

SCHEDULES

SCHEDULE 10

Section 66

PROPOSALS UNDER SECTION 66 FOR ESTABLISHMENT OF SECONDARY SCHOOLS: SUPPLEMENTARY

PART 1

INTRODUCTORY

- 1 This Schedule applies to proposals published under section 66.
- 2 In this Schedule “promoters”, in relation to any proposals, means the persons who made the proposals (but does not include a local education authority).

PART 2

APPROVAL OF PROPOSALS BY SCHOOL ORGANISATION COMMITTEE OR ADJUDICATOR

Submission of proposals to school organisation committee

- 3 (1) Regulations must make provision for the submission of the proposals to the school organisation committee.
- (2) Regulations under this paragraph may make provision—
 - (a) for the making of objections or comments in relation to the proposals within a prescribed period to the local education authority who published the proposals, and
 - (b) for the sending by the local education authority to the school organisation committee within a prescribed period of copies of objections or comments received.

Approval of proposals

- 4 (1) The proposals must be considered in the first instance by the school organisation committee.
- (2) The committee may—
 - (a) reject all the proposals,
 - (b) approve any of the proposals without modification,
 - (c) approve any of the proposals with such modifications as the committee think desirable after consulting such persons as may be prescribed, or
 - (d) if the committee think it appropriate to do so, and subject to regulations, refer to the adjudicator all the proposals with any comments on them made by the committee.

- (3) Sub-paragraph (2) does not apply in any case where paragraph 5 requires the committee to refer the proposals to the adjudicator.
- (4) Regulations may make provision modifying the application of sub-paragraphs (1) and (2) in relation to proposals which are related to other proposals of a prescribed description; and regulations may require the committee, in deciding for the purposes of the regulations whether any proposals are related, to have regard to any guidance given from time to time by the Secretary of State.
- (5) 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.
- (6) When deciding whether or not to give an approval under this paragraph, the committee must have regard to any guidance given from time to time by the Secretary of State.
- (7) Sub-paragraphs (1) and (2) do not prevent the promoters or local education authority by whom any proposals have been made from withdrawing those proposals—
 - (a) except in a case where the proposals have been referred to the adjudicator, by notice in writing to the school organisation committee, or
 - (b) in that excepted case, by notice in writing to the adjudicator,
 at any time before the proposals are determined under this paragraph by the committee or by the adjudicator.

Mandatory reference to adjudicator

- 5 (1) Regulations may make provision requiring the school organisation committee in prescribed cases to refer to the adjudicator all the proposals with any comments made on them by the committee.
- (2) The Secretary of State may at any time give a direction to a school organisation committee requiring them to refer to the adjudicator—
 - (a) any proposals which have been submitted to the committee under paragraph 3 but which, at the time when the direction is given, have not been determined by the committee, and
 - (b) all subsequent proposals submitted to the committee under that paragraph until the direction is revoked,
 with any comments made on any of the proposals by the committee.
- (3) Where a direction under sub-paragraph (2) is given to a school organisation committee at a time when the committee are considering proposals which consist of or include proposals to establish an Academy, the committee must complete any consultation required by paragraph 7 before referring the proposals to the adjudicator.
- (4) Where a school organisation committee are required by regulations under sub-paragraph (1) or a direction under sub-paragraph (2) to refer any proposals (“the relevant proposals”) to the adjudicator, the committee must also refer to the adjudicator any proposals published under section 28, 28A, 29 or 31 of the School Standards and Framework Act 1998 (c. 31) which relate to the area of the local education authority, if they are satisfied that the proposals are related to the relevant proposals.

- (5) In deciding under sub-paragraph (4) whether any proposals are related to other proposals the school organisation committee must have regard to any guidance given from time to time by the Secretary of State.

Effect of reference to adjudicator

- 6 (1) Where any proposals are referred to the adjudicator under paragraph 4(2)(d) or paragraph 5(1) or (2)—
- (a) he must consider the proposals afresh, and
 - (b) sub-paragraphs (2) and (4) to (6) of paragraph 4 (other than sub-paragraph (2)(d) of that paragraph) apply to him in connection with his decision on the proposals as they apply to the committee.
- (2) The revocation of a direction under paragraph 5(2) does not affect the determination by the adjudicator of any proposals referred to him before the revocation.

