

SCHEDULES

SCHEDULE 6

Sections 28, 29 and 31.

STATUTORY PROPOSALS: PROCEDURE AND IMPLEMENTATION

PART I

PROCEDURE FOR DEALING WITH STATUTORY PROPOSALS: ENGLAND

Application of Part I

- 1 (1) This Part of this Schedule applies to proposals published under section 28, 29 or 31 which relate to a school or proposed school in England.
- (2) In this Part of this Schedule “the relevant committee” means the school organisation committee for the area of the local education authority who maintain the school or (in the case of a new school) who it is proposed should maintain the school.

Objections

- 2 (1) Any person may make objections to any proposals published under section 28, 29 or 31.
- (2) Where the proposals were published by a local education authority—
- (a) any objections under this paragraph shall be sent to the authority within such period as may be prescribed (“the objection period”); and
 - (b) within such period as may be prescribed the authority shall send to the relevant committee copies of all objections made (and not withdrawn in writing) within the objection period, together with the authority’s observations on them.
- (3) Where the proposals were published by a governing body or promoters, any objections under this paragraph shall be sent to the relevant committee within such period as may be prescribed.

Approval of proposals

- 3 (1) Proposals published under section 28, 29 or 31 require approval under this paragraph if—
- (a) the proposals were published by a local education authority and either—
 - (i) objections to the proposals have been made in accordance with paragraph 2 and any of them have not been withdrawn in writing within the objection period; or
 - (ii) such approval is required by virtue of paragraph 4(5); or
 - (b) the proposals were published by a governing body or promoters.

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- (2) Where any proposals require approval under this paragraph, they shall be considered in the first instance by the relevant committee, who may—
- (a) reject the proposals,
 - (b) approve them without modification, or
 - (c) approve them with such modifications as the committee think desirable after consulting such persons or bodies as may be prescribed.
- (3) Any approval given under this paragraph may be expressed to take effect only if an event specified in the approval occurs by a date so specified; and regulations may prescribe the events that may be so specified.
- (4) When deciding whether or not to give any approval under this paragraph the committee shall have regard to—
- (a) any guidance given from time to time by the Secretary of State, and
 - (b) the school organisation plan for the committee’s area;
- and the committee shall not give any such approval unless they are satisfied that adequate financial resources will be available to enable the proposals to be implemented.
- (5) If—
- (a) by the end of such period as may be specified in or determined in accordance with regulations, the committee have not voted on the question whether to give any approval under this paragraph, and
 - (b) the body or promoters by whom the proposals were published request the committee to refer the proposals to the adjudicator,
- they shall refer the proposals to the adjudicator.
- Regulations made for the purposes of this sub-paragraph (or any other corresponding provision of this Act) may be framed by reference to the opinion of the committee.
- (6) If the committee—
- (a) have voted on any matter which (in accordance with regulations under paragraph 5 of Schedule 4) falls to be decided by them under this paragraph by a unanimous decision, but
 - (b) have failed to reach such a decision on that matter,
- they shall refer the proposals to the adjudicator.
- (7) Where any proposals are referred to the adjudicator under sub-paragraph (5) or (6)—
- (a) he shall consider the proposals afresh; and
 - (b) sub-paragraphs (2) to (4) shall apply to him in connection with his decision on the proposals as they apply to the committee.
- (8) Sub-paragraph (1) does not prevent the body or promoters by whom any proposals have been published under section 28, 29 or 31 from withdrawing those proposals by notice in writing given to the relevant committee at any time before the proposals are determined under this paragraph.

Determination by LEA whether to implement proposals

- 4 (1) Where any proposals have been published by a local education authority under section 28, 29 or 31 and either—
- (a) no objections were made in accordance with paragraph 2, or

