

## SCHEDULE 3

Regulation 4

### GOVERNING BODY PROPOSALS FOR ALTERATIONS OTHER THAN FOUNDATION PROPOSALS

#### PART 1

Information to be included in or provided in relation to proposals

##### **School and governing body's details**

1. The name, address and category of the school for which the governing body are publishing the proposals.

##### **Implementation and any proposed stages for implementation**

2. The date on which the proposals are planned to be implemented, and if they are to be implemented in stages, a description of what is planned for each stage, the number of stages intended and the dates of each stage.

##### **Objections and comments**

3. A statement explaining the procedure for making representations, including—
- (a) the date prescribed in accordance with paragraph 29 of this Schedule by which objections or comments should be sent to the local authority; and
  - (b) the address of the local education authority to which objections or comments should be sent.

##### **Alteration description**

4. A description of the proposed alteration and in the case of special school proposals, a description of the current special needs provision.

##### **School capacity**

5.—(1) Where the alteration is an alteration falling within any of paragraphs 1 to 4, 8 and 9, 12 to 14 and 18 to 21 of Schedule 2 the proposal must also include—

- (a) details of the current capacity of the school and, where the proposals will alter the capacity of the school, the proposed capacity of the school after the alteration;
- (b) details of the number of pupils to be admitted to the school in each relevant age group in the first school year in which the proposals will have been implemented;
- (c) where it is intended that proposals should be implemented in stages, the number of pupils to be admitted to the school in the first school year in which each stage will have been implemented; and
- (d) where the number of pupils in any relevant age group is lower than the indicated admission number for that relevant age group, a statement to this effect and details of the indicated admission number in question.

(2) Where the alteration is an alteration falling within any of paragraphs 1, 2, 9, 12, 13, and 18 to 21 of Schedule 2 a statement of the number of pupils at the school at the time of the publication of the proposals.

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## **Implementation**

6. Where the proposals relate to a foundation or voluntary controlled school a statement as to whether the proposals are to be implemented by the local education authority or by the governing body, and, if the proposals are to be implemented by both, a statement as to the extent to which they are to be implemented by each body.

## **Additional Site**

7.—(1) A statement as to whether any new or additional site will be required if proposals are implemented and if so the location of the site if the school is to occupy a split site.

(2) Where proposals relate to a foundation or voluntary school a statement as to who will provide any additional site required, together with 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.

## **Changes in boarding arrangements**

8.—(1) Where the proposals are for the introduction or removal of boarding provision, or the alteration of existing boarding provision such as is mentioned in paragraph 8 or 21 of Schedule 2—

- (a) the number of pupils for whom it is intended that boarding provision will be made if the proposals are approved;
- (b) the arrangements for safeguarding the welfare of the children at the school;
- (c) the current number of pupils for whom boarding provision can be made and a description of the boarding provision; and
- (d) except where the proposals are to introduce boarding provision, a description of the existing boarding provision.

(2) Where the proposals are for the removal of boarding provision or an alteration to reduce boarding provision such as is mentioned in paragraph 8 or 21 of Schedule 2—

- (a) the number of pupils for whom boarding provision will be removed if the proposals are approved; and
- (b) a statement as to the use to which the former boarding accommodation will be put if the proposals are approved.

## **Transfer to new site**

9. Where the proposals are to transfer a school to a new site the following information—

- (a) the location of the proposed site (including details of whether the school is to occupy a single or split site), and including where appropriate the postal address;
- (b) the distance between the proposed and current site;
- (c) the reason for the choice of the proposed site;
- (d) the accessibility of the proposed site or sites;
- (e) the proposed arrangements for transport of pupils to the school on its new site; and
- (f) a statement about other sustainable transport alternatives where pupils are not using transport provided, and how car use in the school area will be discouraged.

## **Objectives**

10. The objectives of the proposals.

### **Consultation**

11. Evidence of the consultation before the proposals were published including—
- (a) a list of persons who were consulted;
  - (b) minutes of all public consultation meetings;
  - (c) the views of the persons consulted;
  - (d) a statement to the effect that all applicable statutory requirements in relation to the proposals to consult were complied with; and
  - (e) copies of all consultation documents and a statement on how these documents were made available.

### **Project costs**

12. A statement of the estimated total capital cost of the proposals and the breakdown of the costs that are to be met by the governing body, the local education authority, and any other party.

