



Education Act 1996

1996 CHAPTER 56

PART II

SCHOOLS MAINTAINED BY LOCAL EDUCATION AUTHORITIES

CHAPTER II

ESTABLISHMENT, ALTERATION ETC. OF COUNTY AND VOLUNTARY SCHOOLS

Voluntary schools: establishment, alteration or change of site

41 Voluntary school: proposals for establishment, alteration or new site

(1) Where any persons propose—

- (a) that a school which they or persons whom they represent propose to establish should be maintained by a local education authority as a voluntary school, or
- (b) that a school established by them or by persons whom they represent which is not a voluntary school should be so maintained as a voluntary school,

then (subject to subsection (9)) they shall publish proposals for that purpose in such manner as may be required by regulations and submit a copy of the published proposals to the Secretary of State.

(2) Where the governing body of a school which is maintained by a local education authority as a voluntary school intend—

- (a) to make a significant change in the character, or a significant enlargement of the premises, of the school, or
- (b) to transfer the school to a new site,

then (subject to subsections (3) and (9)) they shall publish proposals for that purpose in such manner as may be required by regulations and submit a copy of the published proposals to the Secretary of State.

- (3) The requirement to publish proposals under subsection (2)(b) does not apply in relation to the transfer of a voluntary school to a new site if—
- (a) the transfer is authorised by an order made under section 47(1) of this Act (or under section 16(1) of the Education Act 1944); or
 - (b) the school is intended to return to its existing site within three years of the time of the transfer.
- (4) No proposals under subsection (1) shall be approved by the Secretary of State under section 43 if the school or proposed school is to provide—
- (a) part-time education suitable to the requirements of persons of any age over compulsory school age, or
 - (b) full-time education suitable to the requirements of persons who have attained the age of 19 years;
- and the reference in subsection (2)(a) to a change in the character of a school does not include a change in character resulting only from persons beginning or ceasing to be provided with education falling within paragraph (a) or (b) above.
- (5) Proposals published under this section shall include particulars—
- (a) of the time or times at which it is intended to implement the proposals, and
 - (b) of the number of pupils intended to be admitted to the school in each relevant age group in the first school year in relation to which the proposals have been wholly implemented;
- and shall be accompanied by a statement of the effect of section 42.
- (6) For the purposes of subsection (5)(b) pupils intended to be admitted to the school for nursery education shall be disregarded, and pupils—
- (a) already admitted to the school for nursery education, and
 - (b) intended to be transferred to a reception class at the school,
- shall be treated as intended to be admitted to the school on their transfer.
- (7) Before publishing any proposals under this section, the persons concerned shall—
- (a) in the case of proposals under subsection (1), consult the local education authority, and
 - (b) in the case of proposals under either subsection (1) or subsection (2), consult such other persons as appear to them to be appropriate;
- and in discharging their duty under this subsection they shall have regard to any guidance given from time to time by the Secretary of State.
- (8) Before publishing any proposals under subsection (2)(a) which (if implemented) would affect the facilities for full-time education suitable to the requirements of persons over compulsory school age who have not attained the age of 19, the governing body shall consult the appropriate further education funding council.
- (9) No proposals shall be published under this section in respect of any school in respect of which proposals for acquisition of grant-maintained status have been approved under section 194.

42 Objections to proposals under section 41

- (1) Objections to any proposals published under section 41 may be submitted to the Secretary of State by any of the following—

- (a) any ten or more local government electors for the area of the local education authority referred to in subsection (1) or (as the case may be) subsection (2) of that section,
 - (b) the governing body of any school affected by the proposals,
 - (c) the appropriate further education funding council (if the proposals affect the provision of education to which section 2(1) of the Further and Higher Education Act 1992 applies), and
 - (d) any local education authority concerned.
- (2) Objections may be so submitted within the period of two months after the first publication of the proposals.
- (3) Where the proposals are to transfer a school to a site in a different area, objections under subsection (1) to the proposals may also be so submitted by any ten or more local government electors for that area.
- (4) Where—
 - (a) an order under section 27 applies to the area of a local education authority, and
 - (b) any persons publish proposals under section 41 which affect the provision of relevant education in the area,the funding authority shall be included among the persons who may submit objections under subsection (1) above to the proposals.
- (5) For the purposes of this section proposals under section 41 shall be taken to have been first published—
 - (a) on the day on which the requirements of regulations with respect to the publication of the proposals are satisfied; or
 - (b) where different such requirements are satisfied on different days, on the last of those days.
- (6) Where any such requirement imposes a continuing obligation with respect to the publication of any proposals, the requirement shall for the purposes of subsection (5) be taken to be satisfied on the first day in respect of which it is satisfied.

43 Approval or rejection by Secretary of State of proposals under section 41

- (1) Proposals published under section 41 require the approval of the Secretary of State.
- (2) The Secretary of State may (subject to subsections (3) to (6))—
 - (a) reject such proposals,
 - (b) approve them without modification, or
 - (c) after consultation with the persons making the proposals and the local education authority by whom the school is, or is to be, maintained, approve them with such modifications as he thinks desirable.
- (3) This subsection applies if either—
 - (a) the proposals are first published after proposals for acquisition of grant-maintained status for the school have been published under section 193 but before those proposals are determined or withdrawn, or
 - (b) after the proposals have first been published but before they are determined or withdrawn, proposals for acquisition of grant-maintained status for the school are published under section 193;

and references in this subsection to proposals being first published shall be construed in accordance with section 42(5) and (6).