Proposals to establish Academy

- 7 (1) Regulations may provide that, where proposals submitted to the school organisation committee under paragraph 3 consist of or include proposals to establish an Academy, the committee must within the prescribed period consult the Secretary of State in accordance with regulations, before taking any decision under paragraph 4.
- (2) The school organisation committee may not approve under paragraph 4 proposals to establish an Academy unless the Secretary of State, on being consulted under sub-paragraph (1), has indicated in accordance with regulations that, if the proposals were approved, he would be willing to commence negotiations with a view to entering into an agreement under section 482 of the Education Act 1996 (c. 56) for the establishment of an Academy.
- (3) If a direction under paragraph 5(2) is in force in relation to a school organisation committee and the case does not fall within paragraph 5(3), the reference in sub-paragraph (1) to the committee is to be read as a reference to the adjudicator.
- (4) Sub-paragraph (2) has effect in relation to a decision of an adjudicator under paragraph 4 as it has effect in relation to a decision of the school organisation committee under that paragraph.
- (5) Approval under paragraph 4 by the school organisation committee or the adjudicator of proposals to establish an Academy does not oblige the Secretary of State to enter into, or seek to enter into, an agreement under section 482 of the Education Act 1996.

Provision of information

- 8 Regulations may, in relation to any proposals published under section 66, require any of the following—
- (a) the authority or promoters who published the proposals,
 - (b) the school organisation committee, and
 - (c) the adjudicator,
- to provide such information relating to the proposals to such persons, and at such times, as may be prescribed.

PART 3

DETERMINATION BY LEA WHETHER TO IMPLEMENT PROPOSALS

- 9 (1) Where the only proposals published in pursuance of a notice published under section 66 by a local education authority are proposals published by that authority by virtue of subsection (8)(b) of that section and either—
- (a) no objections were made in accordance with regulations under paragraph 3, or
 - (b) all objections so made were withdrawn in writing within the period prescribed under the regulations as that within which any objections must be made,
- then (subject to the following provisions of this paragraph) the authority must 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 must notify the school organisation committee and the Secretary of State of any determination made by the authority under sub-paragraph (1).
- (3) The requirement to make a determination under sub-paragraph (1) in the case of any proposals applies only 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 by the authority under section 28(1) or 28A(1) of the School Standards and Framework Act 1998 (c. 31) to establish a new community or foundation school in the area of the authority,
 - (b) any undetermined proposals published under section 28(2) or 28A(2) of that Act to establish a new voluntary or foundation school in the area of the authority,
 - (c) any undetermined proposals published under Schedule 7 to the Learning and Skills Act 2000 (c. 21),
 - (d) any undetermined proposals published under section 113A of the Learning and Skills Act 2000, if those proposals are of a description prescribed for the purposes of this paragraph,
 - (e) any undetermined proposals made under section 51 of the Further and Higher Education Act 1992 (c. 13), if those proposals are of a description so prescribed, or
 - (f) any direction under paragraph 3(2) or 4(2) of Schedule 11 to this Act.
- (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 4 of this Schedule, under paragraph 9 or 10 of Schedule 11 to this Act, under paragraph 3 of Schedule 6 to the School Standards and Framework Act 1998, or under Schedule 7 or 7A to the Learning and Skills Act 2000, or
 - (b) the authority have not determined under this paragraph whether to implement them, or
 - (c) the Secretary of State has not made a decision as to whether or not to make an order under section 16 or 27 of the Further and Higher Education Act 1992,

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as the case may be; and when deciding under sub-paragraph (3) whether proposals are related to other proposals the authority must have regard to any guidance given from time to time by the Secretary of State.

- (5) The authority may, if they think it appropriate to do so and subject to regulations, refer to the school organisation committee any proposals which would otherwise fall to be determined by the authority under this paragraph.
- (6) 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),
 - (b) the requirement to make such a determination does not apply by virtue of sub-paragraph (3), or
 - (c) the authority refer the proposals to the school organisation committee,
- the proposals must be considered afresh under paragraph 4.

PART 4

IMPLEMENTATION OF PROPOSALS

Requirement to implement proposal to establish maintained school

- 10 (1) Where—
- (a) any proposals to establish a community, foundation or voluntary school have been approved under paragraph 4, or
 - (b) a local education authority have determined under paragraph 9 to implement any such proposals,
- then (subject to the following provisions of this paragraph) the proposals must be implemented, in the form in which they were so approved or determined, in accordance with this Part of this Schedule.
- (2) At the request of any prescribed person, the school organisation committee—
- (a) may modify the proposals after consulting such persons as may be prescribed, and
 - (b) where any approval was given in accordance with paragraph 4(5), may specify a later date by which the event in question must occur.
- (3) If, after consulting such persons as may be prescribed, the school organisation 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 4 that implementation of the proposals would be inappropriate,
- the committee may determine that sub-paragraph (1) is to 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 authority or promoters who published the proposals referred to in sub-paragraph (1); and regulations may provide for any of the provisions of Parts 1 and 2 of this Schedule to have effect in relation to any such further proposals with or without modifications.