13. A copy of confirmation from the Secretary of State, local education authority and the Learning and Skills Council for England (as the case may be) that funds will be made available (including costs to cover any necessary site purchase).

### **Age range**

14. Where the proposals relate to a change in age range, the current age range for the school.

### **Early years provision**

15. Where the proposals are to alter the lower age limit of a mainstream school so that it provides for pupils aged between 2 and 5—

- (a) details of the early years provision including the number of full-time and part-time pupils, the number and length of sessions in each week, and the services for disabled children that will be offered;
- (b) how the school will integrate the early years provision with childcare services and how the proposals are consistent with the integration of early years provision for childcare;
- (c) evidence of parental demand for additional provision of early years provision;
- (d) assessment of capacity, quality and sustainability of provision in schools and in establishments other than schools who deliver the Early Years Foundation Stage within 3 miles of the school; and
- (e) reasons why such schools and establishments who have spare capacity, cannot make provision for any forecast increase in the number of such provision.

### **Changes to sixth form provision**

16. Where the proposals are to alter the upper age limit of the school so that the school provides sixth form education or additional sixth form education, a statement of how the proposals will—

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

for 16-19 year olds in the area.

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17. Where the proposals are to alter the upper age limit of the school so that the school ceases to provide sixth form education, a statement of the effect on the supply of 16-19 places in the area.

### **Special educational needs**

18. Where the proposals are to establish or change the type of provision for special educational needs—

- (a) a description of the types of learning difficulties in respect of which education will be provided;
- (b) any additional specialist features that will be provided;
- (c) the proposed numbers of pupils for which the provision is to be made;
- (d) details of how the provision will be funded;
- (e) a statement as to whether the education will be provided for children with special educational needs who are not registered pupils at the school to which the proposals relate;
- (f) a statement as to whether the expenses of the provision will be met from the school's delegated budget;
- (g) the location of the provision if it is not to be established on the existing site of the school; and
- (h) where the provision will replace existing educational provision for children with special educational needs, a statement as to how the governing body believes that the new provision is likely to lead to improvement in the standard, quality and range of the educational provision for such children.

19. Where the proposals are to discontinue provision for special educational needs—

- (a) details of alternative provision for pupils for whom the provision is currently made;
- (b) details of the number of pupils for whom provision is made that is recognised by the local education authority as reserved for children with special educational needs during each of the 4 school years preceding the current school year;
- (c) details of provision made outside the area of the local education authority for pupils whose needs will not be able to be met in the area of the authority as a result of the discontinuance of the provision; and
- (d) a statement as to how the governing body believes the proposals are likely to lead to improvement in the standard, quality and range of the educational provision for such children.

20. Where the proposals will lead to alternative provision for children with special educational needs, as a result of the establishment, alteration or discontinuance of existing provision, the specific educational benefits that will flow from the proposals in terms of—

- (a) improved access to education and associated services including the curriculum, wider school activities, facilities and equipment with reference to the local education authority's Accessibility Strategy;
- (b) improved access to specialist staff, both educational and other professionals, including any external support and outreach services;
- (c) improved access to suitable accommodation; and
- (d) improved supply of suitable places.

### **Sex of pupils**

**21.** Where the proposals are to make an alteration to provide that a school which was an establishment which admitted pupils of one sex only becomes an establishment which admits pupils of both sexes—

- (a) details of the likely effect which the alteration will have on the balance of the provision of single-sex education in the area;
- (b) evidence of local demand for single-sex education; and
- (c) details of any transitional period which the body making the proposals wishes specified in a transitional exemption order (within the meaning of section 27 of the Sex Discrimination Act 1975(1)).

**22.** Where the proposals are to make an alteration to a school to provide that a school which was an establishment which admitted pupils of both sexes becomes an establishment which admits pupils of one sex only—

- (a) details of the likely effect which the alteration will have on the balance of the provision of single-sex education in the area; and
- (b) evidence of local demand for single-sex education.

### **Extended services**

**23.** If the proposed alterations affect the provision of the school's extended services, details of the current extended services the school is offering and details of any proposed change as a result of the alterations.