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- (b) all objections so made were withdrawn in writing within the objection period,
then (subject to the following provisions of this paragraph) the authority shall determine whether the proposals should be implemented.
- (2) Any determination under sub-paragraph (1) must be made within the period of four months beginning with the date of publication of the proposals (as determined in accordance with regulations); and the authority shall notify the relevant committee of any determination made by them under sub-paragraph (1).
- (3) The requirement to make a determination under sub-paragraph (1) in the case of any proposals only applies if, at the time when the authority's determination falls to be made under that sub-paragraph, they are satisfied that the proposals are not related to any of the following, namely—
- (a) any undetermined proposals published under section 28(2) to establish a new foundation or voluntary school in the area of the authority;
 - (b) any undetermined proposals published under section 28(2), 29(2) or 31(2) by the governing body of a foundation, voluntary or foundation special school in the area of the authority;
 - (c) any undetermined proposals published by the authority which, by virtue of sub-paragraph (1)(a) of paragraph 3, require approval under that paragraph; or
 - (d) any order under paragraph 2(2) or 3(2) of Schedule 7.
- (4) For the purposes of sub-paragraph (3) proposals are “undetermined” if they have not been withdrawn and—
- (a) they have not been approved or rejected under paragraph 3 or under paragraph 8 or 9 of Schedule 7, or
 - (b) the authority have not determined under this paragraph whether to implement them,
- as the case may be; and when deciding under sub-paragraph (3) whether any proposals are related to other proposals the authority shall have regard to any guidance given from time to time by the Secretary of State.
- (5) Where, in the case of any proposals within sub-paragraph (1)—
- (a) the authority fail to make a determination under that sub-paragraph within the period mentioned in sub-paragraph (2), or
 - (b) the requirement to make such a determination does not apply by virtue of sub-paragraph (3),
- the proposals require approval under paragraph 3.

Requirement to implement proposals

- 5 (1) Where—
- (a) any proposals published under section 28, 29 or 31 have been approved under paragraph 3, or
 - (b) a local education authority have determined under paragraph 4 to implement any such proposals,
- then (subject to the following provisions of this paragraph) the proposals shall be implemented, in the form in which they were so approved or determined, in accordance with Part III of this Schedule.

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- (2) At the request of any prescribed body or persons, the relevant committee—
- (a) may modify the proposals after consulting such persons or bodies as may be prescribed; and
 - (b) where any approval under paragraph 3 was given in accordance with sub-paragraph (3) of that paragraph, may specify a later date by which the event in question must occur.
- (3) If the relevant committee are satisfied—
- (a) that implementation of the proposals would be unreasonably difficult, or
 - (b) that circumstances have so altered since approval was given under paragraph 3 that implementation of the proposals would be inappropriate,
- the committee may determine that sub-paragraph (1) shall cease to apply to the proposals.
- (4) The committee may only make a determination under sub-paragraph (3) where proposals that they should do so have been published, in accordance with regulations, by the body or promoters who published the proposals referred to in sub-paragraph (1)(a) or (b); and regulations so made may provide for any of the provisions of sections 28, 29 and 31 and this Part of this Schedule to have effect in relation to any such further proposals with or without modifications.
- (5) If—
- (a) by the end of such period as may be specified in or determined in accordance with regulations, the committee have not voted on any matter falling to be decided by them under this paragraph, and
 - (b) the body or promoters who published the proposals referred to in sub-paragraph (1)(a) or (b) request the committee to refer that matter to the adjudicator,
- they shall refer that matter to the adjudicator.
- (6) If the committee—
- (a) have voted on any matter which (in accordance with regulations under paragraph 5 of Schedule 4) falls to be decided by them under this paragraph by a unanimous decision, but
 - (b) have failed to reach such a decision on that matter,
- they shall refer that matter to the adjudicator.
- (7) Where any matter is referred to the adjudicator under sub-paragraph (5) or (6)—
- (a) he shall consider the matter afresh; and
 - (b) such of the provisions of sub-paragraphs (2) to (4) as are relevant shall apply to him in connection with his decision on that matter as they apply to the committee.
- (8) Where—
- (a) any approval under paragraph 3 was given in accordance with sub-paragraph (3) of that paragraph, and
 - (b) the event specified under that sub-paragraph does not occur by the date in question (whether as specified under that sub-paragraph or as specified under sub-paragraph (2)(b) above),
- sub-paragraph (1) above shall cease to apply to the proposals.

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- (9) Where, by virtue of sub-paragraph (3) or (8), sub-paragraph (1) ceases to apply to any proposals, those proposals shall be treated for the purposes of this Schedule as if they had been rejected under paragraph 3.

PART II

PROCEDURE FOR DEALING WITH STATUTORY PROPOSALS: WALES

Application of Part II

- 6 This Part of this Schedule applies to proposals published under section 28, 29 or 31 which relate to a school or proposed school in Wales.

