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STATUTORY INSTRUMENTS

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**2006 No. 2139**

**EDUCATION, ENGLAND**

**The Education (New Secondary School Proposals) (England) Regulations 2006**

<i>Made</i>	- - - -	<i>2nd August 2006</i>
<i>Laid before Parliament</i>		<i>10th August 2006</i>
<i>Coming into force</i>	- -	<i>1st September 2006</i>

In exercise of the powers conferred upon the Secretary of State by sections 28A(4), (6), (8) and 138 of, and paragraph 5 of Schedule 4 to the School Standards and Framework Act 1998<sup>(1)</sup>, sections 66, 120 and 124 of and paragraphs 3, 4, 5, 7, 8, 9 and 10 of Schedule 10 to, the Education Act 2005<sup>(2)</sup> the Secretary of State for Education and Skills hereby makes the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Education (New Secondary School Proposals) (England) Regulations 2006 and come into force on 1st September 2006.

**Interpretation**

2. In these Regulations—

“extended services” has the meaning given to it in the publication entitled “Extended Schools: Access to Opportunities and Services for All” published by the Department for Education and Skills, dated June 2005 and with ISBN number 1-84478-451-7;

“the Act” means the Education Act 2005;

“the 1992 Act” means the Further and Higher Education Act 1992<sup>(3)</sup>

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

“the 2000 Act” means the Learning and Skills Act 2000<sup>(4)</sup>;

“the 2002 Act” means the Education Act 2002<sup>(5)</sup>;

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(1) [1998 c.31](#); section 28A was inserted by section 65 of the Education Act 2005. Please see section 142 for the definition of “prescribed”.

(2) [2005 c.18](#). Please see section 73 for the definitions of “prescribed” and “regulations”.

(3) [1992 c.13](#).

(4) [2000 c.21](#).

(5) [2002 c.32](#).

“relevant age group” means the age group in which pupils are proposed to be normally admitted to the school;

“sixth form education” means full-time secondary education suitable to the requirements of pupils over compulsory school age;

“the upper and lower age limits” means the highest and lowest ages of pupils for whom it is intended that education is normally provided at the school;

and any reference to section 66 or Schedule 10 is a reference to that section of, or Schedule to, the Act.

### **Information to be contained in a notice inviting proposals**

3. Notices published under section 66 inviting proposals for the establishment of a secondary school falling within section 66(2) must specify the matters listed in Schedule 1 to these Regulations (in addition to the matters required by section 66(3)(a) and (b)).

### **Prescribed interval after which proposals must be submitted to the local education authority**

4. For the purposes of section 66(3)(b) the prescribed interval is an interval of four months from the date of the publication of the notice inviting proposals.

### **Manner of publication of a notice inviting proposals and information which must be sent**

5. Notices inviting proposals for the establishment of a school must—
- (a) be published in at least one newspaper circulating in the area to be served by the school;
  - (b) be sent to any local education authority likely to be affected by the proposals;
  - (c) be sent to the Secretary of State;
  - (d) be sent to—
    - (i) the Diocesan Board of Education<sup>(6)</sup> for any diocese of the Church of England which is comprised in the area of the local education authority;
    - (ii) the local ordinary of a diocese of the Roman Catholic Church which is comprised in the area of the local education authority; and
    - (iii) any other person or organisation that has expressed an interest in writing to the authority in establishing an additional secondary school to serve pupils in the area;
  - (e) be sent to the Learning and Skills Council<sup>(7)</sup> for England;
  - (f) be sent to the adjudicator<sup>(8)</sup>;
  - (g) be sent to any other body or organisation that in the opinion of the local education authority is likely to be interested in the notice;
  - (h) be posted in a conspicuous place in the area to be served by the schools; and
  - (i) in cases where the proposed establishment of a school relates to the discontinuance of another school or schools, be posted at the main entrance to any school which is proposed to be discontinued.

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(6) The Diocesan Board of Education is established under section 1 of the Diocesan Boards of Education measure 1991.

(7) The Learning and Skills Council is established under section 1 of the 2000 Act.

(8) The term “adjudicator” is defined in section 73 of the Act.

## **Consultation**

6.—(1) For the purposes of section 66(4), the local education authority must, before publishing a notice, consult—

- (a) the governing bodies of any schools which are proposed to be discontinued and whose pupils may be expected to transfer to the new school;
- (b) the governing bodies of any primary schools whose pupils might be expected to attend the new school;
- (c) the governing bodies of other maintained schools in the area, including schools in an adjoining local education authority that may be affected by the proposals;
- (d) any other local education authority which might be affected by the establishment of the new school;
- (e) parents, teachers, school staff in the area who may be affected by the proposals, including parents of pupils at feeder primary schools and those living, or who have children attending a school, in the area of an adjoining local education authority and representatives of any trade union of which staff at schools likely to be affected by the proposals are members;
- (f) the Diocesan Board of Education for any diocese of the Church of England which is comprised in the area of the local education authority, the local ordinary of a diocese of the Roman Catholic Church which is comprised in the area of the local education authority;
- (g) any other person or organisation that has expressed an interest in writing to the authority in establishing an additional secondary school to serve pupils in the area;
- (h) the Learning and Skills Council for England;
- (i) any Member of Parliament, whose constituency includes the site of the proposed school, or whose constituents are likely to be affected by the proposals; and
- (j) the district council (where it is not a local education authority) and any parish council for the area where the proposed school is to be situated.

(2) For the purposes of section 66(4) the “relevant matters” about which the local education authority must consult are those matters listed in Schedule 1 to these Regulations.

(3) The local education authority must arrange for at least one public meeting to be held to inform the public of the consultation and any relevant matters.

(4) A local education authority must, once it has commenced any such consultation, immediately inform the Secretary of State in writing of the period during which consultation will be carried out.

(5) If before 1st September 2006 any action was taken which (had it been taken on or after that day) would to any extent have satisfied the requirements of this regulation, those requirements are to that extent to be treated as satisfied.

## **Information to be contained in proposals made in response to a notice**

7. For the purposes of section 66(7)(a), proposals submitted to the local education authority must contain, the information specified in Part 1 of Schedule 2 to these Regulations.