### **Need or demand for additional places**

**24.** If the proposals involve adding places—

- (a) a statement and supporting evidence of the need or demand for the particular places in the area;
- (b) where the school has a religious character, a statement and supporting evidence of the demand in the area for education in accordance with the tenets of the religion or religious denomination; and
- (c) where the school adheres to a particular philosophy, evidence of the demand for education in accordance with the philosophy in question and any associated change to the admission arrangements for the school.

**25.** If the proposals involve removing places—

- (a) a statement and supporting evidence of the reasons for the removal, including an assessment of the impact on parental choice; and
- (b) a statement on the local capacity to accommodate displaced pupils.

### **Additional information in the case of special schools**

**26.** Where the proposals relate to a special school the following information must also be provided—

- (a) information as to the numbers, age range, sex and special educational needs of the pupils (distinguishing boarding and day pupils) for whom provision is made at the school;

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(1) 1975 c.65. Section 27 is amended by paragraph 3 of Schedule 3 to the Act.

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- (b) information on the predicted rise or fall (as the case may be) in the number of children with particular types of special educational needs requiring specific types of special educational provision;
- (c) a statement about the alternative provision for pupils who may be displaced as a result of the alterations;
- (d) where the proposals would result in the school being organised to make provision for pupils with a different type or types of special educational needs, with the result that the provision which would be made for pupils currently at the school would be inappropriate to their needs, details of the other schools which such pupils may attend including any interim arrangements and transport arrangements to such schools;
- (e) where the proposals relate to a foundation special school, a statement as to whether the proposals are to be implemented by the local education authority, or by the governing body, and if the proposals are to be implemented by both, a statement as to the extent to which they are to be implemented by each body.

## PART 2

### Publication, determination and implementation of proposals

#### Consultation on proposals

27.—(1) The governing body must, before they publish any proposals, consult the following persons—

- (a) any local education authority likely to be affected by the proposals, in particular neighbouring local education authorities where there may be significant cross-border movement of pupils;
- (b) families, teachers and other staff at the school;
- (c) the governing body, teachers and other staff of any other school that may be affected by the proposals;
- (d) families at any other school that may be affected by the proposals including where appropriate parents of pupils at feeder primary schools;
- (e) any trade unions who represent staff at the school and representatives of any trade unions of any other staff at schools that may be affected by the proposals;
- (f) the trustees of the school (if any);
- (g) if proposals involve, or are likely to affect a school which has a religious character—
  - (i) the Diocesan Board of Education for any diocese of the Church of England any part of which is comprised in the area of the authority;
  - (ii) the bishop of a diocese of the Roman Catholic Church any part of which is comprised in the area of the authority; or
  - (iii) the relevant faith group in relation to the schoolas appropriate;
- (h) if the proposals affect the provision of full-time 14-19 education, the Learning and Skills Council for England;
- (i) Members of Parliament whose constituencies include the school that is the subject of the proposals or whose constituents are likely to be affected by the proposals;
- (j) the local district or parish council where the school is situated;

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- (k) where proposals affect early years provision, the Early Years Development and Child Care Partnership<sup>(2)</sup>, or those who benefit from a contractual arrangement giving them the use of the premises;
  - (l) any other interested party; and
  - (m) any other persons whom the governing body thinks appropriate.
- (2) Where the proposals relate to a special school, the governing body must also consult—
- (a) the relevant Primary Care Trust for the area in which the school is situated; and
  - (b) any NHS trust or NHS foundation trust responsible for a hospital or other provision in the area in which the school is situated.

### **Manner of publication of proposals**

- 28.**—(1) The governing body must publish—
- (a) the information contained in paragraphs 1 to 7(1), 8(1)(a) and (b), 9(a) and 19(a) of this Schedule;
  - (b) details of how complete copies of the proposals can be obtained.
- (2) The governing body must publish the information in sub-paragraph (1)—
- (a) by posting it in a conspicuous place in the area served by the school and at or near the main entrance to the school or, if there is more than one main entrance, all of them; and
  - (b) publishing it in at least one newspaper circulating in the area served by the school.
- (3) The governing body must send a complete set of the proposals to—
- (a) the relevant local education authority within 1 week of the date of publication;
  - (b) the Secretary of State within 1 week of the date of publication; and
  - (c) anyone who requests a copy of the proposals within 1 week of the request.
- (4) Where the proposals relate to a special school, the governing body must also send a complete set of the proposals to—
- (a) the relevant Primary Care Trust for the area in which the school is situated;
  - (b) any NHS trust or NHS foundation trust responsible for a hospital or other provision in the area in which the school is situated;
  - (c) any local education authority which maintains a statement of special needs in respect of a registered pupil at the school;
  - (d) any local education authority which might be affected by the proposal; and
  - (e) parents of children who attend the special school.

