

## SCHEDULES

### SCHEDULE 11

Section 67

#### RATIONALISATION OF SCHOOL PLACES IN ENGLAND

##### PART 1

###### INTRODUCTORY

- 1 In this Schedule “the 1998 Act” means the School Standards and Framework Act 1998 (c. 31).
- 2 In this Schedule—
  - (a) “powers to make or invite proposals for the establishment, alteration or discontinuance of schools” means all or any of the powers of the local education authority—
    - (i) to publish proposals under section 28, 28A, 29 or 31 of the 1998 Act, or
    - (ii) to publish a notice under section 66 of this Act and then, if they think fit, proposals of their own under subsection (5)(b) of that section;
  - (b) “powers to make proposals for the alteration of their school”, in relation to the governing body of a foundation, voluntary or foundation special school, means their powers to publish proposals under section 28(2)(b) or 31(2)(a) of the 1998 Act.

##### PART 2

###### DIRECTIONS TO BRING FORWARD PROPOSALS

###### *Directions to bring forward proposals to remedy excessive provision*

- 3 (1) This paragraph applies where the Secretary of State is of the opinion that the provision for primary or secondary education in maintained schools—
  - (a) in the area of any local education authority in England, or
  - (b) in any part of such an area,is excessive.
- (2) For the purpose of remedying the excess, the Secretary of State may—
  - (a) direct the local education authority to exercise their powers to make or invite proposals for the establishment, alteration or discontinuance of schools, and
  - (b) in the case of any foundation, voluntary or foundation special school maintained by the authority, direct the governing body to exercise their powers to make proposals for the alteration of their school.

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- (3) A direction under sub-paragraph (2) must—
  - (a) require the direction to be complied with not later than such date as may be specified in the direction, and
  - (b) require the body to whom the direction is given to apply such principles in giving effect to the direction as may be specified in the direction.
- (4) A direction under sub-paragraph (2)(a) may not require the proposals to relate to any named school.
- (5) Where any proposals under the 1998 Act are published in pursuance of a direction under sub-paragraph (2), the body concerned must (in addition to complying with section 28(6), 28A(6), 29(5) or 31(5) of the 1998 Act) send—
  - (a) a copy of the published proposals, and
  - (b) such information in connection with those proposals as may be prescribed, to the Secretary of State.
- (6) Where a notice under section 66 is published in pursuance of a direction under sub-paragraph (2), the local education authority concerned must send—
  - (a) a copy of the published notice, and
  - (b) a copy of any proposals published under that section in pursuance of the notice,
 to the Secretary of State.

*Directions to bring forward proposals to remedy insufficient provision*

- 4 (1) This paragraph applies where the Secretary of State is of the opinion that the provision for primary or secondary education in maintained schools—
  - (a) in the area of any local education authority in England, or
  - (b) in any part of such an area,
 is, or is likely to become, insufficient.
- (2) The Secretary of State may—
  - (a) direct the local education authority to exercise their powers to make or invite proposals for the establishment, alteration or discontinuance of schools, and
  - (b) in the case of any foundation, voluntary or foundation special school maintained by the authority, direct the governing body to exercise their powers to make proposals for the alteration of their school,
 with a view (in each case) to securing that provision is made for such additional number of pupils in the area, or in any such part of the area, as may be specified in the direction.
- (3) A direction under sub-paragraph (2) must—
  - (a) require the direction to be complied with not later than such date as may be specified in the direction, and
  - (b) require the body to whom the direction is given to apply such principles in giving effect to the direction as may be specified in the direction.
- (4) An order under sub-paragraph (2)(a) may not require the proposals to relate to any named school.

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- (5) Where any proposals under the 1998 Act are published in pursuance of a direction under sub-paragraph (2), the body concerned must (in addition to complying with section 28(6), 28A(6), 29(5) or 31(5) of the 1998 Act) send—
- (a) a copy of the published proposals, and
  - (b) such information in connection with those proposals as may be prescribed, to the Secretary of State.
- (6) Where a notice under section 66 is published in pursuance of a direction under sub-paragraph (2), the local education authority concerned must send—
- (a) a copy of the published notice, and
  - (b) a copy of any proposals published under that section in pursuance of the notice,
- to the Secretary of State.