- (4) In a case where subsection (3) applies, the Secretary of State—
 - (a) shall consider both sets of proposals together, but
 - (b) shall not determine the proposals published under section 41 until he has made his determination with respect to the proposals published under section 193.
- (5) If the Secretary of State approves the proposals published under section 193, he—
 - (a) shall approve the proposals published under section 41 if they were made for the purpose of ensuring consistency in the provision of education made in the area of the local education authority, but
 - (b) shall otherwise reject the proposals published under that section.
- (6) Any proposals under section 41 which are approved under subsection (5) shall be treated for the purposes of Part III as if they had been—
 - (a) published under section 259 (change of character etc. of grant-maintained school), and
 - (b) approved under section 261,
 and section 262 (approval of school premises) shall apply accordingly.
- (7) Where the proposals published under section 41 are to transfer the school to a site in a different area, subsection (2)(c) above requires consultation with the local education authority by whom the school is maintained as well as with the authority by whom it is to be maintained.

44 Approval of school premises

- (1) Where any proposals are published under section 41, the persons making the proposals shall submit to the Secretary of State for his approval such particulars in respect of the premises or proposed premises of the school as he may require.
- (2) The particulars shall be so submitted at such time, and in such form and manner, as the Secretary of State may direct.
- (3) Before submitting any particulars under this section, the persons making the proposals shall consult the local education authority by whom the school is, or is to be, maintained.
- (4) Where the proposals published under section 41 are to transfer the school to a site in a different area, subsection (3) requires consultation with the local education authority by whom the school is to be maintained.

45 Implementation of proposals under section 41, etc

- (1) Subject to subsections (2) and (4), where any proposals are approved under section 43, they shall be implemented—
 - (a) in the case of proposals published under section 41(1), by the persons making them or the persons whom they represent (as the case may require) and by the local education authority referred to in that subsection, or
 - (b) in the case of proposals published under section 41(2), by the school's governing body.

- (2) Subject to subsection (4), it shall be the duty of the local education authority—
- (a) in the case of any proposals so approved for the transfer of a controlled school to a new site, to implement the proposals (and any associated proposals for a change in the character of the school) so far as they involve the provision of premises or the removal or provision of equipment; and
 - (b) in any other case, to implement so much of any proposals so approved as relates to the provision of—
 - (i) playing fields, or
 - (ii) buildings which are to form part of the school premises but are not to be school buildings.
- (3) Where any particulars have been submitted under section 44 in connection with the proposals, the proposals shall be implemented in accordance with the particulars as approved by the Secretary of State.
- (4) The Secretary of State may modify any proposals required to be implemented by virtue of this section, but shall do so—
- (a) in the case of proposals published under section 41(1), only at the request of the local education authority referred to in that subsection, and
 - (b) in the case of proposals published under section 41(2), only at the request of the governing body of the school.
- (5) Subject to subsection (6), no person shall do or undertake to do anything for which proposals are required to be published and submitted under section 41 until the requirements of that section and section 44 have been complied with and any approval necessary under section 43 or 44 has been given.
- (6) The Secretary of State may in any case allow such steps to be taken pending compliance with any such requirements and the giving of any such approval as he considers reasonable in the circumstances.
- (7) Where proposals for the transfer of a school to a site in a different area are approved under section 43, then—
- (a) in the case of any voluntary school—
 - (i) the reference in subsection (2) above to the local education authority is to be read as referring to the authority for the new area, and
 - (ii) upon the transfer the duty to maintain the school shall transfer to that authority; and
 - (b) in the case of any controlled school, section 60 (together with section 62) shall apply as if the duty to maintain the school had been transferred to the local education authority for the new area.

46 Establishment of a new voluntary school in substitution for an old one

- (1) This section applies where—
- (a) proposals for the establishment of any school or schools are submitted to the Secretary of State under section 41(1); and
 - (b) in connection with those proposals it is claimed that the school or schools should be maintained by the local education authority as a voluntary school or voluntary schools in substitution for any other voluntary school or schools (whether maintained by that or another local education authority) which is or are to be discontinued.

Status: This is the original version (as it was originally enacted).

(2) If the Secretary of State—

- (a) approves the proposals under section 43, and
- (b) is satisfied that the new school or schools will be maintained as mentioned in subsection (1)(b) above,

he may by order direct that the new school or schools shall be established in substitution for the school or schools which is or are to be discontinued.

(3) Where an order is made under this section, section 173 shall not apply with respect to the discontinuance of that school or those schools.

(4) Before making an order under this section, the Secretary of State shall consult—

- (a) any local education authority who in his opinion will be affected by the making of the order; and
- (b) the governing body of any voluntary school which in his opinion will be so affected.

(5) An order under this section may—

- (a) impose such conditions on any such local education authority or governing body, and
- (b) contain such incidental and consequential provisions, as the Secretary of State thinks fit.

47 Order authorising transfer of voluntary school to new site

(1) Where the Secretary of State is satisfied that the transfer of a voluntary school to a new site is expedient—

- (a) because it is not reasonably practicable to make to the existing premises of the school any alterations necessary to secure that they conform to the standards prescribed under section 542, or
- (b) in consequence of any movement of population or of any action taken or proposed to be taken under the enactments relating to housing or to town and country planning,

he may by order authorise the transfer of the school to the new site.

(2) The Secretary of State shall not, however, make any such order in the case of an aided or special agreement school unless he is satisfied that the school's governing body will be able and willing, with the assistance of any grant made under section 65, to defray the expenses mentioned in section 59(5).

(3) Before making an order under this section the Secretary of State shall consult—

- (a) any local education authority who in his opinion will be affected by the making of the order; and
- (b) the governing body of any voluntary school which in his opinion will be so affected.

(4) An order under this section may—

- (a) impose such conditions on any such local education authority or governing body, and
- (b) contain such incidental and consequential provisions, as the Secretary of State thinks fit.