### **Objections and comments**

- 29.**—(1) Except where sub-paragraph (2) applies, any person may send objections or comments in relation to any proposals to the local education authority within 6 weeks from the date of publication of the proposals.
- (2) Where the proposal is for an excepted expansion any objections or comments must be sent to the authority within 4 weeks from the date of the publication of the proposals.
- (3) For the purpose of this Schedule an excepted expansion means, in respect of primary schools and secondary schools except grammar schools, a prescribed alteration falling within paragraphs—

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(2) Early Years Development and Child Care Partnerships are required to be established by section 119 of SSFA 1998 which is prospectively amended so as not to apply in England by paragraph 32 of Schedule 2 to the [Childcare Act 2006\(c.21\)](#)

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- (a) 1, 2 and 3 (but in respect of paragraph 3 only where the alteration of the upper age limit is being made so as to provide sixth form education) of Part 1 to Schedule 2;
  - (b) 12, 13 and 14 (but in respect of paragraph 14 only where the alteration of the upper age limit is being made so as to provide sixth form education) of Part 2 to Schedule 2;
  - (c) 19 and 22 (but in respect of paragraph 22 only where the alteration of the upper age limit is being made so as to provide sixth form education) of Part 3 to Schedule 2.
- (4) The representation period means the period starting on the date of publication of the proposals and ending 6 or 4 weeks later, as appropriate.

#### **Local education authority as decision maker**

**30.**—(1) For the purpose of section 21(2)(f) the local education authority is prescribed as the person who (subject to the remaining provisions of this Schedule) must consider and determine the proposals.

(2) Where paragraph 36 applies, (transfer to a different local education authority area) the local education authority referred to in sub-paragraph (1) is the local education authority described in paragraph 36 as Local Education Authority A.

#### **Consideration and determination of proposals by the local education authority or adjudicator**

**31.**—(1) In determining proposals to which this Schedule applies the local education authority may—

- (a) reject the proposals;
- (b) approve the proposals without modification; or
- (c) approve the proposals with such modifications as the authority think desirable.

(2) Before approving any proposals with modifications the authority must consult the governing body (unless the modifications are proposed by the governing body).

(3) Where proposals are approved by the authority (whether with or without modifications) the approval may be conditional on the occurrence of an event prescribed in paragraph 38.

(4) Any determination under sub-paragraph (1) must be made within the period of 2 months from the end of the representation period.

(5) Where the authority does not make a determination within the period prescribed by sub-paragraph (4), the proposals must be referred to the adjudicator.

**32.**—(1) Where any proposals have been referred to the adjudicator pursuant to paragraphs 31(5) or 34, the adjudicator may—

- (a) reject the proposals;
- (b) approve the proposals without modifications; or
- (c) approve the proposals with such modifications as the adjudicator thinks desirable.

(2) Before approving any proposals with modifications, the adjudicator must consult the relevant governing body and the local education authority (unless they proposed the modification).

(3) Where the proposals are approved by the adjudicator (whether with or without modifications) the approval may be conditional on the occurrence of an event prescribed in paragraph 38.



### **Referral to adjudicator post determination**

**33.**—(1) For the purpose of section 21(2)(h), the prescribed persons at whose request proposals must, after their initial determination by the local education authority, be referred to the adjudicator are—

- (a) the Diocesan Board of Education for any diocese of the Church of England any part of which is comprised in the area of the authority;
- (b) the bishop of a diocese of the Roman Catholic Church any part of which is comprised in the area of the authority;
- (c) where proposals relate to a school providing, or proposing to provide education for pupils aged 14 or over, the Learning and Skills Council for England;
- (d) where proposals relate to a community school, and the proposal is an excepted expansion (as defined in paragraph 29) the governing body.

(2) A request under sub-paragraph (1) must be made within 4 weeks of the initial determination of the proposal by the authority.

(3) Where a request is made under sub-paragraph (1) the authority must submit the proposals and any objections or comments made in relation to the proposals to the adjudicator within 1 week of receiving the request.

