State within 1 week of the proposal being modified.”.

25. In Schedule 6—

(a) replace the Schedule heading with—

**“LAND TRANSFERS WHERE A SCHOOL CHANGES
CATEGORY OR ACQUIRES A FOUNDATION”;**

(b) after paragraph 2 insert—

“**2A.—**(1) This paragraph applies where any proposals that a foundation school should acquire a foundation have been approved.

(2) In such a case, any land, which immediately before the implementation date, was held or used by the local authority or governing body for the purposes of the foundation school,

must on that date transfer to, and by virtue of this paragraph vest in, the trustees of the school, to be held on trust for the purposes of the school;”

- (c) in paragraph 9 insert “2A,” after “2”; and
- (d) omit paragraph 23 of Schedule 6.

Amendments to the School Organisation (Transitional Provisions)(England) Regulations 2007

26. The School Organisation (Transitional Provisions) (England) Regulations 2007(a) are amended in accordance with regulations 27 to 29.

27. After regulation 3(9) insert—

“(10) Any proposals published before the 25th May 2007 which have not been determined or sent by the school organisation committee to the relevant authority, or by the relevant authority to the adjudicator by [2 weeks after cif of amending regs] must be sent to the adjudicator for determination.”

28. In regulation 27(4) for “regulations 24(6) or 26(8)” substitute “regulation 24(6) or (8)”.

29. In regulation 33(1)—

- (a) omit “and” at the end of sub-paragraph (k);
- (b) in paragraph (l) for “(g)” substitute “(k)” and insert “and” at the end of the paragraph; and
- (c) after paragraph (l) insert—

“(m)where proposals are related to proposals for establishment of new schools or discontinuance of schools, and those proposals depend upon the occurrence of events specified in regulation 7(5) the occurrence of such an event.”

Amendment to the School Governance (Procedure) Regulations 2003

30.—(1) The School Governance (Procedure) Regulations 2003(b) are amended as follows.

(2) In regulation 6(3) for “for a period extending beyond” substitute “until”.

(3) In regulation 11(4)—

- (a) omit “and” at the end of sub-paragraph (b);
- (b) insert “and” at the end of sub-paragraph (c); and
- (c) after sub-paragraph (c) insert—

“(d) the local education authority, where an agenda item for the meeting involves consideration of a change of school category .”.

Amendments to the School Governance (New Schools) (England) Regulations 2007

31.—(1) The School Governance (New Schools) (England) Regulations 2007(c) are amended as follows.

(2) In regulation 36(3) for “a period extending beyond” substitute “until”.

(3) After regulation 52(1) insert the following paragraph—

“(1A) For the purposes of paragraph (1) —

- (a) the reference in regulation 29 of the Constitution Regulations to “governing bodies” is treated as a reference to “temporary governing bodies”; and
- (b) references in regulation 31 of the Constitution Regulations to—

(a) S.I. 2007/1355.

(b) S.I. 2003/ 1377 to which there are amendments not relevant to these Regulations.

(c) S.I. 2007/958.

- (i) “governing body” are treated as references to “temporary governing body”,
- (ii) “school” are treated as references to “proposed school” except that the references to “Church of England school” and “Roman Catholic Church school” in paragraph (2)(c) are treated as references to “proposed Church of England school” and “proposed Roman Catholic Church school” and except for the reference to “category of school” in paragraph (4), and
- (iii) “foundation governors” are treated as references to “temporary foundation governors.”.

Amendments to the School Governance (Federations) (England) Regulations 2007

32.—(1) The School Governance (Federations) (England) Regulations 2007(a) are amended as follows.

(2) In regulation 38 after paragraph (3) insert—

“(4) For the purpose of paragraph (3)(a)(ii)—

- (a) the reference in regulation 29 of the Constitution Regulations to “governing bodies” is treated as a reference to “temporary governing bodies”; and
- (b) references in regulation 31 of the Constitution Regulations to—
 - (i) “governing body” are treated as references to “temporary governing body”, and
 - (ii) “foundation governors” are treated as references to “temporary foundation governors.”.

(3) After regulation 43 insert—

“**43A.** For the purpose of regulation 43(b)—

- (a) the reference in regulation 29 of the Constitution Regulations to governing bodies is treated as a reference to temporary governing bodies; and
- (b) references in regulation 31 of the Constitution Regulations to—
 - (i) “governing body” are treated as references to “temporary governing body”, and
 - (ii) “foundation governors” are treated as references to “temporary foundation governors.”.

(4) Omit paragraph 7(b) of Schedule 7.