## **Information to be contained in proposals published by the local education authority**

8. For the purposes of section 66(9)(c), proposals published by the local education authority under section 66(8)(b) must contain the information specified in Part 2 of Schedule 2 to these Regulations.

### **Time within which proposals must be published**

**9.—**(1) This regulation prescribes for the purposes of section 66(9)(a) the time period within which proposals made under section 66 must be published.

(2) The local education authority which published the notice must publish—

(a) proposals submitted to them; and

(b) where they wish to make any, their own proposals pursuant to section 66(8)(b)

within 3 weeks of the date for the submission of proposals as specified in the notice inviting proposals.

### **Manner in which the local education authority must publish details of the proposals which it has received from promoters or made itself**

**10.** The local education authority must publish details of—

(a) in respect of any proposals submitted to them,

(i) the name of the promoter, or promoters, and a contact address;

(ii) the category of school the promoters propose to establish;

(iii) any religious character the school is proposed to have;

(iv) any particular ethos the school is proposed to have;

(v) any specialism the school is proposed to have; and

(vi) any proposed divergence from the characteristics specified by the local education authority in the notice inviting proposals;

(b) where they have made proposals themselves pursuant to section 66(8)(b) —

(i) the name of the local education authority and a contact address; and

(ii) the information specified in paragraphs (2)(a)(ii), (iv) and (v);

(c) where complete copies of the proposals can be inspected;

(d) an explanation of the effect of regulation 12 including—

(i) the date by which objections and comments should be sent to the relevant local education authority; and

(ii) the address of the local education authority to which objections and comments should be sent; and

(e) the first of any public meetings which the local education authority arrange pursuant to regulation 11

in at least one newspaper circulating in the area to be served by the school and in a conspicuous place in the area to be served by the school.

### **Promotion of Public Awareness**

**11.—**(1) This regulation prescribes for the purposes of section 66(10) the prescribed steps to be taken by a local education authority for the purpose of promoting public awareness of any proposals published by them.

(2) The local education authority must make available for inspection by members of the public at the offices of the authority, and any other place that they consider to be appropriate, complete copies of all proposals.

(3) The local education authority must send complete copies of all proposals—

(a) to any other local education authority likely to be affected by the proposals;

- (b) to—
  - (i) the Diocesan Board of Education for any diocese of the Church of England which is comprised in the area of the local authority;
  - (ii) the local ordinary of a diocese of the Roman Catholic Church which is comprised in the area of the local education authority; and
  - (iii) any other person or organisation that has previously expressed an interest in writing to the authority in establishing a secondary school to serve pupils in the area;
- (c) to the Learning Skills Council of England; and
- (d) to the Secretary of State

and must send a copy of any particular proposal to any person who requests such a proposal.

(4) The local education authority must arrange for at least one public meeting to be held to inform the public of the proposals received and the arrangements for making objections and comments.

(5) The first of any such meetings must be held within two weeks from the publication of the proposals by the local education authority.

(6) The local education authority must invite all the promoters to all such meetings.

### **Objections and Comments**

**12.** Any person may object to or comment on proposals published under section 66(8) and such objections or comments must be sent to the local education authority within six weeks from the date of publication of the proposals.

### **Submission of proposals to the school organisation committee**

**13.** The local education authority must send complete copies of all published proposals that have not been withdrawn and any objections or comments received in accordance with regulation 12 to the school organisation committee within two weeks from the end of the time period specified in regulation 12.

### **Approval of proposals with modifications after consultation**

**14.—(1)** This regulation prescribes for the purposes of paragraph 4(2)(c) of Schedule 10 the persons or bodies with whom the school organisation committee or (as the case may be) an adjudicator must consult before approving proposals with modifications.

- (2) The persons or bodies prescribed are—
  - (a) the promoters or the local education authority who made the proposals; and
  - (b) where the proposals were made by the promoters, the local education authority who it is proposed should maintain the school.

### **Related Proposals**

**15.—(1)** For the purposes of paragraph 4(4) of Schedule 10, the prescribed description of proposals are—

- (a) any proposals published under section 29 of the 1998 Act (*proposals for the discontinuance of a school*); or
- (b) (i) any undetermined proposals published under Schedule 7 to the 2000 Act (*inadequate sixth-Forms*);

- (ii) any undetermined proposals published under section 113A of the 2000 Act (*restructuring of sixth-form education*)(9);
- (iii) any undetermined proposals made under section 51 of the 1992 Act (*publication of proposals*) where such proposals are made either with a view to meeting recommendations made in the report of an area inspection under section 65 of the 2000 Act, or with a view to promoting one or more of the relevant objectives referred to in section 113A(2)(b) of the 2000 Act; and
- (iv) any direction under paragraph 3(2) or 4(2) of Schedule 11 to the Act

and proposals are “undetermined” if they have not been withdrawn and—

- (a) they have not been approved or rejected under paragraph 4 of Schedule 10 to the Act, under paragraph 9 or 10 of Schedule 11 to the Act, under paragraph 3 of Schedule 6 to the 1998 Act, or under Schedule 7 or 7A to the 2000 Act; 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 1992 Act

as the case may be.

(2) In respect of proposals which are related to the proposals prescribed under paragraph (1)(a)—

- (a) paragraph 4(1) of Schedule 10 to the Act shall have effect as though for the words “The proposals” there were substituted “(a) all proposals which are related to proposals of a prescribed description”;
- (b) after the word “considered” there were inserted the words “simultaneously and”;
- (c) at the end there were inserted “in accordance with the provisions of this Schedule”; and
- (d) after (a) there were inserted—

“(b) where any related proposals have already been referred to the adjudicator pursuant to paragraph 4(2)(d) of Schedule 10, all proposals which are related to proposals published under section 29 of the 1998 Act must be referred to the adjudicator for determination together.”.

(3) In respect of proposals which are related to the proposals prescribed under paragraph (1)(b), paragraph 4(2) of Schedule 10 to the Act shall have effect as though—

- (a) in paragraph 4(2), for the words “The committee” there were substituted “Subject to paragraph (2A), the committee”; and
- (b) after paragraph 4(2) there were inserted—

“(2A) The requirement to make a determination under sub-paragraph (2) applies only if at the time when the school organisation committee’s determination falls to be made under that paragraph, they are satisfied that the proposals are not related to any of the proposals prescribed in paragraph (4)(1)(b).”.