### **Provision for notification of decisions**

**34.**—(1) The local education authority must notify the following persons of each decision under paragraph 31, together with their reasons—

- (a) the governing body;
- (b) the trustees of the school (if any);
- (c) the Secretary of State;
- (d) where proposals include provision for 14-16 education or sixth form education, the Learning and Skills Council for England;
- (e) the Diocesan Board of Education for any diocese of the Church of England any part of which is comprised in the area of the authority;
- (f) the bishop of any diocese of the Roman Catholic Church any part of which is comprised in the area of the authority;
- (g) where the proposals relate to a special school—
  - (i) the relevant Primary Care Trust for the area in which the school is situated, and
  - (ii) any NHS trust or NHS foundation trust responsible for a hospital or other provision in the area in which the school is situated;
- (h) subject to sub-paragraph (3), each objector to the proposals; and
- (i) the adjudicator.

(2) In the case of any determination made by the adjudicator pursuant to paragraph 31(5) or 33, the adjudicator must notify the local education authority and the persons in sub-paragraphs (a) to (h) of sub-paragraph (1) of each decision, together with his reasons.

(3) 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 authority or adjudicator (as the case may be) may comply with sub-paragraph (1)(h) by—

- (a) notifying the person (if any) who appears to them to have arranged for the petition to be sent to the authority; or

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- (b) if there is no such person, notifying the objector whose name appears first on the petition.

### **Related proposals**

**35.**—(1) Where proposals appear to be related to other proposals the local education authority or adjudicator, as the case may be, must consider the related proposals together.

(2) Where the authority are required under paragraph 31(5) or 33 to refer any proposals to the adjudicator, the authority must also within 1 week refer to the adjudicator any other proposals which appear to them to be related.

### **Determination of proposals where the school is transferring to a different local education authority**

**36.**—(1) This paragraph applies to the determination of any proposals for the transfer of the school to a new site falling within paragraph 9 or 18 of Schedule 2, where the new site is in an area other than that of the local education authority who maintain the school.

(2) The local education authority who maintain the school (“Local Education Authority A”) must send a copy of the proposals, together with all objections and comments received, to the local education authority for the area where it is proposed that the school will be situated (“Local Education Authority B”).

(3) Local Education Authority A must send the documents required under sub-paragraph (2) within 1 week from the end of the representation period.

(4) Before determining the proposals in accordance with paragraph 30, Local Education Authority A must first seek the recommendation of Local Education Authority B on how the proposals should be determined.

(5) Any determination made under sub-paragraph (1) must be made within the period of 2 months from the end of the representation period.

### **Transitional exemption orders under the Sex Discrimination Act 1975**

**37.**—(1) This paragraph applies to proposals for a school to cease to be an establishment which admits pupils of one sex only.

(2) Sub-paragraph (3) applies where such proposals fall within paragraph 7 or paragraph 23 of Schedule 2, and in accordance with paragraph 28(3)(a) of this Schedule the governing body sends a copy of the published proposals to the local education authority.

(3) Sending the published proposals is to be treated as an application to the local education authority for a transitional exemption order under section 27 of the Sex Discrimination Act 1975, and the local education authority must make such an order accordingly.

(4) Where—

- (a) the authority have failed to make a transitional exemption order; or
- (b) the authority refer the proposals to the adjudicator under paragraph 31(5) or 33

they must refer the question whether to make a transitional exemption order to the adjudicator.

(5) Where that question is referred to the adjudicator—

- (a) he must consider the matter afresh, and
- (b) he may make a transitional exemption order accordingly.

(6) In this paragraph “make”, in relation to the transitional exemption order, includes (so far as the context permits) vary or revoke.

## Conditional approvals

**38.**—(1) The following events are prescribed as specified events which (if the approval is expressed to take effect only if they occur) must occur by the date specified in the approval—

