

**2005 No. 1731**

**EDUCATION, ENGLAND**

**The Education (Change of Category of Maintained Schools) (Amendment) (England) Regulations 2005**

<i>Made</i> - - - - -	<i>29th June 2005</i>
<i>Laid before Parliament</i>	<i>8th July 2005</i>
<i>Coming into force</i> - -	<i>1st August 2005</i>

In exercise of the powers conferred on the Secretary of State, by sections 138(7) and 144 of, and paragraphs 2 and 5 of Schedule 8 to the School Standards and Framework Act 1998<sup>(a)</sup> the Secretary of State for Education and Skills makes the following Regulations:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Education (Change of Category of Maintained Schools) (Amendment) (England) Regulations 2005 and shall come into force on 1st August 2005.

(2) In these Regulations—

“the Principal Regulations” means the Education (Change of Category of Maintained Schools) (England) Regulations 2000<sup>(b)</sup>; and

“the 1998 Act” means the School Standards and Framework Act 1998.

**Amendment of the Principal Regulations**

2. The Principal Regulations shall be further amended as follows.

3. In regulation 2(1)—

(1) after the definition “the Act” there shall be inserted the definition ““the alternative modified Schedule 6 to the Act” means that Schedule as it has effect with modifications by virtue of Schedule 2A to these Regulations”;

(2) in the definition of “the implementation date”, after the words “modified Schedule 6 to the Act” in the second place it appears there shall be inserted “or the date determined by the governing body under the alternative modified Schedule 6 to the Act”; and

(3) at the end of the definition of “proposals” there shall be added “or by a governing body under paragraph 5 of the alternative modified Schedule 6 to the Act.”

4. In regulation 4(1), for “Where” there shall be substituted “Except where paragraph (3) applies, where—”.

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<sup>(a)</sup> 1998 c. 31. By virtue of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I.1999/672) the powers conferred by these provisions are exercisable by the Secretary of State only in relation to England.

<sup>(b)</sup> S.I. 2000/2195 as amended by S.I. 2003/2136.

5. After regulation 4(2) there shall be inserted—

“(3) Subject to paragraph (5), where a governing body propose under paragraph 2 of Schedule 8 to the Act that either a community secondary, or a voluntary controlled secondary school should become a foundation secondary school, sections 28(3), 28(5), 28(6) and 28(8) of and Part I of Schedule 6 to the Act shall apply to the proposals published under paragraph 2 of Schedule 8 of the Act and shall do so with the modifications set out in Schedule 2A.

(4) The provisions of section 28 of and Part I of Schedule 6 to the Act so applied are set out as modified in Schedule 2B.

(5) If at the time when the proposals are published, sections 15 or 17 of, or section 51 of or Schedule 15 to the Act apply to the school, paragraph (3) shall not apply and accordingly paragraph (1) shall apply.”

6. In regulation 11(2) in sub-paragraph (b), after the words “modified Schedule 6 to the Act,” insert—

“or on the date the governing body determine to implement proposals under paragraph 4 of the alternative modified Schedule 6 to the Act”.

7. After Schedule 2, there shall be inserted the following Schedules—

“ **SCHEDULE 2A** Regulation 4(3)

**PROVISIONS OF SECTION 28 OF, AND SCHEDULE 6 TO THE ACT  
HAVING EFFECT IN RELATION TO PROPOSALS MENTIONED IN  
REGULATION 4(3)**

The subsections of section 28 of, and the paragraphs in Part 1 of Schedule 6 to, the Act specified in the left hand column of the table below shall have effect in relation to proposals mentioned in regulation 4 with the modifications specified in the right hand column of the table.

