

SCHEDULE 3

GOVERNING BODY PROPOSALS FOR ALTERATIONS OTHER THAN FOUNDATION PROPOSALS

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;
 - (k) where proposals affect early years provision, the Early Years Development and Child Care Partnership⁽¹⁾, 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

(1) 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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- (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—
- (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;

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- (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
- (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(2);
- (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;

(2) 1990 c.8.

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- (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⁽³⁾ 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⁽⁴⁾, 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.

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;

⁽³⁾ S.I. 2000/2872.

⁽⁴⁾ S.I. 2007/496.

- (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.

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(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 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.