Revocation

33. The Education (Adjudicators Inquiry Procedure etc.) Regulations 1999(b) are revoked.

7th December 2007

Andrew Adonis
Parliamentary Under Secretary of State
Department for Children, Schools and Families

(a) S.I. 2007/960.
(b) S.I. 1999/1286.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make various amendments to regulations relating to school organisation and school governance.

Regulations 2 to 16 amend the School Organisation (Establishment and Discontinuance of Schools) (England) Regulations 2007. Regulation 3 amends the definition of “APA rating” to remove the reference to reports under section 99 of the Local Government Act 2003. This was included initially so as to cover the period between 25th May 2007 and the date when the new Ofsted local authority performance ratings were to be announced in November 2007. Regulations 3 to 15 correct minor drafting errors.

Regulations 17 to 25 amend the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007. They correct minor drafting errors and add the following additional provisions:

A new paragraph 33 in Schedule 1 on transitional admission arrangements is inserted by regulation 20(l). This provides that where a community or voluntary controlled school changes category to become a foundation school, anything done before the implementation date by the local education authority as admission authority will from the implementation date have effect as if done by the governing body. Similarly regulation 22(dd) inserts a new paragraph in Schedule 3 so as where a voluntary controlled or community school changes category to become a voluntary aided school anything done before the implementation date by the local authority as admission authority will from the implementation date have effect as if done by the governing body and vice versa where a foundation or voluntary aided school changes category to a community school.

New paragraphs 25A are inserted into Schedule 3 and 5 by regulations 22(k) and 24(m) with the effect that proposals to expand schools must include a statement as to whether they consider the presumption for the expansion of successful and popular schools should apply, and if so evidence to support this.

The amendments also clarify the duty to implement in relation to different categories of schools: regulation 22 adds new paragraphs to Schedule 3 on the duty to implement and the provision of site and buildings for foundation, voluntary controlled or foundation special schools. Where a local authority are required by the new paragraph 40A to provide a site for such a school, they must transfer their interest in the site to the school’s trustees or the governing body if there are no trustees. Regulation 24 adds similar paragraphs to Schedule 5. These provisions mirror what was included in the previous statutory regime (in Schedule 6 to SFFA 1998 now repealed in relation to England) and were omitted in error when the regulations were made under Part 2 of EIA 2006.

Regulation 25 amends Schedule 6 (Land Transfers) so as that it applies to transfers of land where a foundation school acquires a foundation, as well as transfers when a school changes category. A new paragraph 2A is inserted into Schedule 6 which provides that where a foundation school acquires a foundation any land held by the governing body or local authority for the purposes of the school must transfer to the trustees.

Regulations 26 to 29 make amendments to the School Organisation (Transitional Provisions) (England) Regulations 2007 to correct minor drafting errors and to provide that any undetermined proposals published before the 25th May must be forwarded to the adjudicator by two weeks after these Regulations come into force.

Regulation 30 amends the School Governance (Procedure) Regulations 2007 to clarify what is considered ‘urgent’ in the provision that relates to delegating to the chair of governors. The Regulations are further amended to provide that the governing body must notify the local authority where an agenda item for a governing body meeting involves a consideration of a change of school category.

Regulation 31 amends the School Governance (New Schools) (England) Regulations 2007 to clarify that a temporary governing body will prepare the draft instrument of government in certain

circumstances. Regulation 52 of those Regulations requires the local authority to secure that an instrument of government is made in accordance with the School Governance (Constitution) (England) Regulations 2007. The Constitution Regulations refer to the 'governing body' making this instrument, which does not at that time exist. This amendment modifies the relevant provisions of the Constitution Regulations so as that references to 'governing body' are treated as references to a 'temporary governing body'. The Regulations are also further amended to clarify what is considered 'urgent' in the provision that relates to delegating to the chair of governors.

Regulation 32 amends the School Governance (Federations) (England) Regulations 2007 so that a temporary governing body can draft a new instrument of government when a school leaves a federation or a federation is dissolved. This amendment modifies the relevant provisions of the Constitution Regulations so that reference to 'governing body' and 'foundation governors' are treated as reference to 'temporary governing body' and 'temporary foundation governors'.

Regulation 33 revokes the Education (Adjudicators Inquiry Procedure etc.) Regulations 1999.

2007 No. 3464

EDUCATION, ENGLAND

**The School Organisation and Governance (Amendment)
(England) Regulations 2007**

£3.50

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Stationery Office and Queen's Printer of Acts of Parliament.

E1729 12/2007 171729T 19585