<i>Provision</i>	<i>Modification</i>
Section 28(3)	<p>That subsection shall have the effect as if—</p> <ul style="list-style-type: none"> <li>(a) for “under this section” there were substituted “under paragraph 2 of Schedule 8”; and</li> <li>(b) for sub-paragraphs (a) and (b) and the words “as may be prescribed.” there were substituted— <ul style="list-style-type: none"> <li>“(a) contain the following information—</li> <li>(i) the name of the school for which the governing body are publishing the proposal;</li> <li>(ii) the proposed implementation date;</li> <li>(iii) the relevant contact name (if any) and address of the school’s governing body to where any objections or comments may be sent and the date by which they should be sent;</li> <li>(iv) a statement that it is proposed to change the category of the school (stating the current category of school) to a foundation school;</li> <li>(v) statement that the school will— <ul style="list-style-type: none"> <li>(aa) have or continue to have a foundation established otherwise than under this Act and if it will, the identity of that foundation, or</li> <li>(bb) belong or continue to belong to a group of schools for which a foundation body acts and if it does, the identity of that body and the identity of the other schools in the group for which the body performs or will perform the functions set out in section 21(4), or</li> </ul> </li> </ul> </li> </ul>

<i>Provision</i>	<i>Modification</i>
	<p>(cc) be a foundation school not falling within either of sub-paragraphs (v)(aa) or (bb) above;</p> <p>(vi) details of any trusts on which the school premises are held or it is proposed will be held or any proposed trusts on which it is proposed the school premises will be held;</p> <p>(vii) details of the body or authority to whom, on the date on which it is proposed that the school change category, it is proposed that land should be transferred in accordance with regulations made under paragraph 5 of Schedule 8;</p> <p>(viii)</p> <p>(aa) the name of any person who is entitled to appoint the foundation governors and, if there is more than one such person, the basis upon which such appointments are made,</p> <p>(bb) details of any foundation governorship to be held ex officio by the holder of a named office, and</p> <p>(cc) the name of any person who is entitled to request the removal of any ex officio foundation governor and to appoint any substitute governor;</p> <p>(ix) where the school is to be a foundation school which has a religious character, a description of the religious ethos of the school; and</p> <p>(b) shall be published—</p> <p>(i) by being posted in a conspicuous place in the area served by the school;</p> <p>(ii) in at least one newspaper circulating in the area served by the school; and</p> <p>(iii) by being posted at or near the main entrance to the school, or if there is more than one main entrance, all of them.”</p>
Section 28(5)	That subsection shall have the effect as if for “under this section” there were substituted “under paragraph 2 of Schedule 8”, and for the words “relevant body or promoters” in each of the places these words occur there were substituted “governing body”.
Section 28(6)	That subsection shall have effect as if the following were substituted— “(6) The governing body shall send at the time of publication a copy of the published proposals to the Secretary of State and to the local education authority.”
Section 28(8)	That subsection shall have effect as if the following were substituted— “(8) Schedule 6 as modified shall have effect in relation to the procedure for dealing with proposals under paragraph 2 of Schedule 8.”
Schedule 6 Paragraph 1	That paragraph shall have effect as if— (a) in sub-paragraph (1) for “section 28, 29 or 31” there were substituted “paragraph 2 of Schedule 8” and the words “or proposed school” were omitted; and (b) sub-paragraph (2) were omitted.

<i>Provision</i>	<i>Modification</i>
Schedule 6 Paragraph 2	That paragraph shall have effect as if— (a) in sub-paragraph (1) for “section 28, 29 or 31” there were substituted “paragraph 2 of Schedule 8”; (b) for sub-paragraph (2) there were substituted— “(2) Any objections or comments made under this paragraph shall be sent to the name (if any) and address of the governing body given in the notice published under section 28(3) within 4 weeks from the date of the publication of the proposals.” (c) sub-paragraph (3) were omitted.
Schedule 6 Paragraph 4	That paragraph shall have effect as if— (a) in the heading, for “LEA” there were substituted “governing body”. (b) for sub-paragraph (1) there were substituted— “(1) Where any proposals have been published by a governing body under paragraph 2 of Schedule 8 then (subject to sub-paragraph (2)) that governing body shall after considering all objections and comments which are received on or before the period referred to in paragraph 2(2), determine whether the proposals shall be implemented.” (c) for sub-paragraph (2) there were substituted— “(2) Any determination under sub-paragraph (1) must be made within the period of six months beginning with the date of publication of the proposals, and the governing body shall notify the Secretary of State and the local education authority of any determination made by them under sub-paragraph (1).” (d) sub-paragraphs (3), (4), (4A) and (5) were omitted.
Schedule 6 Paragraph 5	That paragraph shall have effect as if it were omitted and the following were substituted— “5.—(1) Where the governing body have determined under paragraph 4 to implement any proposals published under paragraph 2 of Schedule 8, then (subject to sub-paragraph (2)), the proposals shall be implemented, in the form in which they were so determined in accordance with regulations made under paragraph 5 of Schedule 8. (2) The governing body may modify the implementation date in respect of the proposals after consulting the relevant local education authority.””