#### *Supplementary provisions*

- 5 (1) Where the Secretary of State gives a direction under paragraph 3(2) or 4(2) in relation to the area of any local education authority, he must send a copy of the direction—
- (a) to the school organisation committee for the area, and
  - (b) to any adjudicator who appears to him to be likely to be considering proposals in relation to that area.
- (2) Where the school organisation committee or any adjudicator receive a copy of the direction under sub-paragraph (1), the committee or adjudicator must send to the Secretary of State—
- (a) a copy of all proposals relating to the area which have been received by them or him but have not been determined by the relevant time, and
  - (b) a copy of all proposals relating to the area, other than any made under paragraph 7, which they receive after the relevant time.
- (3) Where sub-paragraph (2) applies, then unless the Secretary of State gives his consent—
- (a) neither the school organisation committee nor the adjudicator may make any determination, and
  - (b) the school organisation committee may not make any reference to the adjudicator under paragraph 3 of Schedule 6 to the 1998 Act, under paragraph 4(2)(d) or 5(1) of Schedule 10, or under paragraph 9 of this Schedule,
- in relation to any proposals within sub-paragraph (2) during the period beginning with the relevant time and ending with the time when the Secretary of State notifies the committee or the adjudicator, as the case may be, that they or he may make any such determination or reference in relation to those proposals without the Secretary of State's consent.
- (4) The duty of the school organisation committee or any adjudicator to send copies of the proposals to the Secretary of State under sub-paragraph (2) terminates at the end of the period mentioned in sub-paragraph (3).
- (5) In sub-paragraphs (2) and (3)—

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- (a) references to the relevant time, in relation to the school organisation committee or to any adjudicator, are to the time when they or he receive under sub-paragraph (1) a copy of the direction,
  - (b) references to proposals are to proposals made under section 28, 28A, 29 or 31 of the 1998 Act, Schedule 7 to the Learning and Skills Act 2000 (c. 21), section 66 of this Act or paragraph 7 of this Schedule, and
  - (c) references to the determination of any proposals are to—
    - (i) any determination whether or not to approve the proposals under paragraph 3 of Schedule 6 to the 1998 Act,
    - (ii) any determination whether or not to approve the proposals under Schedule 7 to the Learning and Skills Act 2000 (c. 21),
    - (iii) any determination whether or not to approve the proposals under paragraph 4 of Schedule 10, or
    - (iv) any determination whether or not to approve the proposals under paragraph 9 or 11 of this Schedule.
- 6 (1) Where a local education authority publish any proposals under section 28, 28A, 29 or 31 of the 1998 Act in pursuance of a direction under paragraph 3(2) or 4(2), those proposals require approval under paragraph 3 of Schedule 6 to the 1998 Act, despite anything in paragraph 3(1)(a) or 4 of that Schedule.
- (2) Proposals made by any person under section 28, 28A, 29 or 31 of the 1998 Act in pursuance of a direction given to that person under paragraph 3(2) or 4(2) may not be withdrawn without the consent of the Secretary of State and such consent may be given on such conditions (if any) as the Secretary of State considers appropriate.
- (3) Where the governing body of a foundation, voluntary or foundation special school make any proposals in pursuance of a direction given to the governing body under paragraph 3(2)(b) or 4(2)(b), the local education authority must reimburse any expenditure reasonably incurred by the governing body in making the proposals.
- (4) Where—
- (a) proposals made by the governing body of a foundation, voluntary or foundation special school in pursuance of any such direction under paragraph 3(2)(b) or 4(2)(b) are approved, or as the case may be, determined to be implemented, or
  - (b) proposals approved under paragraph 9 or 11 have effect as mentioned in paragraph 13(b),
- then, despite anything in Part 3 of Schedule 6 to the 1998 Act, the local education authority must defray the cost of implementing the proposals.