- (5) The committee—
- (a) may, if they think it appropriate to do so and subject to regulations, refer to the adjudicator any matter which would otherwise fall to be determined by the committee under this paragraph, and
 - (b) in prescribed cases, must refer to the adjudicator any such matter.
- (6) Where any matter is referred to the adjudicator under this paragraph—
- (a) he must consider the matter afresh, and
 - (b) such of the provisions of sub-paragraphs (2) to (4) above as are relevant shall apply to him in connection with his decision on that matter as they apply to the committee.

Proposals not falling to be implemented

- 11 (1) Where, by virtue of paragraph 10(3), paragraph 10(1) ceases to apply to any proposals, those proposals are to be treated for the purposes of this Schedule as if they had been rejected under paragraph 4.
- (2) Where—
- (a) any approval under paragraph 4 was given in accordance with paragraph 4(5), and
 - (b) the event specified under paragraph 4(5) does not occur by the date in question (whether as specified under that provision or as specified under paragraph 10(2)(b)),
- paragraph 10(1) ceases to apply to the proposals.
- (3) Where, by virtue of sub-paragraph (2), paragraph 10(1) ceases to apply to any proposals approved by the school organisation committee under paragraph 4, those proposals must be considered afresh by the committee under that paragraph.
- (4) Where, by virtue of sub-paragraph (2), paragraph 10(1) ceases to apply to any proposals approved by the adjudicator under paragraph 4, those proposals must be considered afresh by him under that paragraph (and paragraph 6 applies accordingly).

Requirement to implement proposals relating to community school

- 12 Proposals to establish a community school which fall to be implemented under paragraph 10 must be implemented by the local education authority that made them.

Requirement to implement proposals relating to foundation or voluntary controlled school

- 13 (1) This paragraph applies to proposals to establish a foundation or voluntary controlled school which fall to be implemented under paragraph 10.
- (2) Proposals made by a local education authority must be implemented by the authority.
- (3) In any other case, the proposals must be implemented by the local education authority which published them and the promoters, respectively, to such extent (if any) as the proposals provide for each of them to do so.
- (4) Where a local education authority are required under sub-paragraph (2) or (3) to provide a site for a proposed foundation or voluntary controlled school, paragraph 16 of Schedule 6 to the School Standards and Framework Act 1998 (c. 31) (provision

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of site and buildings for a foundation, voluntary controlled or foundation special school) applies as it applies in the circumstances mentioned in sub-paragraph (1) of that paragraph.

Requirement to implement proposals relating to voluntary aided school

- 14 (1) This paragraph applies to proposals to establish a voluntary aided school which fall to be implemented under paragraph 10.
- (2) The proposals must be implemented—
- (a) so far as relating to the provision of any relevant premises for the school, by the local education authority which published the proposals, and
 - (b) otherwise by the promoters.
- (3) In sub-paragraph (2) “relevant premises” means—
- (a) in a case where it is proposed to establish the school at the site specified in the notice under section 66, that site or playing fields, and
 - (b) in any other case, playing fields.
- (4) Sub-paragraphs (5) to (7) apply where a local education authority are required, by virtue of sub-paragraph (2)(a), to provide for a school the site specified in a notice under section 66.
- (5) The authority must transfer their interest in the site and in any buildings on it which are to form part of the school premises—
- (a) 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 school’s foundation body, to be held by that body for the purposes of the schools comprising the group for which that body acts.
- (6) If any doubt or dispute arises as to the persons to whom the authority are required to make a transfer under sub-paragraph (5), it is to be made to such persons as the Secretary of State thinks proper.
- (7) The authority must pay to the persons to whom the transfer is made their reasonable costs in connection with the transfer.
- (8) Paragraph 17 of Schedule 6 to the School Standards and Framework Act 1998 (c. 31) (grants in respect of certain expenditure relating to voluntary aided schools) applies in relation to the obligation under sub-paragraph (2)(b) of this paragraph as it applies in relation to the obligations referred to in sub-paragraph (1)(b) of that paragraph.
- (9) Paragraph 19 of that Schedule (assistance from LEA in respect of voluntary aided schools) applies in relation to the obligation under sub-paragraph (2)(b) of this paragraph as it applies in relation to the obligations referred to in that paragraph, and paragraph 20 of that Schedule (duty on LEA to transfer interest in premises provided under paragraph 19) applies accordingly.

Proposals relating to Academy

- 15 Where proposals to establish an Academy published under section 66 are implemented by the Secretary of State making an agreement under section 482 of

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the Education Act 1996 (c. 56), subsection (3) of that section (requirement to consult certain LEAs about the establishment of the school) does not apply.