- (a) the grant of planning permission under Part 3 of the Town and Country Planning Act 1990<sup>(3)</sup>;
  - (b) the acquisition of any site required for the implementation of the proposals;
  - (c) the acquisition of playing fields required for the implementation of the proposals;
  - (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 Department for Education and Skills following the entering into a private finance contract by a local education authority;
  - (f) the entering into an agreement for any necessary building project supported by the Department for Education and Skills in connection with the programme known as “Building Schools for the Future”;
  - (g) in the case of mainstream schools, the agreement to any change to the admission arrangements of any other school or schools, as specified in the approval;
  - (h) the making of any scheme relating to any charity connected with the school;
  - (i) the formation of any federation (within the meaning of section 24(2) of EA 2002) of which it is intended that the school should form part, or the fulfilling of any other condition relating to the school forming part of a federation;
  - (j) the Secretary of State giving approval under regulation 5(4) of the Education (Foundation Body)(England) Regulations 2000<sup>(4)</sup> to a proposal that a foundation body must be established and that the school must form part of a group for which a foundation must act;
  - (k) the Secretary of State making a declaration under regulation 22(3) of the Education (Foundation Body) (England) Regulations 2000 that the school should form part of a group for which a foundation body acts; and
  - (l) where the proposals in question depend upon any of the events specified in paragraphs (a) to (g) 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 purpose of paragraph (g) above a change to the admission arrangements is agreed—
- (a) in the 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 SSFA 1998 and either—
    - (i) no objection is made to the change in accordance with section 90 of SSFA 1998, or
    - (ii) if an objection to the change is made and referred to the adjudicator in accordance with section 90 of SSFA 1998, the objection is not upheld;
  - (b) in a case where the change arises from a variation made under section 89(5) of SSFA 1998 or made under The School Admissions (Alteration and Variation of, and Objections to, Arrangements) (England) Regulations 2007<sup>(5)</sup>, 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.

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(3) 1990 c.8.

(4) S.I. 2000/2872.

(5) S.I. 2007/496.

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### **Withdrawal of proposals**

**39.** Proposals may be withdrawn by the governing body which published the proposals provided that—

- (a) such proposals are withdrawn before any determination is made,
- (b) written notice is given to—
  - (i) the local education authority;
  - (ii) in cases where the proposals have been referred to the adjudicator, the adjudicator and the Secretary of State; and
- (c) written notice is placed at the main entrance to the school or, if there is more than one main entrance, all of them.

### **Duty to implement proposals**

**40.**—(1) Subject to the following provisions of this Schedule proposals must be implemented in the form in which they were approved.

(2) Where the local education authority or adjudicator have approved any proposals then the proposals must be implemented by the governing body in the form in which they were approved.

### **Revocation of proposals (after approval)**

**41.**—(1) If the local education authority, or adjudicator (where the original proposals were referred to him under paragraph 31(5) only, or a referral is made to him under sub-paragraph (9)) are satisfied that—

- (a) implementation of the proposals would be unreasonably difficult; or
- (b) circumstances have so altered since approval was given that implementation would be inappropriate,

the authority or adjudicator as appropriate may determine that paragraph 40 (duty to implement) is to cease to apply to the proposals.

(2) The authority or adjudicator (as the case may be) may only make a determination under sub-paragraph (1) where proposals have been published by the governing body under sub-paragraph (3) (“revocation proposals”).

(3) Revocation proposals must contain—

- (a) a description of the original proposals as published in accordance with section 19(3);
- (b) the date of publication of the original proposals;
- (c) a statement as to why it is proposed that, in accordance with sub-paragraph (1), paragraph 40 should not apply in relation to the original proposals; and
- (d) details of how copies of the original proposals can be obtained.

(4) Revocation proposals must be published by—

- (a) posting them in a conspicuous place in the area served by the school, and at or near the main entrance to the school or, if there is more than one main entrance, all of them, and
- (b) publishing them in at least one newspaper circulating in the area served by the school.

(5) The governing body must submit the revocation proposals within 1 week of the date of publication to the authority.

(6) Any person may object to or comment on revocation proposals, and such objections and comments must be sent to the authority within 6 weeks of the date of publication of the proposals.

(7) Where the original proposals were decided by the adjudicator pursuant to a reference under paragraph 31(5), the authority must refer the revocation proposals, together with any objections or comments in relation to them, to him within 2 weeks of the end of the representation period.

(8) Where the authority determine revocation proposals, any determination must be made within a period ending 2 months after the end of the representation period.

(9) If the authority does not make a determination within the period specified in sub-paragraph (8) they must refer the proposals to the adjudicator within 1 week from the end of that period.