(4) In deciding whether any proposals are related, the school organisation committee must have regard to any guidance given by the Secretary of State.

(5) For the purposes of paragraph 9(3)(d) of Schedule 10, the prescribed proposals are those published pursuant to paragraph 5 of the School Organisation Proposals by the Learning and Skills Council for England Regulations 2003(10).

(6) For the purposes of paragraph 9(3)(e) of Schedule 10, the prescribed description of proposals are where such proposals are made—

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(9) Section 113A of the 2000 Act was inserted by section 72 of the 2002 Act.

(10) S.I. 2003/507.

- (a) with a view to meeting recommendations made in the report of an area inspection under section 65 of the 2000 Act; or
- (b) with a view to promoting one or more of the relevant objectives referred to in section 113A(2)(b) of the 2000 Act.

### **Conditional approvals**

**16.**—(1) The following events are prescribed for the purposes of paragraph 4(5) of Schedule 10 (which provide that approvals given under those paragraphs may be expressed to take effect only if an event specified in the approval occurs by a date so specified)—

- (a) the grant of planning permission under Part 3 of the Town and Country Planning Act 1990<sup>(11)</sup>;
  - (b) the acquisition of the site on which a new school is to be constructed;
  - (c) the acquisition of playing fields to be provided for the school;
  - (d) the securing of any necessary access to a site referred to in sub-paragraph (b) or playing fields referred to in sub-paragraph (c);
  - (e) the private finance credit approval given by the Secretary of State for Education and Skills following the entering into of a private finance contract by a local education authority or the approval by the Secretary of State for Education and Skills of capital grant in an equivalent arrangement for voluntary aided schools;
  - (f) the entering into an agreement for any necessary building project supported by the Secretary of State for Education and Skills in connection with the programme known as “Building Schools for the Future”;
  - (g) the making of any scheme relating to any charity connected with the school;
  - (h) the formation of any federation (within the meaning of section 24(2) of the 2002 Act) of which it is intended that the proposed school should form part, or the fulfilling of any other condition relating to the proposed school forming part of a federation;
  - (i) the Secretary of State giving notice under regulation 5(4) of the Education (Foundation Body) (England) Regulations 2000<sup>(12)</sup> that a foundation body must be established and that the school must form part of a group for which a foundation body must act;
  - (j) the Secretary of State making a declaration under regulation 22(3) of the Education (Foundation Body) (England) Regulations 2000 that the school must form part of a group for which a foundation body acts;
  - (k) the agreement to any change to admission arrangements specified in the approval, relating to another school; and
  - (l) where the proposals in question depend upon any of the events specified in paragraphs (a) to (k) occurring by a specified date in relation to proposals relating to any other school or proposed school, the occurrence of such an event.
- (2) For the purposes of paragraph (1) (k) above a change in admission arrangements is agreed—
- (a) in a case where the change arises from the admission arrangements for the school year in question being different from the admission arrangements for the previous school year, if the admission arrangements are determined under section 89(4) of the 1998 Act and either—
    - (i) no objection is made to the change in accordance with section 90 of the 1998 Act, or

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<sup>(11)</sup> 1990 c.8.

<sup>(12)</sup> S.I. 2000/2872.

- (ii) if an objection to the change is made and referred to the adjudicator in accordance with section 90 of the 1998 Act, the objection is not upheld;
- (b) in a case where the change arises from a variation made under section 89(5) of the 1998 Act or made under the Education (Variation of Admission Arrangements) (England) Regulations 2002(13) where the variation is required to be referred to the adjudicator, if the adjudicator determines that the variation should have effect without modifications; and
- (c) in a case where the change arises from a variation made under those regulations where the variation is not required to be referred to the adjudicator, when the variation is made.

### **School organisation committee referrals to adjudicator**

17.—(1) The school organisation committee must refer any proposals or matter to the adjudicator under paragraph 5(1) and 10(5)(b) of Schedule 10 if—

- (a) the committee—
  - (i) have voted on any matter which by virtue of regulation 20(3) falls to be decided by them under this paragraph by a unanimous decision; but
  - (ii) have failed to reach such a decision on that matter; or
- (b) where the school organisation committee have failed to make a decision within 2 months of receiving the proposals from the local education authority.

(2) The school organisation committee may only refer proposals to the adjudicator under paragraph 4(2)(d) of Schedule 10, if—

- (a) they have voted on the proposals; but
- (b) at least two groups of members (within the meaning of regulation 20(1)) did not vote because members of each group had declared an interest in the proposals or matter in question.

(3) The school organisation committee, in cases where sub-paragraphs (1)(a) and (2) apply, must make any such referral within two weeks of the vote and, in cases, where sub-paragraph (1)(b) applies, within two weeks of the expiration of the two months referred to therein.

### **Consultation with Secretary of State in respect of Academies**

18.—(1) Where proposals submitted to a school organisation committee in accordance with regulation 13 consist of or include proposals to establish an Academy, the school organisation committee must within two weeks of receiving those proposals consult the Secretary of State before taking any decision under paragraph 4 of Schedule 10.

(2) The Secretary of State must (on being consulted pursuant to paragraph (1)) give a statement in writing to the school organisation committee as to whether he would be willing to commence negotiations with a view to entering into an agreement for the establishment of an Academy.

### **Provision of Information**

19.—(1) The school organisation committee must notify the following persons of each decision taken under paragraphs 4(2) or 10(3) of Schedule 10 together with their reasons for taking such a decision—

- (a) the persons or body who submitted the proposals;
- (b) (if different) the local education authority who it is proposed should maintain the school;



- (c) subject to paragraph (4), each objector; and
- (d) the Secretary of State.

(2) The school organisation committee must notify the persons referred to in sub-paragraphs (a) (b) and (d) of paragraph (1) if they refer any proposals or matter to the adjudicator under paragraphs 4(2)(d), 5(1), and 10(5) of Schedule 10 or pursuant to a direction under paragraph 5(2) of Schedule 10.