**8.** In Schedule 6—

- (1) in paragraph 3(1) before the words “to implement any such proposals”, insert—  
     “or a governing body have determined under paragraph 4 of the alternative modified Schedule 6 to the Act.”
- (2) in paragraph 8(2) for the words “the governing body” there shall be substituted the following—  
     “(a) 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, the governing body.”
- (3) In paragraph 10(1), at the end there shall be added—  
     “or a governing body have determined under paragraph 4 of the alternative modified Schedule 6 to the Act to implement any such proposals.”

(4) In paragraph 10(2) for the words “the governing body” there shall be substituted the following—

- “(a) 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, the governing body.”

(5) In paragraph 16(3)—

- (a) in sub-paragraph (e) the word “or” shall be omitted;
- (b) at the end of sub-paragraph (f) for the full stop, there shall be substituted “; or”; and
- (c) after sub-paragraph (f), there shall be added—
  - “(g) if the governing body decide not to implement proposals initiated pursuant to regulation 4(3).”

(6) In paragraph 17(3) after the words “are approved”, there shall be substituted—

“or have been determined by the governing body (as the case may be)”.

(7) in paragraph 18(2)(a) after the words “are approved”, there shall be substituted—

“or have been determined by a governing body (as the case may be)”.

### **Transitional Provisions**

9. Regulations 1 to 8 shall not have effect in relation to any proposals published under paragraph 2 of Schedule 8 to the 1998 Act before 15th July 2005.

### **Revocation**

10. Regulation 20(3) of the Principal Regulations is revoked.

## **SCHEDULE 2B**

Regulation 4(4)

### **PROVISIONS OF SECTION 28 OF, AND PART 1 TO, SCHEDULE 6 TO THE ACT APPLIED BY SCHEDULE 2A, AS MODIFIED**

“Section 28

(3) Proposals under paragraph 2 of Schedule 8 shall—

- (a) contain the following information—
  - (i) the name of the school for which the governing body are publishing the proposal;
  - (ii) the proposed implementation date;
  - (iii) the relevant contact name (if any) and address of the school’s governing body to where any objections or comments may be sent and the date by which they should be sent;
  - (iv) a statement that it is proposed to change the category of the school (stating the current category of school) to a foundation school;
  - (v) a statement that the school will—
    - (aa) have or continue to have a foundation established otherwise than under this Act and if it will, the identity of that foundation, or
    - (bb) belong or continue to belong to a group of schools for which a foundation body acts and if it does, the identity of that body and the identity of the other schools in the group for which the body performs or will perform the functions set out in 21(4), or
    - (cc) be a foundation school not falling within either of sub-paragraphs (v)(aa) or (bb) above;
  - (vi) details of any trusts on which the school premises are held or it is proposed will be held or any proposed trusts on which it is proposed the school premises will be held;
  - (vii) details of the body or authority to whom, on the date on which it is proposed that the school change category, it is proposed that land should be transferred in accordance with regulations made under paragraph 5 of Schedule 8;