### PART 3

#### PROPOSALS BY SECRETARY OF STATE

- 7 (1) Where—
- (a) in relation to the area of any local education authority or any part of such an area, the Secretary of State—
    - (i) has given the local education authority a direction under paragraph 3(2)(a) or 4(2)(a) to make proposals for the establishment, alteration or discontinuance of schools, or

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- (ii) has given the governing body of a foundation, voluntary or foundation special school a direction under paragraph 3(2)(b) or 4(2)(b) to make proposals for the alteration of their school, and
    - (b) any of the conditions in sub-paragraph (3) is met,
- he may make any such proposals as might have been made in accordance with the direction relating to that area or that part of that area by the person to whom the direction was given.
- (2) In determining for the purposes of sub-paragraph (1) what proposals might have been made by a local education authority under section 28A of the 1998 Act, it is to be assumed that no notice under section 66 of this Act has been published and that the Secretary of State consents to the publication of the proposals under section 28A.
  - (3) The conditions referred to in sub-paragraph (1)(b) are—
    - (a) that the person to whom the direction was given has failed to publish within the time specified in the direction proposals under section 28, 28A, 29 or 31 of the 1998 Act or a notice under section 66,
    - (b) that the person to whom the direction was given has published proposals under section 28, 28A, 29 or 31 of the 1998 Act but it appears to the Secretary of State that the proposals are inadequate,
    - (c) that a notice under section 66 has been published in pursuance of the direction but the period within which proposals must be published under subsection (8)(a) or (b) of that section has passed without any proposals being published, or
    - (d) that proposals have been published under (8)(a) or (b) of section 66 in pursuance of a notice published in pursuance of the direction but either—
      - (i) every set of proposals has been withdrawn, or
      - (ii) every set of proposals, apart from any that has been withdrawn, appears to the Secretary of State to be inadequate.
  - (4) Proposals under this paragraph must—
    - (a) contain such information, and
    - (b) be published in such manner,as may be prescribed.
  - (5) The Secretary of State must send a copy of the proposals to the school organisation committee for the area to which the proposals relate.

## PART 4

### PROCEDURE FOR DEALING WITH PROPOSALS UNDER PARAGRAPH 7

#### *Objections*

- 8 (1) Any person may make objections to, or comments on, any proposals published under paragraph 7.
- (2) Objections or comments under this paragraph—
  - (a) must be sent to the school organisation committee for the area to which those proposals relate, and
  - (b) must be so sent within such period as may be prescribed.

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### *Approval of proposals*

- 9 (1) Proposals published under paragraph 7 require the approval of the school organisation committee under this paragraph or of the adjudicator under paragraph 11.
- (2) Where the school organisation committee receive a copy of the proposals published under paragraph 7, they must (subject to sub-paragraph (3) and (8)) either—
- (a) approve them without modification, or
  - (b) approve them with such modifications as the committee thinks desirable and to which the Secretary of State consents, or
  - (c) refer them to the adjudicator under sub-paragraph (6) or (7).
- (3) The committee may, if they think it appropriate to do so and subject to regulations, refer to the adjudicator any proposals which would otherwise fall to be dealt with by them under sub-paragraph (2).
- (4) Any approval given under this paragraph may, with the consent of the Secretary of State, 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.
- (5) When deciding whether or not to give any approval under this paragraph the committee must have regard to any guidance given from time to time by the Secretary of State.
- (6) 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 Secretary of State requests the committee to refer his proposals to the adjudicator,
- the committee must refer the Secretary of State's proposals to the adjudicator.
- (7) If the committee—
- (a) have voted on any matter which (in accordance with regulations under paragraph 5 of Schedule 4 to the 1998 Act) falls to be decided by them under this paragraph by a unanimous decision but have failed to reach such a decision on the matter, or
  - (b) have decided not to give any approval under this paragraph,
- the committee must refer the Secretary of State's proposals to the adjudicator.
- (8) 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 this paragraph 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 this paragraph until the direction is revoked.
- (9) Where a school organisation committee refer any proposals to the adjudicator under sub-paragraph (6), (7) or (8), they must also refer to him any comments of the committee on the proposals.

- (10) Sub-paragraph (1) does not prevent the Secretary of State from withdrawing any proposals published under paragraph 7 by notice in writing given to the school organisation committee at any time before the proposals are determined under this paragraph or paragraph 11.