(3) The adjudicator must notify the persons referred to in paragraph (2) and the relevant school organisation committee of each decision taken under paragraphs 6 and 10(6) of Schedule 10.

(4) Where objections to a proposal take the form of a petition (that is to say a document containing the text of one objection signed by more than one objector) the school organisation committee may comply with paragraph (1) as the case may be by—

- (a) notifying the person (if any) who appears to them to have arranged for the petition to be sent to the local education authority or school organisation committee; or
- (b) if there is no such person, notifying the objector whose name appears first on the petition.

(5) Paragraph (3) does not apply in relation to any decision provision for the notification of which is made by regulation 15 of the Education (Adjudicators Inquiry Procedure etc.) Regulations 1999(14).

#### **Voting of committee on proposals under section 66 and Schedule 10**

**20.**—(1) In this regulation references to a group of members of a school organisation committee must be construed in accordance with the Education (School Organisation Committees) (England) Regulations 1999(15).

(2) Each group of members must collectively have a single vote in relation to any decision of the committee as to whether or not—

- (a) to reject all the proposals or to approve any of the proposals (with or without modification) under paragraph 4(2) of Schedule 10; or
- (b) to—
  - (i) modify any proposals;
  - (ii) specify any later date; or
  - (iii) make any determination

under paragraphs 10(2)(a) or (b) or (3) of that Schedule;

- (c) to make any recommendation such as is mentioned in paragraph 4(2) of Schedule 10 where that sub-paragraph applies with the modifications specified in paragraph 6 of Schedule 3 to these Regulations; or
- (d) to defer consideration of whether to make any decision or recommendation on any of the matters referred to in sub-paragraphs (a) to (c) above.

(3) All decisions on questions referred to in paragraph (2) must be unanimous decisions of those voting.

#### **Limitation on power of local education authority to refer proposals to school organisation committee**

**21.** A local education authority may only refer any proposals to the school organisation committee under paragraph 9(5) of Schedule 10 where it appears to them that it may be appropriate,

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(14) S.I. 1999/1286.

(15) S.I. 1999/700.

if the proposals are approved, for the approval to be expressed to take effect only if an event specified in the approval occurs by the date specified.

### **Publication of proposals under paragraph 10(4) of Schedule 10**

**22.**—(1) In cases where promoters or a local education authority publish proposals pursuant to paragraph 10(4) of Schedule 10, such proposals must contain—

- (a) the detail set out in the original proposals as published in accordance with regulation 10(2); and
- (b) a statement as to why it is proposed that paragraph 10(1) of Schedule 10 should not apply in relation to the original proposals.

(2) In this regulation “the original proposals” means the proposals to which it is proposed that paragraph 10(1) of Schedule 10 should not apply.

(3) In relation to proposals published under section 10(4) of Schedule 10, paragraph 3 of Schedule 10 shall have effect as if for that paragraph there were substituted the following—

“**3.**—(1) Any person may object to or comment on proposals published in accordance with paragraph 10(4) and such objections and comments must be sent to the local education authority who published the proposals within six weeks after the date of the publication of such proposals; and

(2) The local education authority must send copies of the published proposals and any objections or comments received in accordance with sub-paragraph (1) to the school organisation committee within one week after the end of the time period specified in sub-paragraph (1).”.

(4) For the purposes of paragraph 10(3) of Schedule 10 before removing the requirement to implement proposals the school organisation committee must consult the promoters who made the proposals and where the proposals are to establish a new foundation or voluntary school, the local education authority that is proposed should maintain the school.

### **Modification of approved proposals and consultation**

**23.**—(1) Paragraph (2) prescribes for the purpose of paragraphs 10(2)(a) and (b) of Schedule 10 the persons—

- (a) at whose request the school organisation committee may modify approved proposals to establish a secondary school; and
- (b) at whose request the school organisation committee may where approval was given in accordance with paragraph 4(5) of Schedule 10 (approval expressed to take effect only if an event specified in the approval occurs by a date specified), specify a later date by which the event in question must occur.

(2) The persons prescribed are the promoters or the local education authority who made the proposals and, where the proposals were made by the promoters, the local education authority who it is proposed should maintain the school.

(3) For the purposes of paragraph 10(2)(a) of Schedule 10, before modifying proposals the school organisation committee must consult the promoters or the local education authority who made the proposals and where the proposals are to establish a foundation or a voluntary school, the local education authority whom it is proposed should maintain the school.

### **Application of and modification to provisions of the Act where section 66(13) applies**

24. Schedule 3 to these Regulations has effect for specifying the modifications to which Schedule 10 to the Act is to be subject where proposals published under section 66 relate to a school which is proposed to be situated in an area other than that of the local education authority who published the notice.

### **Revocation and Savings**

25.—(1) Subject to paragraph (2) the Education (Additional Secondary School Proposals) Regulations 2003(16) and the Education (Additional Secondary Schools) (Amendment) Regulations 2003(17) are hereby revoked.

(2) Despite the repeal of section 70 of the 2002 Act (18), the provisions of the Education (Additional Secondary School Proposals) Regulations 2003 and the Education (Additional Secondary Schools) (Amendment) Regulations 2003 shall continue to apply in relation to proposals made under section 70 of the 2002 Act where the notice published pursuant to subsection (1) of that section was published before 1st September 2006.

### **Amendment of The Education (School Organisation Proposals) (England) Regulations 1999**

26.—(1) The Education (School Organisation Proposals) (England) Regulations 1999(19) are amended as follows.