Objections

- 7 (1) Any person may make objections to any proposals published under section 28, 29 or 31.
- (2) Where the proposals were published by a local education authority—
- (a) any objections under this paragraph shall be sent to the authority within such period as may be prescribed (“the objection period”); and
 - (b) within such period as may be prescribed the authority shall send to the Secretary of State copies of all objections made (and not withdrawn in writing) within the objection period, together with the authority’s observations on them.
- (3) Where the proposals were published by a governing body or promoters, any objections under this paragraph shall be sent to the Secretary of State within such period as may be prescribed.

Approval of proposals

- 8 (1) Proposals published under section 28, 29 or 31 require approval under this paragraph if—
- (a) the Secretary of State, within two months after a copy of the published proposals is sent to him under that section, gives notice to the body or promoters by whom the proposals were published that they require such approval; or
 - (b) objections to the proposals have been made in accordance with paragraph 7 and any of them have not been withdrawn in writing within the objection period.
- (2) Where any proposals require approval under this paragraph, the Secretary of State may—
- (a) reject the proposals,
 - (b) approve them without modification, or
 - (c) approve them with such modifications as he thinks desirable after consulting such persons or bodies as may be prescribed.
- (3) Any approval given under this paragraph may be expressed to take effect only if an event specified in the approval occurs by a date so specified.

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- (4) When deciding whether or not to give any approval under this paragraph the Secretary of State shall have regard to the school organisation plan for the area in which the school is, or (in the case of a new school) is proposed to be, situated.
- (5) Sub-paragraph (1) does not prevent the body or promoters by whom any proposals have been published under section 28, 29 or 31 from withdrawing those proposals by notice in writing given to the Secretary of State at any time before the proposals are approved under this paragraph.

Determination whether to implement proposals

- 9 (1) Where any proposals published under section 28, 29 or 31 do not require approval under paragraph 8, the body or promoters by whom the proposals were published shall determine whether the proposals should be implemented.
- (2) Any determination under sub-paragraph (1) must be made within four months after a copy of the published proposals was sent to the Secretary of State under section 28, 29 or 31.
- (3) The body or promoters in question shall notify the Secretary of State of any determination made by them under sub-paragraph (1).

Requirement to implement proposals

- 10 (1) Where—
 - (a) any proposals published under section 28, 29 or 31 have been approved under paragraph 8, or
 - (b) the body or promoters by whom such proposals were published have determined under paragraph 9 to implement the proposals,
 then (subject to the following provisions of this paragraph) the proposals shall be implemented, in the form in which they were so approved or determined, in accordance with Part III of this Schedule.
- (2) At the request of any prescribed body or persons, the Secretary of State—
 - (a) may modify the proposals after consulting such persons or bodies as may be prescribed; and
 - (b) where any approval under paragraph 8 was given in accordance with sub-paragraph (3) of that paragraph, may specify a later date by which the event in question must occur.
- (3) If the Secretary of State is satisfied—
 - (a) that implementation of the proposals would be unreasonably difficult, or
 - (b) that circumstances have so altered since approval was given under paragraph 8 that implementation of the proposals would be inappropriate,
 he may determine that sub-paragraph (1) shall cease to apply to the proposals.
- (4) The Secretary of State may only make a determination under sub-paragraph (3) where proposals that he should do so have been published, in accordance with regulations, by the body or promoters who published the proposals referred to in that sub-paragraph; and regulations so made may provide for any of the provisions of sections 28, 29 and 31 and this Part of this Schedule to have effect in relation to any such further proposals with or without modifications.

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

- (5) Where—
- (a) any approval under paragraph 8 was given in accordance with sub-paragraph (3) of that paragraph, and
 - (b) the event specified under that sub-paragraph does not occur by the date in question (whether as specified under that sub-paragraph or as specified under sub-paragraph (2)(b) above),
- sub-paragraph (1) above shall cease to apply to the proposals.
- (6) Where, by virtue of sub-paragraph (3) or (5), sub-paragraph (1) ceases to apply to any proposals, those proposals shall be treated for the purposes of this Schedule as if they had been rejected under paragraph 8.