*Reference to adjudicator of other proposals*

- 10 (1) Where any proposals are referred to the adjudicator under paragraph 9, the school organisation committee must also refer to him—
- (a) any other proposals published under paragraph 7 in relation to the area of the local education authority (and not withdrawn),
  - (b) any proposals made by that authority in the exercise of their powers to make or invite proposals for the establishment, alteration or discontinuance of schools (and not withdrawn),
  - (c) any proposals published by that authority under section 66(8)(a) of this Act (and not withdrawn),
  - (d) any proposals made by the governing body of any community, foundation, voluntary or foundation special school in the area in the exercise of their powers to make proposals for the alteration of their school (and not withdrawn), and
  - (e) any proposals published under Schedule 7 to the Learning and Skills Act 2000 (c. 21) (and not withdrawn),
- where those proposals are not determined before the adjudicator holds an inquiry under paragraph 11(1) and appear to the committee to be related to the proposals referred by them to the adjudicator under paragraph 9.
- (2) Sub-paragraph (1) applies to any proposals within that sub-paragraph whether or not the proposals have been previously referred to the adjudicator by the committee.
- (3) References in this paragraph to the determination of any proposals are to—
- (a) any determination whether or not to approve the proposals under paragraph 3 of Schedule 6 to the 1998 Act, paragraph 4 of Schedule 10 to this Act, sub-paragraph (2)(a) or (b) of paragraph 9 or paragraph 11(3) of this Schedule, or
  - (b) any determination whether or not to approve the proposals under Schedule 7 to the Learning and Skills Act 2000.

*Local inquiry into proposals*

- 11 (1) Where any proposals are referred to the adjudicator under paragraph 9, he must hold a local inquiry to consider—
- (a) those proposals,
  - (b) any additional proposals referred to him under paragraph 10(1),
  - (c) any objections or comments made (under paragraph 2 of Schedule 6 to the 1998 Act, paragraph 3 of Schedule 10 to this Act or paragraph 8 of this Schedule) to any proposals within paragraph (a) or (b) unless such objections or comments have been withdrawn, and
  - (d) any views expressed by the school organisation committee on any such proposals.
- (2) It is not open to the inquiry to question the principles specified in the direction under paragraph 3(2) or 4(2).

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- (3) After holding the inquiry, the adjudicator must, in the case of any proposals considered at the inquiry, either—
  - (a) approve them with or without modifications, or
  - (b) reject them.
- (4) 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.
- (5) When deciding whether or not to give any approval under this paragraph, paragraph 9(5) applies to the adjudicator as it does to the committee.

#### *Proposals relating to Academy*

- 12 (1) Regulations may provide that, where proposals referred to the adjudicator under paragraph 10(1) consist of or include proposals to establish an Academy, the adjudicator must within the prescribed period consult the Secretary of State in accordance with regulations, before taking any decision under that paragraph.
- (2) The adjudicator may not approve under paragraph 11 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) Approval under paragraph 11 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.

#### *Implementation of proposals*

- 13 Proposals approved by the school organisation committee under paragraph 9 or by the adjudicator under paragraph 11 have effect as if they—
  - (a) had been made by the local education authority under their powers to make or invite proposals for the establishment, alteration or discontinuance of schools, or
  - (b) in any case where the proposals are for the alteration of a foundation, voluntary or foundation special school, had been made by the governing body under their powers to make proposals for the alteration of their school, and had been approved by the school organisation committee or the adjudicator, as the case may be, under paragraph 3 of Schedule 6 to the 1998 Act or, in the case of proposals to establish an Academy, under paragraph 4 of Schedule 10 to this Act.

### **PART 5**

#### TRANSITIONAL EXEMPTION ORDERS FOR PURPOSES OF SEX DISCRIMINATION ACT 1975

- 14 (1) This paragraph applies to proposals for a school in England to cease to be an establishment which admits pupils of one sex only.



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- (2) Sub-paragraph (3) applies where such proposals are made under paragraph 7 and, in accordance with sub-paragraph (5) of that paragraph, the Secretary of State sends a copy of the published proposals to the school organisation committee.
- (3) The sending of the published proposals to the school organisation committee by the Secretary of State is to 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) on whether to make a transitional exemption order, or
  - (b) the school organisation committee refer the proposals to the adjudicator under paragraph 9,
- they must refer the question whether to make a transitional exemption order to the adjudicator.
- (5) Where that question is referred to the adjudicator—
- (a) he must consider the matter afresh, and
  - (b) he may make a transitional exemption order accordingly.
- (6) In this paragraph—
- “the 1975 Act” means the Sex Discrimination Act 1975 (c. 65);
  - “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;
  - “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 of a school’s admission arrangements as is mentioned in section 27(1) of the 1975 Act (single-sex establishments becoming co-educational).