- (2) In regulation 2(1), after “and any reference to section 28,” insert “section 28A,”.
- (3) In regulation 4(1) after “section 28(3)(a),” insert “section 28A(4)(a),”.
- (4) In regulation 4(2), after “section 28”, insert “,28A”.
- (5) In regulation 5(1), after “sections 28(3)(b)” insert “section 28A(4)(b)”.
- (6) In regulation 5(5), after “section 28” insert “,28A”.
- (7) In regulation 6(1)(a)—
  - (a) after “section 28(6)(b),” insert “section 28A(6)(b)”; and
  - (b) after “section 28” insert “, section 28A”.
- (8) In regulation 6(2), after “section 28” insert “,28A”.
- (9) In regulation 7(2)—
  - (a) after “Objections to or comments on proposals published under section 28”, insert “,28A”; and
  - (b) in sub-paragraph (b)(ii), after “section 28”, insert “or section 28A”.
- (10) In regulation 7(3), after “section 28” insert “, 28A”.
- (11) In regulation 12(1)(a) after “has effect by virtue of Schedule 4 to these Regulations)”, insert “, section 28A(6)”.
- (12) In regulation 12(10), after “section 28(6)”, insert “, 28A(6)”.
- (13) In the heading of regulation 13, after “section 28”, insert “, section 28A”.
- (14) In regulation 15(1), after “section 28” insert “, section 28A”.
- (15) In regulation 15(2)—

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(16) S.I. 2003/1200.

(17) S.I. 2003/1421.

(18) Section 70 is repealed by section 123 of and Part 2 of Schedule 19 to the Act which is brought into force by the Education Act 2005 (Commencement No.2 and Transitional Provisions and Savings) Order 2006 (S.I. 2006/2129 (C.70)).

(19) S.I. 1999/2213 (amended by S.I. 2000/2198, S.I. 2001/1405, S.I. 2003/1229, S.I. 2004/3052 and S.I. 2005/1801).

- (a) after “section 28(6),” insert “section 28A(6)”; and
  - (b) after “section 28”, insert “28A”.
- (16) In Schedule 3, in the heading of Part 2, after “section 28” insert “,28A”.
- (17) In Schedule 4—
- (a) in the heading, after “Section 28” insert “, Section 28A”;
  - (b) in the provision column after “Section 28(3)”, insert “or Section 28A(4) (as the case may be)”;
  - (c) in the provision column after “Section 28(5)”, insert “or Section 28A(5) (as the case may be)”;
  - (d) in the provision column after “Section 28(6)”, insert “or Section 28A(6) (as the case may be)” and in the corresponding modification, for “That subsection” substitute “section 28(6)” and after the word “and” in the first place it occurs insert “in the case of each of 28(6) and 28A(6),”;
  - (e) in the provision column after “Section 28(10)” insert “or Section 28A(9) (as the case may be)”;
  - (f) in the modification corresponding to Schedule 6, paragraph 1, after “section 28” insert “, 28A”; and
  - (g) in the modification corresponding to Schedule 6, paragraph 2, after “section 28,” insert “28A,”.
- (18) In Schedule 5—
- (a) in the heading following “Schedule 5”, after “section 28” insert “ and 28A”;
  - (b) in the heading under “Part 1”, after “section 28” insert “, 28A”;
  - (c) in paragraph 2, after “section 28”, insert “,28A”;
  - (d) after paragraph 2(a), insert—
    - “(aa) section 28A(6) must have effect as if at the end there were added “and to the school organisation committee for the area of the local education authority in which the school is proposed to be situated”,” and
  - (e) in paragraph (3), after “section 28(6)” insert “, or section 28A(6)”.

2nd August 2006

*Beverley Hughes*  
Minister of State  
Department for Education and Skills

## SCHEDULE 1

Regulation 3

### OTHER MATTERS TO BE SPECIFIED IN A NOTICE INVITING PROPOSALS FOR A SECONDARY SCHOOL

1. The reason why the new secondary school is considered necessary.
2. An explanation of—
  - (a) the location of the proposed site (including details of whether the school is to occupy a single or split site), including where appropriate the postal address or addresses;
  - (b) the reason for the choice of site;
  - (c) the area or particular community or communities the school is expected to serve;
  - (d) the accessibility of the site (or if the school is to occupy a split site the accessibility of the accommodation);
  - (e) the proposed arrangements for transport of pupils to the new school and a statement about other sustainable transport alternatives where pupils are not using transport provided, and how the school will seek to discourage car use in the school area;
  - (f) the tenure (freehold or leasehold) on which the site will be held, and if the site is to be held on a lease, details of the proposed lease; and
  - (g) the effect of paragraphs 13(4) and 14(5) of Schedule 10 to the Act (that the local education authority must transfer their interest in the site to the school's trustees, foundation body, or governing body).
3. The date on which the school should open or where it is proposed that there should be transitional arrangements, the dates on which each stage should be implemented.
4. Information on—
  - (a) the number of pupil places the school should provide;
  - (b) the upper and lower age limits of the proposed school and, where it is intended that it should provide sixth form education, the number of pupils for whom it is intended that such education should be provided;
  - (c) the number of pupils to be admitted to the proposed school in each relevant age group in the first school year in which the proposals have been implemented or, where it is intended that the proposals should be implemented in stages, the number of pupils to be admitted to the proposed school in each stage ;
  - (d) whether it is proposed that the school should admit pupils of both sexes or boys or girls only and, in the case of a single sex school where it is intended to provide sixth form education, whether both sexes or boys or girls only are to be admitted to the sixth form;
  - (e) whether the new school should make provision which is recognised by the local education authority as reserved for children with special educational needs, and if so the range of special needs and the number of pupils for which provision is proposed; and
  - (f) the estimated capital costs of providing the school (such an estimate to be made in accordance with the guidance provided at pages 17 to 19 of Department for Education and Skills Guidance "Education Building Projects - Information on Costs and Performance Data - Schools Building and Design Unit", (reference DfES/0288/2003) (ISBN 1 84185 950 8) issued in April 2003).
5. An explanation that proposals should be in line with requirements set out in paragraph 4 above, but that proposals that do not comply with all of the requirements but meet the need for secondary places in the area will be considered.

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6. The address of the local education authority, and the name of the person to whom proposals should be addressed.
7. The date, being not less than four months from the date of publication of the notice, by which proposals must be submitted to the local education authority.
8. A brief explanation of the procedure to be followed after the date when proposals must be received by the local education authority.
9. The requirement that any proposals made pursuant to a notice published under section 66(1) must contain the information required by Part 1 of Schedule 2.
10. A statement that the local education authority will meet the capital costs of implementing the proposals to the extent required by any enactment.
11. The types of and extent of extended services the school is expected to provide.

