

*Changes to legislation: There are currently no known outstanding effects for the Education Act 2011, SCHEDULE 11. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 11 **E+W**

Section 37

#### ESTABLISHMENT OF NEW SCHOOLS

##### *Amendments to Part 2 of EIA 2006*

- 1 Part 2 of EIA 2006 (establishment, discontinuance and alteration of schools) is amended as follows.

#### **Commencement Information**

- I1** Sch. 11 para. 1 in force at 1.2.2012 for specified purposes by S.I. 2012/84, art. 3 (with art. 4)  
**I2** Sch. 11 para. 1 in force at 1.9.2012 for specified purposes by S.I. 2012/2213, art. 2

- 2 Before section 7 insert—

#### **Requirement to seek proposals for establishment of new Academies**

- “6A (1) If a local authority in England think a new school needs to be established in their area, they must seek proposals for the establishment of an Academy.
- (2) The local authority must specify a date by which any proposals sought under subsection (1) must be submitted to them.
- (3) After the specified date, the local authority must notify the Secretary of State—
- (a) of the steps they have taken to seek proposals for the establishment of an Academy, and
- (b) of any proposals submitted to them as a result before the specified date, or of the fact that no such proposals have been submitted to them before that date.
- (4) A notification under subsection (3) must—
- (a) identify a possible site for the Academy, and
- (b) specify such matters as may be prescribed.”

#### **Commencement Information**

- I3** Sch. 11 para. 2 in force at 1.2.2012 for specified purposes by S.I. 2012/84, art. 3 (with art. 4)  
**I4** Sch. 11 para. 2 in force at 1.9.2012 for specified purposes by S.I. 2012/2213, art. 2

- 3 In section 7 (invitation for proposals for establishment of new schools)—
- (a) in subsection (1), after “may” insert “ with the consent of the Secretary of State ”;
- (b) in subsection (5), omit paragraph (b) and the “and” immediately before it;

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- (c) omit subsection (5A);
- (d) in subsection (6), insert “ and ” at the end of paragraph (a) and omit paragraph (c) and the “and” immediately before it.

**Commencement Information**

**I5** Sch. 11 para. 3 in force at 1.2.2012 by S.I. 2012/84, art. 3 (with art. 4)

4 After section 7 insert—

**“7A Withdrawal of notices under section 7**

- (1) This section applies where a local authority have published a notice under section 7.
- (2) At any time before the date specified in the notice—
  - (a) the local authority may withdraw it, with the consent of the Secretary of State, or
  - (b) the Secretary of State may direct the local authority to withdraw it.”

**Commencement Information**

**I6** Sch. 11 para. 4 in force at 1.2.2012 by S.I. 2012/84, art. 3 (with art. 4)

5 Section 8 (proposals under section 7 relating to community or community special schools) is repealed.

**Commencement Information**

**I7** Sch. 11 para. 5 in force at 1.2.2012 by S.I. 2012/84, art. 3 (with art. 4)

6 (1) Section 10 (publication of proposals with consent of Secretary of State) is amended as follows.

- (2) In subsection (1), for the words from “(otherwise” to the end substitute “a new community, community special, foundation or foundation special school, which—
  - (a) is not to be one providing education suitable only to the requirements of persons above compulsory school age, and
  - (b) is to replace one or more maintained schools, except where section 11(A2) applies or in a case within section 11(A3).”

- (3) In subsection (2)—
  - (a) after “voluntary” insert “ controlled ”;
  - (b) in paragraph (b), for “(2)(b) or (c)” substitute “ (2) ”.

**Commencement Information**

**I8** Sch. 11 para. 6 in force at 1.2.2012 by S.I. 2012/84, art. 3 (with art. 4)

7 (1) Section 11 (publication of proposals to establish maintained schools: special cases) is amended as follows.

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(2) Before subsection (1) insert—

“(A1) Subsection (A2) applies where a local authority in England publish a notice under section 7 (notice inviting proposals for establishment of new schools), and—

- (a) no proposals are made pursuant to the notice, or
- (b) proposals are made pursuant to the notice but none of the proposals are approved under Schedule 2 or result in Academy arrangements being entered into.

(A2) The local authority may publish under this section proposals of their own to establish a new community, community special, foundation or foundation special school, which is not to be one providing education suitable only to the requirements of persons above compulsory school age.

(A3) Where a local authority in England propose to establish a new community, community special, foundation or foundation special school, which—

- (a) is to be a primary school, and
- (b) is to replace a maintained infant school and a maintained junior school,

the authority must publish their proposals under this section.”

(3) After subsection (1) insert—

“(1A) Where any persons (“proposers”) propose to establish a new voluntary aided school in England, they may publish their proposals under this section.”

(4) In subsection (2)—

- (a) after “voluntary” insert “ controlled ”;
- (b) before paragraph (b) insert—
  - “(aa) is to replace one or more foundation or voluntary schools which have a religious character,”.

(5) After subsection (2) insert—

“(2A) For the purposes of subsection (2)(aa), a new foundation or voluntary controlled school replaces a foundation or voluntary school which has a religious character if it is proposed that the new school—

- (a) should have the same religious character,
- (b) should have a different religious character, or
- (c) should not have a religious character.”

(6) In subsection (3), after “voluntary” insert “ controlled ”.

(7) In subsection (7), after “subsection” insert “ (1A) or ”.

(8) For subsection (9) substitute—

“(9) In this section—

“maintained infant school” means a maintained school that provides primary education suitable to the requirements of children of compulsory school age who have not attained the age of 8;

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“maintained junior school” means a maintained school that provides primary education suitable to the requirements of junior pupils who have attained the age of 7;

“non-maintained special school” means a school which is approved under section 342 of EA 1996.”