(10) The authority must notify the following persons of each decision taken under sub-paragraph (1) together with their reasons—

- (a) the Diocesan Board of Education for any diocese of the Church of England any part of which is comprised in the area of the authority;
- (b) the bishop of a diocese of the Roman Catholic Church any part of which is comprised in the area of the authority;
- (c) where proposals relate to a school providing or proposing to provide education for pupils aged 14 or over, the Learning and Skills Council for England;
- (d) where the proposals relate to a voluntary or foundation school, or a foundation special school—
  - (i) the governing body; and
  - (ii) the trustees of the school; and
- (e) where the original proposal is an excepted expansion, (as defined in paragraph 29(3)), the governing body.

(11) The persons at whose request revocation proposals must after their determination by the authority be referred to the adjudicator are—

- (a) the Diocesan Board of Education for any diocese of the Church of England any part of which is comprised in the area of the authority;
- (b) the bishop of a diocese of the Roman Catholic Church any part of which is comprised in the area of the authority;
- (c) where proposals relate to a school providing or proposing to provide education for pupils aged 14 or over, the Learning and Skills Council for England;
- (d) where the proposals relate to a voluntary or foundation school, or a foundation special school—
  - (i) the governing body, and
  - (ii) the trustees of the school; and
- (e) where the proposal is an excepted expansion (as defined in paragraph 29(3)) the governing body.

(12) A request under sub-paragraph (11) must be made within 4 weeks of the initial determination of the revocation proposals by the authority.

(13) Where a request is made under sub-paragraph (11) the authority must submit the revocation proposals, and any objections or comments relating to the proposals to the adjudicator within 1 week of receiving the request.

### **Modification post determination**

**42.**—(1) Where the local education authority has determined the proposals, the authority may make modifications to the proposals, and where there has been a conditional approval, specify a later

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date by which the event in question must occur, at the request of the governing body at any time after determination but before implementation.

(2) Where the adjudicator has determined the proposals, he may modify the proposals, and where there has been a conditional approval, specify a later date by which the event in question must occur, after consulting the governing body and the local education authority (unless they have proposed the modifications) at any time after determination but before implementation.

### **Proposals not falling to be implemented**

**43.**—(1) Where by virtue of paragraph 41(1), paragraph 40 (duty to implement) ceases to apply to any proposals, those proposals are to be treated for the purpose of this Schedule as if they had been rejected.

(2) Where a conditional approval under paragraph 38 is given, and an event specified in that approval does not occur by the required date—

- (a) paragraph 40 ceases to apply to the proposals,
- (b) the proposals must be considered afresh by the local education authority or adjudicator (as the case may be) and paragraphs 30 to 42 apply accordingly.

## **PART 3**

### **Provisions relating to change of category only**

#### **Unimplemented statutory proposals**

**44.** Where a school changes category in accordance with this Schedule and there are other proposals for alterations falling to be implemented in respect of that school which have not been implemented—

- (a) in the case of a school which has changed category from a community or voluntary aided school to become a voluntary controlled school, the proposals must to the extent that they have not been implemented, be implemented by the local education authority;
- (b) in the case of a school which has changed category from a foundation or voluntary controlled school to become a voluntary aided school, the proposals must continue to be implemented by the governing body and local education authority (as the case may be) as if the school had remained a foundation or voluntary controlled school.

#### **Revision or replacement of the school's instrument of government**

**45.**—(1) The governing body and the local education authority must secure that by the end of the implementation period a new instrument of government is made for the school in accordance with the Constitution Regulations.

(2) The implementation period is the period commencing on the date a proposal is approved under paragraph 31 or 32 and ending on the implementation date.

(3) The new instrument of government is to take effect from the date of making for the purpose of reconstituting the governing body but does not affect the constitution of the governing body conducting the school pending the implementation date.

(4) For all other purposes the new instrument of government is to take effect from the implementation date.

### **Reconstitution or replacement of the governing body**

46.—(1) The governing body and the local education authority must secure that as soon as reasonably practicable after the commencement of the implementation period (and in any event within a period of 3 months beginning on the implementation date) the governing body are reconstituted in accordance with the new instrument of government, and the Constitution Regulations.

(2) The current governing body must exercise their functions under the Act and these Regulations in a manner calculated to enable the authority to fulfil their duties under sub-paragraph (1).

### **Current governors continuing in office**

47.—(1) Sub-paragraph (2) applies to any member of a current governing body in respect of which a new instrument of government has been made under these Regulations.