## SCHEDULE 2

### Regulation 7

## PART 1

### INFORMATION TO BE CONTAINED IN PROPOSALS TO ESTABLISH A SECONDARY SCHOOL MADE BY A PROMOTER OTHER THAN THE LOCAL EDUCATION AUTHORITY

1. The name of the promoter, or promoters, and a contact address.
2. Whether the proposals are being submitted independently or jointly with another promoter or promoters.
3. The type of school falling within section 66(2) that the promoters propose to establish (a foundation school, a voluntary school or an Academy).
4. The area or particular community or communities the school is expected to serve.
5. The proposed ethos of the school, and if the school is to have a religious character, information about the religious character, or if it is to adhere to a particular philosophy, information about that philosophy.
6. An indication of the proposed admission arrangements and over-subscription criteria for the proposed school including, where the school is proposed to be a foundation or voluntary school or Academy which is to have a religious character—
  - (a) the extent to which priority for places is proposed to be given to children of the school's faith or denomination; and
  - (b) the extent if any to which priority is to be given for any places to children of other faiths or denominations or to children in specified groups regardless of their faith or denomination.
7. Whether it is intended that the proposed admission arrangements for the school will make provision for selection by ability as is mentioned in section 101 of the 1998 Act (pupil banding).
8. Evidence of any relevant experience in education held by the promoter, or promoters. In particular, details of any involvement in the improvement of standards in education.
9. Where the school is—

- (a) proposed to have a religious character, evidence of the demand in the area for education in accordance with the tenets of the religion;
- (b) proposed to adhere to a particular philosophy, evidence of the demand for education in accordance with the philosophy in question that is not already met in other maintained schools or Academies in the area.

**10.**—(1) A statement that special educational needs provision will be in line with that specified in the notice or, where it will not, the nature of any such provision and the proposed number of pupils for whom such provision is to be made.

(2) Details of the proposed policy of the school relating to the education of pupils with special educational needs.

**11.** Where it is proposed that the school will provide sixth form education, how the proposals will—

- (a) improve the educational or training achievements;
- (b) increase participation in education or training; or
- (c) expand the range of educational or training opportunities

for 16-19 year olds in the area.

**12.** Whether the proposed school will have any specialisms on implementation and whether the promoter intends to apply to the Secretary of State for the school to be a specialist school from implementation.

**13.** Information on how the school would contribute to enhancing the diversity and quality of education in the area.

**14.** Information on how the school will help to raise the quality and standard of education in the area and contribute to school improvement.

**15.** Information on the extended services which will be provided.

**16.** Information on how the proposals will contribute to enabling children and young people to: be healthy; stay safe; enjoy and achieve; make a positive contribution to the community and society and achieve economic well-being.

**17.** The following information relating to the proposals—

- (a) how the school will promote and contribute to community cohesion;
- (b) how the school will increase inclusion and equality of access for all social groups; and
- (c) how the school will collaborate with other schools, colleges and training providers.

**18.** Confirmation that the size, age-range and admission number of the school will be in line with the specification in the notice, or, if this is not the case, the proposed details.

**19.** Confirmation that the promoter is satisfied that accommodation will be adequate to meet the number of pupil places specified in paragraph 4 of Schedule 1.

**20.** Whether the new school will admit pupils of both sexes or boys only or girls only and, in the case of a single sex school where it is intended to provide sixth form education, whether both sexes or boys or girls only are to be admitted to the sixth form.

**21.** Confirmation that the school will be established on the site specified in the notice or where that is not the case—

- (a) the location of the site (including where appropriate the postal address or addresses if the school is to occupy a split site);

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- (b) whether the school will occupy a single or split site;
- (c) the accessibility of the site (or if the school is to occupy a split site the accessibility of the accommodation);
- (d) the current ownership and tenure (freehold or leasehold) of the site, the estimated cost of providing the site and the proposed use of any buildings already on the site;
- (e) details of the tenure (freehold or leasehold) on which the site of the school will be held, and if the site is to be held on a lease, details of the proposed lease;
- (f) whether the site is currently used for the purposes of another school which will no longer be required for the purposes of that school. If so, provide details as to why the site will no longer be required for the purposes of that school; and
- (g) the estimated costs of providing the site and a statement about how the costs will be met.

**22.** Confirmation that the proposals will be implemented in line with the timing in the notice published by the local education authority or, if this is not the case, the date when it is planned that the proposals will be implemented, or where the proposals are to be implemented in stages, the date on which each stage is planned to be implemented.

**23.** Confirmation that the promoters consider that the costs of establishing the proposed school can be met within the estimate of capital costs of providing the school outlined in the notice published by the local education authority and where they cannot be met within that estimate, how any shortfall will be met.

**24.** Where the proposals are to establish a voluntary controlled or foundation school a statement as to whether the proposals are to be implemented by the local education authority or by the promoters, and if the proposals are to be implemented by both—

- (a) a statement as to the extent that they are to be implemented by each body; and
- (b) a statement as to the extent to which the capital costs of implementation are to be met by each body.

**25.** Details of how the promoter proposes to fund his share (if any) of the capital costs of implementing the proposals.

**26.** The proposed arrangements for transport of pupils to the school.

**27.** Details of any proposals for the school to be federated with one or more schools (by virtue of sections 24 and 74(1) of the 2002 Act).

**28.** Confirmation that the school will meet the general requirements in relation to curriculum contained in section 78 of the 2002 Act and an outline of any provision that will be in addition to the basic curriculum required by section 80 to the 2002 Act, in particular any 14-19 vocational education.

**29.** In addition, where the proposed school is to be a voluntary aided school—

- (a) details of the trusts on which the site is to be held together with details of any arrangements to secure that, if the school is discontinued or transfers to a new site, the proceeds of sale of the site will be available for use in connection with another maintained school;
- (b) the amount of capital grant under paragraph 5 or 6 of Schedule 3 to the 1998 Act for which it is intended that an application should be made;
- (c) confirmation that the governing body will be able and willing to carry out their obligations under Schedule 3 to the 1998 Act;
- (d) details of the proposed ownership of the site; and
- (e) confirmation that the proceeds of sale of other premises will be available to the trustees where that is the case.