PART III

MANNER OF IMPLEMENTATION OF STATUTORY PROPOSALS

Introductory

- 11 In this Part of this Schedule “proposals” means proposals falling to be implemented under paragraph 5 or 10.

Proposals relating to community or maintained nursery schools

- 12 (1) This paragraph applies to proposals relating to a community or proposed community school or to a maintained nursery school.
- (2) The proposals shall be implemented by the local education authority by whom they were published under section 28(1) or 29(1).

Proposals relating to foundation or voluntary controlled schools

- 13 (1) This paragraph applies to proposals relating to a foundation or voluntary controlled school or a proposed such school.
- (2) Where the proposals were published by a local education authority under section 28(1) or 29(1), they shall be implemented by the authority.
- (3) Where the proposals were published under section 28(2)—
- (a) by promoters, or
 - (b) by the governing body,
- they shall be implemented by the local education authority and by the promoters or (as the case may be) the governing body, respectively, to such extent (if any) as the proposals provide for each of them to do so.
- (4) Where the proposals were published by the governing body under section 29(2), they shall be implemented—
- (a) by the governing body; and
 - (b) by the local education authority as well.

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Proposals relating to voluntary aided schools

- 14 (1) This paragraph applies to proposals relating to a voluntary aided school or a proposed such school.
- (2) Where the proposals were published by the governing body under section 28(2) or 29(2), they shall be implemented—
- (a) in the case of proposals published under section 28(2) so far as relating to the provision of any relevant premises for the school, by the local education authority;
 - (b) in the case of proposals published under section 29(2), by the governing body and the authority; and
 - (c) otherwise by the governing body.
- (3) Where the proposals were published under section 28(2) by promoters, they shall be implemented—
- (a) so far as relating to the provision of any relevant premises for the school (but subject to sub-paragraph (5)), by the local education authority; and
 - (b) otherwise by the promoters.
- (4) In sub-paragraph (2) or (3) “relevant premises” means—
- (a) playing fields, or
 - (b) buildings which are to form part of the school premises but are not to be school buildings.
- (5) Nothing in sub-paragraph (3) requires a local education authority to provide any such premises where—
- (a) the 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 premises—
 - (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.
- (6) Where the proposals were published by a local education authority under section 29(1), they shall be implemented by the authority.

Proposals relating to community or foundation special schools

- 15 (1) This paragraph applies to proposals relating to—
- (a) a community or foundation special school; or
 - (b) a proposed such school.
- (2) Where the proposals were published by a local education authority under section 31(1), they shall be implemented by the authority.
- (3) Where the proposals were published by the governing body under section 31(2)(a), they shall be implemented by the local education authority and by the governing body, respectively, to such extent (if any) as the proposals provide for each of them to do so.

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- (4) Where the proposals were published by the governing body under section 31(2)(b), they shall be implemented—
- (a) by the governing body; and
 - (b) by the local education authority as well.

PART IV

PROVISION OF PREMISES AND OTHER ASSISTANCE

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

- 16 (1) This paragraph applies where a local education authority are required—
- (a) by virtue of paragraph 13(2) or (3) to provide a site for a foundation or voluntary controlled school or a proposed such school; or
 - (b) by virtue of paragraph 15(2) or (3) to provide a site for a foundation special school.
- (2) The authority shall transfer their interest in the site and in any buildings on the site which are to form part of the school premises—
- (a) to the school's trustees, to be held by them on trust for the 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 shall be made to such persons as the Secretary of State thinks proper.
- (4) The authority shall 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 shall notify the local education authority that paragraph (b) applies to them and they or their successors shall 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 Secretary of State.
- (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;
- and for the purposes of any agreed determination under sub-paragraph (5) regard shall be had to any guidance given from time to time by the Secretary of State.

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- (7) Any sum paid under sub-paragraph (5) shall be treated for the purposes of section 14 of the Schools Sites Act 1841 (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 (right of reverter replaced by trust for sale) if (and only if)—
- (a) the determination is made by the Secretary of State, and
 - (b) he is satisfied that steps have been taken to protect the interests of the beneficiaries under the trust.
- (9) Sub-paragraph (5) shall 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 (5)(b) (if any) as remains after the application of paragraphs 1 to 3 of Schedule 22 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, or
 - (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.