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**Commencement Information**

**I9** Sch. 11 para. 7 in force at 1.2.2012 by S.I. 2012/84, art. 3 (with art. 4)

- 8 In section 11A(1) (restriction on power of governing body to make proposals), for “11(2)” substitute “ 11(1A) or (2) ”.

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**Commencement Information**

**I10** Sch. 11 para. 8 in force at 1.2.2012 by S.I. 2012/84, art. 3 (with art. 4)

- 9 In section 12 (establishment of school as a federated school), in subsection (1), after “new” insert “ maintained ”.

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**Commencement Information**

**I11** Sch. 11 para. 9 in force at 1.2.2012 by S.I. 2012/84, art. 3 (with art. 4)

- 10 (1) Schedule 2 (consideration, approval and implementation of proposals for establishment or discontinuance of schools in England) is amended as follows.

- (2) After paragraph 3 insert—

“ “Academy proposals” and “non-Academy proposals”

- 3A In this Schedule—

- (a) “Academy proposals” means proposals under section 7 for the establishment of an Academy, and
- (b) “non-Academy proposals” means proposals under section 7 for the establishment of a school falling within subsection (2)(a) of that section.”

- (3) In paragraph 4(a) (references to persons by whom proposals under section 7 are made), omit “or in the case of proposals published by the relevant authority under subsection (5)(b) of that section, by the relevant authority,”.

- (4) In paragraph 5(b) (requirement to forward objections and comments made in relation to proposals)—

- (a) for “referred to” substitute “ to be considered by the Secretary of State or ”;
- (b) after “forward to” insert “ the Secretary of State or (as the case may be) ”.

- (5) In the heading to Part 2, omit “by Local Authority or Adjudicator”.

- (6) For the heading before paragraph 6 substitute “ *Consideration of proposals* ”.

- (7) Before paragraph 6 insert—

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- “5A (1) Academy proposals do not require consideration under paragraph 8 (see paragraph 7A instead).
- (2) If proposals under section 7 consist wholly of non-Academy proposals, the proposals require consideration under paragraph 8.
- (3) If proposals under section 7 include both Academy proposals and non-Academy proposals, the non-Academy proposals do not require consideration under paragraph 8 unless and until paragraph 7A(5) or (6) applies.”
- (8) In paragraph 6 (proposals under section 7, 10 or 11 requiring consideration under paragraph 8), omit “7,”.
- (9) After paragraph 7 insert—
- “7A (1) This paragraph applies where proposals under section 7 consist of or include Academy proposals.
- (2) The Secretary of State must decide whether to enter into Academy arrangements as a result of any of the Academy proposals.
- (3) The Secretary of State must notify the relevant authority of a decision under sub-paragraph (2).
- (4) Sub-paragraphs (5) and (6) apply where the proposals under section 7 include non-Academy proposals.
- (5) If the Secretary of State decides not to enter into Academy arrangements as a result of any of the Academy proposals, the non-Academy proposals require consideration under paragraph 8.
- (6) In any other case, the Secretary of State may direct that all or any of the non-Academy proposals require consideration under paragraph 8.”
- (10) Omit the heading before paragraph 8.
- (11) In paragraph 9 (consideration of proposals that are related to other proposals), for sub-paragraph (2) substitute—
- “(2) Where proposals within sub-paragraph (2A) appear to the relevant authority to be related to other proposals within that sub-paragraph that have not yet been determined, the authority must consider the proposals together.
- (2A) The proposals within this sub-paragraph are—
- (a) proposals under section 7 that require consideration by the authority under paragraph 8;
- (b) proposals under section 10, 11 or 15.”
- (12) In paragraph 10(1) (duty to refer to adjudicator certain proposals made by or involving relevant authority), for paragraph (a) substitute—
- “(a) all the proposals published under section 7 in response to a notice under that section and which—
- (i) would otherwise require consideration by the authority under paragraph 8, and

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- (ii) consist of or include proposals which relate to the establishment of a foundation school with a foundation falling within sub-paragraph (2);”.
- (13) In paragraph 12 (duty to refer proposals to adjudicator in pursuance of direction of Secretary of State)—
  - (a) in sub-paragraph (1)(a)—
    - (i) after “section 7” insert “ and which require consideration under paragraph 8 ”;
    - (ii) after “determined by the authority” insert “ under that paragraph ”;
  - (b) in sub-paragraph (1)(b), after “that section” insert “ and which require consideration under paragraph 8, ”;
  - (c) omit sub-paragraphs (2) and (3).
- (14) In paragraph 13 (duty to refer proposals to adjudicator where determination delayed), in paragraph (a), after “section 7” insert “ and which require consideration under paragraph 8 ”.
- (15) Omit paragraph 18 and the heading before it (consultation in respect of proposals to establish Academy).
- (16) In paragraph 19(4) (determination whether or not to implement proposals under section 15 not requiring consideration under paragraph 8)—
  - (a) after paragraph (a) insert—
    - “(aa) proposals published under section 7 that require consideration under paragraph 8 and are not yet determined;”;
  - (b) in paragraph (b), omit “7.”.
- (17) Omit paragraph 27 (proposals relating to Academy: implementation).

**Commencement Information**

**I12** Sch. 11 para. 10 in force at 1.2.2012 by S.I. 2012/84, art. 3 (with art. 4)

*Other amendments*

- 11 In Schedule 2 to AA 2010 (Academies: amendments), omit paragraph 22.

**Commencement Information**

**I13** Sch. 11 para. 11 in force at 1.2.2012 by S.I. 2012/84, art. 3 (with art. 4)

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