

EXPLANATORY MEMORANDUM

THE EDUCATION (NEW SECONDARY SCHOOL PROPOSALS) (ENGLAND) (AMENDMENT) REGULATIONS 2007

2007 No. 59

1. This explanatory memorandum has been prepared by Department for Education and Skills and is laid before Parliament by Command of Her Majesty.
2. **Description**
 - 2.1. These regulations provide for competitions for new schools held under the Education Act 2005 to be decided by the schools adjudicator rather than the School Organisation Committee (SOC) in cases where the local authority or Church of England or Roman Catholic diocese has an interest in any of the proposals.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1. None.
4. **Legislative Background**
 - 4.1. This is the first use of the power to make regulations under paragraph 5 of schedule 10 to the 2005 Act providing that competitions for new secondary schools to be decided by the schools adjudicator rather than the SOC.
 - 4.2. The 2005 Act and associated regulations provide for competitions for new secondary schools to be decided by the SOC for the area in the first instance. SOC normally comprise five groups representing: the local education authority; the Church of England diocese for the area; the Roman Catholic Diocese for the area; the local Learning and Skills Council; and existing schools in the area. If the SOC cannot decide the proposals unanimously, or within a prescribed period, they are referred to the schools adjudicator for decision. The SOC may also refer the proposals to the adjudicator after voting on them if at least two groups did not vote because members of each group had declared an interest.
 - 4.3. The schools competition provisions of the 2005 Act will be superseded by corresponding provisions of the 2006 Act, about which the Department is currently consulting. Under the 2006 Act, competitions for new schools will be decided by either (a) the local authority, if the local authority have no interest in any of the proposals; or (b) the schools adjudicator, if the local authority have an interest in any of the proposals. The decision of the local authority or schools adjudicator, as the case may be, will be final. The Department's intention is to

commence the provisions of the 2006 Act as soon as possible, and for competitions initiated under the 2005 Act which have not been decided at the time of commencement to be decided under the provisions of the 2006 Act.

- 4.4. The school competition provisions of the 2005 Act were commenced on 31 August 2006. Since then two local authorities have initiated a total of three competitions by publishing notices inviting proposals for new secondary schools. Only one of these competitions is likely to fall to be decided under the 2005 Act.
- 4.5. The instrument is being made in order to avoid conflicts of interest, or the appearance of conflicts of interest, arising when competitions are decided under the 2005 Act. It will ensure that competitions are decided by the independent schools adjudicator in any case where body which is a member of the SOC has an interest in any of the proposals. These arrangements will be consistent with those under the 2006 Act which prevent local authorities from deciding competitions where they have an interest in any of the proposals.

5. Territorial Extent and Application

- 5.1. This instrument applies only to England.

6. European Convention on Human Rights

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

7. Policy background

Policy

- 7.1. The general policy intention behind the requirement for competitions is to increase diversity and parental choice by giving a wide range of bodies the opportunity to bid to establish new schools. The Government wishes to ensure that the competitions are decided objectively, and to avoid conflicts of interest or the appearance of conflicts of interest. The principal regulations allow for the SOC to refer proposals to the schools adjudicator, having voted on the proposals, if two or more groups did not vote because members had declared an interest. The Department believes that it should not be left to the discretion of the SOC to refer proposals where members have an interest in any of the proposals; and that competitions should in any case be decided by an independent decision maker whenever any member of the SOC has an interest in any of the proposals.
- 7.2. As indicated above, we expect that only one competition will be decided under the 2005 Act before the provisions of the 2006 Act come into force. The local education authority has entered the

competition, and so the regulations will impact on the decision making arrangements for that competition.

- 7.3. There has been little interest nationally in the introduction of the requirement for competitions for new secondary schools. Interest locally in the three competitions that are currently under way has also been limited to date. This is because the competitions are at an early stage: in each case the local education authority have published a preliminary notice setting out the specification for the new school, but no proposals have yet been published.
- 7.4. The change is consistent with the provisions of the 2006 Act on which the Department is consulting and which we expect to come into force early next summer.
- 7.5. There are no alternative ways of meeting the policy objective: the Act provides for competitions to be decided by the SOC in the first instance unless regulations are made under paragraph 5 of schedule 10.

Consultation

- 7.6. There were only twelve responses to the consultation on the principal regulations. One of these was concerned with decision-making arrangements, and specifically the arrangements for referring decisions on competitions to the schools adjudicator where two or more groups on the SOC did not vote because members had declared an interest.
- 7.7. The Department has not consulted on the making of this instrument. The Department has written to the local authorities concerned explaining that the regulations have been made and will come into force on [date], and separately to the local authority, SOC and proposers involved in the competition which will be immediately affected by the regulations.

Guidance

- 7.8. As explained above, the Department has written to all local authorities and other stakeholders informing them of the change.

Consolidation

- 7.9. This is the first time that the principal regulations have been amended. The Department does not intend to consolidate the regulations as they will be superseded when regulations made under the 2006 Act come into force.

8. Impact

- 8.1. These regulations will have no impact on the private and voluntary sectors and accordingly no RIA has been prepared.

- 8.2. The impact on the public sector will be small – a decision which would otherwise be taken by one public body (the SOC) will be taken by another (the schools adjudicator).

9. Contact

- 9.1. Julian Butcher, Head of School Organisation Unit, DfES, Sanctuary Buildings, Great Smith Street, London SW1P 3BT. Telephone: 020 7925 5861. E-mail: julian.butcher@dfes.gsi.gov.uk.