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

- 17 (1) This paragraph applies where—
- (a) the governing body of a voluntary aided school are required by virtue of paragraph 14(2) to implement proposals relating to a prescribed alteration to the school; or
 - (b) any promoters are required by virtue of paragraph 14(3) to implement proposals involving the establishment of a new voluntary aided school.
- (2) Paragraph 5 of Schedule 3—
- (a) shall apply in relation to the voluntary aided school mentioned in sub-paragraph (1)(a) above; and
 - (b) shall apply in relation to the new voluntary aided school mentioned in sub-paragraph (1)(b) above 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 the promoters; and
 - (b) where requirements are imposed in relation to grant paid by virtue of this paragraph to the promoters, the requirements shall be complied with by the governing body, when they are constituted, as well as by the promoters.

Assistance in respect of maintenance and other obligations relating to voluntary aided school

- 18 A local education authority may give to the governing body of a voluntary aided school such assistance as the authority think fit in relation to the carrying out by the governing body of any obligation arising by virtue of paragraph 14(2) in relation to proposals published by them under section 28.

Assistance for promoters of new voluntary aided school

- 19 A local education authority may give to persons required by virtue of paragraph 14(3) 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.

Duty to transfer interest in premises provided under paragraph 18 or 19

- 20 (1) Where assistance under paragraph 18 or 19 consists of the provision of any premises for use for the purposes of a school, the local education authority shall 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 no trustees, to the school’s foundation body, to be held by that body for the relevant purposes.
- (2) If any doubt or dispute arises as to the persons to whom the authority are required to make the transfer it shall be made to such persons as the Secretary of State thinks proper.
- (3) The authority shall 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.

PART V

TRANSITIONAL EXEMPTION ORDERS FOR PURPOSES OF SEX DISCRIMINATION ACT 1975

Single-sex schools: England

- 21 (1) This paragraph applies to proposals for a school in England to cease to be an establishment which admits pupils of one sex only.
- (2) Sub-paragraph (3) applies where—
- (a) such proposals are made under section 28 and, in accordance with subsection (6) of that section, the relevant body send a copy of the published proposals to the school organisation committee; or
 - (b) such proposals are made under section 31 and, in accordance with subsection (5) of that section, the relevant body send a copy of the published proposals to the school organisation committee.

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

- (3) The sending of the published proposals to the school organisation committee by the relevant body shall be treated as an application by the responsible body for the making by the school organisation committee of a transitional exemption order, and the committee may make such an order accordingly.
- (4) Where—
- (a) the school organisation committee have failed to reach a unanimous decision under sub-paragraph (3) above on whether to make a transitional exemption order, or
 - (b) the school organisation committee refer the proposals to the adjudicator under paragraph 3 or 5 of this Schedule,
- they shall refer the question whether to make a transitional exemption order to the adjudicator.
- (5) Where that question is referred to the adjudicator—
- (a) he shall consider the matter afresh; and
 - (b) he may make a transitional exemption order accordingly.
- (6) In this paragraph and in paragraph 22—
- “the 1975 Act” means the Sex Discrimination Act 1975,
- “make”, in relation to a transitional exemption order, includes (so far as the context permits) vary or revoke,
- “the responsible body” has the same meaning as in section 22 of the 1975 Act, and
- “transitional exemption order” has the same meaning as in section 27 of the 1975 Act,
- and references to proposals for a school to cease to be an establishment which admits pupils of one sex only are references to proposals which are or include proposals for such an alteration in a school’s admissions arrangements as is mentioned in section 27(1) of the 1975 Act (single-sex establishments becoming co-educational).

Single-sex schools: Wales

- 22 (1) This paragraph applies to proposals for a school in Wales to cease to be an establishment which admits pupils of one sex only.
- (2) Sub-paragraph (3) applies where—
- (a) such proposals are made under section 28 and, in accordance with subsection (7) of that section, the relevant body send a copy of the published proposals to the Secretary of State; or
 - (b) such proposals are made under section 31 and, in accordance with subsection (6) of that section, the relevant body send a copy of the published proposals to the Secretary of State.
- (3) The sending of the published proposals to the Secretary of State shall be treated as an application by the responsible body for the making by the Secretary of State of a transitional exemption order, and he may make such an order accordingly.