(2) Subject to paragraph 48 a governor to whom this paragraph applies is to continue from the implementation date (or the making of the new instrument of government if later) as a governor of the corresponding category required by the new instrument of government (if any such category exists).

(3) A member of a current governing body who continues as a governor under sub-paragraph (2) holds office for the remainder of the term for which he was originally appointed or elected.

(4) The proceedings of the governing body are not invalidated by the school having more governors of a particular category than are provided for by the new instrument of government pending removal of the surplus governors pursuant to paragraph 48.

### **Surplus governors**

48.—(1) Where—

- (a) on or after the implementation date a school has more governors of any of the categories of governors than are required as governors of the corresponding category by the new instrument of government; and
- (b) the excess is not eliminated by the required number of governors resigning,

such number of that category as is required to eliminate the excess must cease to hold office in accordance with sub-paragraphs (2) and (3).

(2) The governors who are to cease to hold office are determined on the basis of seniority, the governor whose current period of continuous service (whether as a governor of one or more than one category) is the shortest being the first to cease to hold office.

(3) Where it is necessary for the purposes of paragraph (2) to select one or more governors from a group of equal seniority, it must be done by drawing lots.

(4) For the purposes of this paragraph, sponsor governors nominated by a particular category of person are treated as if they constituted a separate category of governor.

(5) Any procedure set out in the new instrument of government for the removal of excess foundation governors does not apply to the reconstitution of the governing body under these Regulations.

### **Transfer of staff**

49. Where a voluntary aided or foundation school changes category to a voluntary controlled school—

- (a) the contract of employment between a person to whom this paragraph applies and the governing body has effect from the implementation date as if originally made between him and the local education authority;

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- (b) all the governing body's rights, powers, duties and liabilities under or in connection with the contract of employment transfer by virtue of this paragraph to the local education authority on the implementation date; and
- (c) anything done by that date by, or in relation to, the governing body in respect of that contract or the employee is deemed from that date to have been done by or in relation to the local education authority.

**50.**—(1) Subject to sub-paragraph (2), paragraph 49 applies to any person who immediately before the implementation date is employed by the governing body to work at the school who is the subject of the proposal.

(2) Paragraph 49 does not apply to any person whose contract of employment terminates on the day immediately preceding the implementation date.

**51.** Any person who before the implementation date has been appointed by the governing body to work at the school as from the implementation date or a date thereafter is to be treated for the purpose of paragraph 49 as if he had been employed by the governing body immediately before the implementation date to do such work at the school as he would have been required to do on or after the date under his contract of employment with the governing body.

**52.** Where a voluntary controlled school changes category to a voluntary aided school—

- (a) the contract of employment between a person to whom this paragraph applies and the local education authority has effect from the implementation date as if originally made between him and the governing body;
- (b) all the authority's rights, powers, duties and liabilities under or in connection with the contract of employment transfer by virtue of this paragraph to the governing body on the implementation date; and
- (c) anything done before that date by or in relation to the authority in respect of that contract or the employee is deemed from that date to have been done by or in relation to the governing body.

**53.**—(1) Subject to sub-paragraph (2), paragraph 52 applies to any person who immediately before the implementation date is employed by the authority to work solely at the school who is the subject of the proposal.

(2) Paragraph 52 does not apply to any person whose contract of employment terminates on the day immediately preceding the implementation date, or to any person employed by the authority to work at the school solely in connection with the provision of meals.

**54.** Any person who before the implementation date has been appointed by the authority to work at the school as from the implementation date or a date thereafter is to be treated for the purpose of paragraph 52 as if he had been employed by the authority immediately before the implementation date to do such work at the school as he would have been required to do on or after the date under his contract of employment with the authority.

(1) Paragraphs 49 to 54 are without prejudice to any right of an employee to terminate his contract if a substantial change is made to his detriment in his working conditions, but no such right arises by reason only of the change in employer effected by these Regulations.

**55.**—(1) This paragraph applies where a voluntary controlled school with a religious character changes category to become a voluntary aided school with a religious character.

(2) Where immediately before the implementation date a teacher in a voluntary controlled school enjoyed by virtue of section 60(2) of the School Standards and Framework Act 1998, rights not conferred on him on or after the implementation date by section 60 as a teacher at a voluntary aided



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school, he must continue to enjoy those rights until he ceases to be employed as a teacher at the voluntary aided school.