- 30.** Where the school is to be a foundation school—
- (a) details of any trusts on which the site is to be held together with details of any arrangements to secure that, if the school is discontinued or transfers to a new site, the proceeds of sale of the site will be available for use in connection with another maintained school; and
  - (b) confirmation as to whether the school—
    - (i) will have a foundation established otherwise than under the 1998 Act and if so the identity of that foundation;
    - (ii) will belong to a group of schools for which a foundation body acts under section 21 of the 1998 Act; or
    - (iii) will not fall within sub-paragraph (i) or (ii).
- 31.** An outline of the proposed senior staffing at the school.
- Regulation 8

## PART 2

### INFORMATION TO BE CONTAINED IN PUBLISHED PROPOSALS TO ESTABLISH A SECONDARY SCHOOL WHERE THE PROPOSER IS THE LOCAL EDUCATION AUTHORITY

1. The name of the local education authority submitting the proposals together with the name and address of the person to whom enquiries should be sent.
2. Whether the school is to be a community or foundation school.
3. The area or particular community or communities the school is expected to serve.
4. The proposed ethos of the school.
5. Whether the proposed school will have any specialisms on implementation and whether the local education authority intends to apply to the Secretary of State for the school to be a specialist school from implementation.
6. Information on how the school would contribute to enhancing the diversity and quality of education in the area.
7. Information on how the school will help to raise the quality and standard of education in the area and contribute to school improvement.
8. Information on the extended services which will be provided.
9. Information on how the proposals will contribute to enabling children and young people to: be healthy; stay safe; enjoy and achieve; make a positive contribution to the community and society and achieve economic well-being.
10. The following information relating to the proposals—
  - (a) how the school will promote and contribute to community cohesion;
  - (b) how the school will increase inclusion and equality of access for all social groups; and
  - (c) how the school will collaborate with other schools, colleges and training providers.
11. An indication of the admission arrangements and over-subscription criteria for the proposed school.
12. Confirmation that the size, age-range and admission number of the school will be in line with the specification in the notice, or, if this is not the case, the proposed details.

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**13.** The date on which the proposals are planned to be implemented, or where the proposals are planned to be implemented in stages, the date on which each stage is planned to be implemented.

**14.—**(1) Information as to whether the school will have provision that is recognised by the local education authority as reserved for children with special educational needs and, if so, the nature of such provision and the proposed number of pupils for whom such provision is to be made.

(2) Details of the proposed policy of the school relating to the education of pupils with special educational needs.

**15.** Where it is proposed that the school will provide sixth form education, how the proposals will—

- (a) improve the educational or training achievements;
- (b) increase participation in education or training; or
- (c) expand the range of educational or training opportunities

for 16-19 year olds in the area.

**16.** Whether the new school will admit pupils of both sexes or boys only or girls only and, in the case of a single sex school where it is intended to provide sixth form education, whether both sexes or boys or girls only are to be admitted to the sixth form.

**17.** The proposed arrangements for transport of pupils to the school.

**18.** Details of any proposals for the school to be federated with one or more schools (by virtue of sections 24 and 74(1) of the 2002 Act).

**19.** Confirmation that the school will meet the general requirements in relation to curriculum contained in section 78 of the 2002 Act and an outline of any provision that will be in addition to the basic curriculum required by section 80 to the 2002 Act.

**20.** An outline of the proposed senior staffing at the school.

**21.** Where the school is to be a foundation school a statement as to whether the school—

- (a) will have a foundation established otherwise than under the 1998 Act and if so the identity of that foundation;
- (b) will belong to a group of schools for which a foundation body acts under section 21 of the 1998 Act; or
- (c) will not fall within sub-paragraph (a) or (b).

**22.** Whether it is proposed that the new admission arrangements for the school will make provision for selection by ability as is mentioned in section 101 of the 1998 Act (pupil banding).

### SCHEDULE 3

Regulation 24

#### PROVISIONS OF SCHEDULE 10 APPLYING TO PROPOSALS PUBLISHED UNDER SECTION 66(13)

**1.** In relation to proposals published under section 66 which relate to a school which is proposed to be situated in an area other than that of the local education authority who published the notice under section 66, Schedule 10 to the Act must have effect in accordance with the following modifications.

**2.** For paragraph 3(1) substitute—

“**3.—**(1) The local education authority—

- (a) in cases where the notice published by the local education authority pursuant to section 66(1) specifies that the proposed school is to be situated in an area other than its own (“notice specific cases”), the local education authority must send complete copies of all published proposals that have not been withdrawn to the school organisation committee for the area of the local education authority who published the notice (“Committee A”) and to the school organisation committee for the area in which it is proposed that the school will be situated (“Committee B”); and
  - (b) in cases where the notice published by the local education authority pursuant to section 66(1) does not so specify that the proposed school is to be situated in an area other than their own, but a promoter includes this in his proposals (“non-notice specific cases”), the local education authority must send a copy of the proposals published by that promoter only to Committee B and complete copies of all published proposals that have not been withdrawn to Committee A”.
3. In paragraph 3(2), omit sub-paragraph (b).
4. After paragraph 3(2) insert—
- “(2A) The local education authority—
  - (a) in notice specific cases, must send copies of all objections and comments received in accordance with regulations made pursuant to paragraph 3(2)(a) together with the proposals it sends in accordance with the modified paragraph 3(1)(a) to Committee A and Committee B within one week of the expiry of the time period specified in regulations for the making of objections and comments on the proposals; and
  - (b) in non-notice specific cases must send copies of any objections and comments received in accordance with regulations made pursuant to paragraph 3(2)(a) in respect only of the proposals sent by the local education authority under the modified paragraph 3(1)(b) to Committee B and copies of all objections and comments received on the proposals to Committee A.”
5. For paragraph 4(1) for “the school organisation committee”, there must be substituted “Committee A”.
6. For paragraph 4(2) there must be substituted the following sub-paragraph—
- “(2) Subject to sub-paragraph (6)(b) and (c), Committee A may, after seeking and, unless Committee B have failed to reach a decision on what recommendation to give, obtaining the recommendation of Committee B—
  - (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 the body who published the proposals and, where the proposals were published to establish a new foundation or voluntary school the local education authority who it is proposed should maintain, the school; or
  - (d) refer them to the adjudicator if—
  - (i) they have voted on the proposals; but
  - (ii) at least two groups of members (within the meaning of the Education (School Organisation Committees) (England) Regulations 1999 did not vote because members of each group had declared an interest in the proposals and if they think it appropriate to do so.”.