- (viii)
    - (aa) the name of any person who is entitled to appoint the foundation governors and, if there is more than one such person, the basis upon which such appointments are made,
    - (bb) details of any foundation governorship to be held ex officio by the holder of a named office, and
    - (cc) the name of any person who is entitled to request the removal of any ex officio foundation governor and to appoint any substitute governor;
  - (ix) where the school is to be a foundation school which has a religious character, a description of the religious ethos of the school; and
  - (b) shall be published—
    - (i) by being posted in a conspicuous place in the area served by the school;
    - (ii) in at least one newspaper circulating in the area served by the school; and
    - (iii) by being posted at or near the main entrance to the school or, if there is more than one main entrance, all of them.
- (5) Before publishing any proposals under paragraph 2 of Schedule 8, the governing body shall consult such persons as appear to them to be appropriate; and in discharging their duty under this subsection the governing body shall have regard to any guidance given from time to time by the Secretary of State.
- (6) The governing body shall send at the time of publication a copy of the published proposals to the Secretary of State and to the local education authority.
- (8) Schedule 6 as modified shall have effect in relation to the procedure for dealing with proposals under paragraph 2 of Schedule 8.”

## “Schedule 6

### **Application of Part 1**

1.—(1) This Part of this Schedule applies to proposals published under paragraph 2 of Schedule 8 which relate to a school in England.

### **Objections**

2.—(1) Any person may make objections to or comments on any proposals published under paragraph 2 of Schedule 8.

(2) Any objections or comments made under this paragraph shall be sent to the name (if any) and address of the governing body given in the notice published under section 28(3) within 4 weeks from the date of the publication of the proposals.

### **Determination by governing body whether to implement proposals**

4.—(1) Where any proposals have been published by a governing body under paragraph 2 of Schedule 8 then (subject to sub-paragraph (2)) that governing body shall after considering all objections and comments which are received on or before the date referred to in paragraph 2(2), determine whether the proposals shall be implemented.

(2) Any determination under sub-paragraph (1) must be made within the period of six months beginning with the date of publication of the proposals; and the governing body shall notify the Secretary of State and the local education authority of any determination made by them under sub-paragraph (1).

### **Requirement to implement proposals**

5.—(1) Where the governing body have determined under paragraph 4 to implement any proposals published under paragraph 2 of Schedule 8, then (subject to sub-paragraph (2)), the proposals shall be implemented, in the form in which they were so determined in accordance with regulations made under paragraph 5 of Schedule 8.

(2) The governing body may modify the implementation date in respect of the proposals after consulting the relevant local education authority.”

29th June 2005

*Jacqui Smith*  
Minister of State  
Department for Education and Skills

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Education (Change of Category of Maintained) (England) Regulations 2000 (No 2195) (“the Principal Regulations”) to provide for alternative procedures for the determination of proposals for certain community or voluntary schools to change category to foundation.

Regulations 3 and 4 and 6 make minor amendments to the Principal Regulations in connection with the amendments made in regulation 5.

Regulation 5 amends regulation 4 of the Principal Regulations so as to provide that where a governing body propose that either a community secondary or a voluntary controlled secondary school should become a foundation secondary school, sections 28(3), 28(5), 28(6) and 28(8) of and Part 1 of Schedule 6 to the School Standards and Framework Act 1998 (the “Act”) as modified in the new Schedule 2A (see below) shall apply, except where sections 15, 17 of and section 51 of and Schedule 15 to the Act (all of which deal primarily with failing schools) apply to a school.

Regulation 7 inserts a new Schedule 2A to the Principal Regulations which will apply in accordance with the changes made to regulation 4 of the Principal Regulations and makes modifications to sections 28(3), 28(5), 28(6) and 28(8) of and Part 1 of Schedule 6 to the Act.

Regulation 8 makes minor amendments to Schedule 6 to the Principal Regulations in consequence of the amendments made in regulation 5. It also amends paragraphs 8 and 10 of Schedule 6 in order to make these paragraphs consistent with other transfer of land provisions of Schedule 6.

Regulation 9 sets out the transitional provisions in relation to these Regulations.

Regulation 10 revokes regulation 20(3) of the Principal Regulations which is no longer needed.

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the cost of business.

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