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7. After paragraph 4(6), there must be substituted the following—
- “(6A) Where under sub-paragraph (2), the recommendation of Committee B is sought, that committee in deciding what recommendation to give, must have regard to any guidance given from time to time by the Secretary of State.
- (6B) Where—
- (a) under sub-paragraph (2) the recommendation of Committee B is sought; and
  - (b) in accordance with regulations under paragraph 5 of Schedule 4 to the 1998 Act the question of what recommendation to give to Committee A falls to be decided by a unanimous decision; but
  - (c) Committee B have failed to reach a decision on what recommendation to give, Committee B must inform Committee A of that fact.”.

8. For paragraph 5(1) there must be substituted—

“5.—(1) If Committee A—

    - (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 have failed to reach a decision on that matter;
    - (b) have voted not to accept the recommendation of Committee B; or
    - (c) have been informed by Committee B under sub-paragraph 6B that Committee B is unable to reach a decision on what recommendation to give

they must refer the proposals to the adjudicator.”.

9. After paragraph 5(1), there must be inserted—

“(1A) If within two months from the date of receipt of all of the proposals by Committee A from the local education authority, Committee A have failed to make a decision, they must refer all the proposals to the adjudicator.”.

10. For paragraph 6(1), there must be substituted—

“6.—(1) Where any proposals are referred to the adjudicator under sub-paragraph 5(1), 5(1A) or 5(2)—

    - (a) he must consider the matter afresh;
    - (b) he may—
      - (i) reject all the proposals;
      - (ii) approve any of the proposals without modification; or
      - (iii) approve any of the proposals with such modifications as the adjudicator may think desirable after consulting the body who published the proposals and, where the proposals were published to establish a new foundation or voluntary school, the local education authority who it is proposed maintain the school;
    - (c) paragraph 4(2) must apply to the adjudicator in connection with his decision on the proposals as it applies to the relevant committee; and
    - (d) when deciding whether or not to give any approval under this paragraph the adjudicator must have regard to any guidance given from time to time by the Secretary of State.”.

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## EXPLANATORY NOTE

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

These Regulations prescribe various matters relating to proposals for the establishment of new secondary schools pursuant to the competition regime set out in the Education Act 2005 (“the Act”).

Regulation 3 with Schedule 1 prescribes the information to be contained in a notice published by a local education authority inviting proposals for the establishment of a new secondary school.

Regulation 4 prescribes the interval after which the proposals in response to a published notice must be sent to the local education authority.

Regulation 5 prescribes the manner in which notices inviting proposals must be published by the local education authority.

Regulation 6 prescribes persons whom the local education authority must consult prior to publishing a notice and the matters to be consulted on and sets out a requirement for a public meeting and notification to the Secretary of State.

Regulation 7 with Part 1 of Schedule 2 prescribes the information that has to be contained in proposals for the establishment of a new secondary school made pursuant to a notice inviting proposals.

Regulation 8 with Part 2 of Schedule 2 prescribes the information that has to be contained in proposals made by a local education authority.

Regulation 9 prescribes the time within which proposals made pursuant to the publication of a notice and those made by a local education authority must be published.

Regulation 10 prescribes the manner in which the details of proposals that it has received or made itself must be published by a local education authority, the requirement to make copies of proposals available for inspection and also those bodies to whom copies of proposals should be sent.

Regulation 11 prescribes the steps to be taken by a local education authority for the purpose of promoting public awareness of any proposals published by them.

Regulation 12 provides for the making of objections or comments to the local education authority in relation to published proposals and for the time period in which they may be made.

Regulation 13 provides for the submission of published proposals and objections and comments received to the school organisation committee and the time period in which that must be done.

Regulation 14 prescribes the persons or bodies whom the school organisation committee must consult before approving proposals with modifications.

Regulation 15 prescribes for the purposes of paragraphs 4(4), 9(3)(d) and (e) of Schedule 10 to the Act, the types of proposals to which proposals made pursuant to these Regulations may relate to and where they do, modifies the application of sub-paragraphs (1) and (2) of paragraph 4 of Schedule 10 to the Education Act 2005.

Regulation 16 prescribes the events which can be specified in a conditional approval.

Regulation 17 prescribes the only circumstances in which a school organisation committee must or may refer proposals or matters to the adjudicator.

Regulation 18 prescribes the manner in which a school organisation committee must consult the Secretary of State when the proposals consist of or include a proposal to establish an Academy.

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Regulation 19 provides for the information which must be provided by the school organisation committee or adjudicator to various persons specified in regulation 19 in connection with published proposals.

Regulation 20 sets out the manner in which the school organisation committee must vote.

Regulation 21 prescribes that a local education authority may refer proposals to the school organisation committee if proposals which they could otherwise have determined, require a conditional approval.

Regulation 22 prescribes the process of publication of proposals where the local education authority or promoters wish to be relieved from the duty of implementing proposals where the implementation of proposals would be unreasonably difficult or circumstances have so altered since the publication of proposals that implementation would be unreasonably difficult.

Regulation 23 prescribes the persons who may request that the Secretary of State modifies approved proposals and those who may request that a later date by which an event specified in a conditional approval must occur and prescribes those whom a school organisation committee must consult before doing so.

Regulation 24 with Schedule 3, sets out how certain provision of the Act must be applied and modified in cases where proposals relate to a school which is proposed to be situated in an area other than that of the local education authority who published the notice.

Regulation 25 revokes the Education (Additional Secondary School Proposals) Regulations 2003 but sets out certain savings in relation to them.

Regulation 26 sets out technical amendments made to the Education (School Organisation Proposals) (England) Regulations 1999 on account of the coming into force of the provisions of the Act.