

SCHEDULE 2

Regulations 18 and 20

IMPLEMENTATION OF ESTABLISHMENT AND DISCONTINUANCE PROPOSALS

Proposals relating to community schools, community special schools or maintained nursery schools

1.—(1) This paragraph applies to proposals which fall to be implemented under regulation 18 or 20 and relate to a community school, a community special school or a maintained nursery school or to a proposed such school.

(2) The proposals must be implemented by the relevant authority.

Proposals relating to foundation or voluntary controlled schools

2.—(1) This paragraph applies to proposals which fall to be implemented under regulation 18 or 20 and relate to a foundation or voluntary controlled school, or a proposed such school.

(2) Proposals made by the relevant authority must be implemented by the authority.

(3) Proposals made by proposers (including, in particular, such proposals so far as relating to the provision of the site for a proposed school) must be implemented by the relevant authority and by the proposers, respectively, to such extent as the proposals provide for each of them to do so.

Proposals relating to voluntary aided schools

3.—(1) This regulation applies to proposals which fall to be implemented under regulation 18 or 20 and relate to a voluntary aided school, or a proposed voluntary aided school.

(2) The proposals must be implemented—

- (a) so far as relating to the provision of any relevant premises for a proposed school, by the relevant authority,
- (b) in the case of discontinuance proposals made by proposers, by the proposers and the relevant authority, and
- (c) otherwise by the proposers or, in the case of proposals made by the relevant authority, by the relevant authority.

(3) In sub-paragraph (2) “relevant premises” means—

- (a) in the case of proposals published under section 66 of EA 2005, the site specified in the notice under that section, or playing fields, and
- (b) in any other case, playing fields.

(4) Nothing in sub-paragraph (2) requires the relevant authority to provide any playing fields where—

- (a) a new voluntary aided school is to be established in place of one or more existing independent, foundation or voluntary schools falling to be discontinued on or before the date of implementation of the proposals, and
- (b) those playing fields—
 - (i) were part of the premises of any of the existing schools (whether it was an independent school or a foundation or voluntary school), and
 - (ii) (if it was a foundation or voluntary school) were not provided by the authority.

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Proposals relating to foundation special schools

4.—(1) This paragraph applies to proposals which fall to be implemented under regulation 18 or regulation 20 and relate to a foundation special school or a proposed foundation special school.

(2) Where the proposals were made by the relevant authority, they must be implemented by the authority.

(3) Proposals made by proposers (including, in particular, proposals so far as relating to the provision of the site for a proposed school) must be implemented by the relevant authority and by the proposers, respectively, to such extent as the proposals provide for each of them to do so.

Proposals relating to Academies

5. Where proposals published under section 66 of EA 2005 to establish an Academy are implemented by the Secretary of State making an agreement under section 482 of EA 1996, subsection (3) of that section (requirement to consult certain LEAs about the establishment of the school) does not apply.

Provision of site and buildings for proposed foundation, voluntary controlled or foundation special school

6.—(1) This paragraph applies where a local education authority are required—

- (a) by virtue of paragraph 2 (2) or (3) to provide a site for a proposed foundation or voluntary controlled school, or
- (b) by virtue of paragraph 4 (2) or (3) to provide a site for a proposed foundation special school.

(2) The authority must transfer their interest in the site and in any buildings on the site which are to form part of the school's premises—

- (a) to the school's trustees, to be held by them on trust for the relevant purposes of the school, or
- (b) if the school has no trustees, to the school's foundation body or (in the absence of such a body) to the governing body, to be held by that body for the relevant purposes.

(3) If any doubt or dispute arises as to the persons to whom the authority are required to make the transfer, it must be made to such persons as the adjudicator thinks proper.

(4) The authority must pay to the persons to whom the transfer is made their reasonable costs in connection with the transfer.

(5) Where—

- (a) a transfer is made under this paragraph, and
- (b) the transfer is made to persons who possess, or are or may become entitled to, any sum representing proceeds of the sale of other premises which have been used for the purposes of the school,

those persons must notify the local education authority that sub-paragraph (b) applies to them; and they or their successors must pay to the authority so much of that sum as, having regard to the value of the interest transferred, may be determined to be just, either by agreement between them and the authority or, in default of agreement, by the adjudicator.

(6) In sub-paragraph (5)(b) the reference to proceeds of the sale of other premises includes a reference to—

- (a) consideration for the creation or disposition of any kind of interest in other premises, including rent, and

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(b) interest which has accrued in respect of any such consideration.

(7) Any sum paid under sub- paragraph (5) is to be treated for the purposes of section 14 of the Schools Sites Act 1841⁽¹⁾ (which relates to the sale or exchange of land held on trust for the purposes of a school) as a sum applied in the purchase of a site for the school.

(8) A determination may be made under sub-paragraph (5) in respect of any property subject to a trust which has arisen under section 1 of the Reverter of Sites Act 1987⁽²⁾ (right of reverter replaced by trust for sale) if and only if—

- (i) the determination is made by the adjudicator, and
- (ii) he is satisfied that steps have been taken to protect the interests of the beneficiaries under the trust.

(9) Sub-paragraph (5) is to apply for the purpose of compensating the authority notified under that sub-paragraph only in relation to such part of the sum mentioned in paragraph (5)(b) (if any) as remains after the application of paragraphs A1 to A16 or 1 to 3 of Schedule 22 to SSFA 1998⁽³⁾ to that sum.

(10) In this paragraph—

“the relevant purposes” means—

- (a) in relation to a transfer to a school’s foundation body, the purposes of the schools comprising the group for which that body acts, and
- (b) in relation to a transfer to a school’s governing body, the purposes of the school;

“site” does not include playing fields but otherwise includes any site which is to form part of the premises of the school in question.

“trustees of the school” means any person (other than the foundation body or governing body) holding property on trust for the purposes of the school.

Grants in respect of certain expenditure relating to proposed voluntary aided school

7.—(1) This paragraph applies where any proposers are required by virtue of paragraph 3 (2) to implement proposals involving the establishment of a new voluntary aided school.

(2) Paragraph 5 of Schedule 3 to SSFA 1998 applies in relation to the new school as it applies in relation to an existing voluntary aided school.

(3) In the application of that paragraph in relation to a new voluntary aided school—

- (a) the references to the governing body, in relation to any time before the governing body are constituted, are to be read as references to the proposers;
- (b) where requirements are imposed in relation to grant paid by virtue of this paragraph to the proposers, the requirements must be complied with by the governing body, when they are constituted, as well as by the proposers.

Assistance for proposers of proposed voluntary aided school

8. A local education authority may give to persons required by virtue of paragraph 3 (2) to implement proposals involving the establishment of a voluntary aided school such assistance as the authority think fit in relation to the carrying out by those persons of any obligation arising by virtue of that provision.

(1) 1841 c. 38.

(2) 1987 c 15.

(3) Paragraphs A1 to A16 were inserted by Schedule 4 to the Act.

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Duty to transfer interest in premises provided under paragraph 8

9.—(1) Where assistance under paragraph 8 consists of the provision of any premises for use for the purposes of a school, the local education authority must transfer their interest in the premises

- (a) to the trustees of the school to be held on trust for the purposes of the school; or
- (b) if the school has not trustees, to the school’s foundation body, to be held by that body for the relevant purpose.

(2) If any doubt or dispute arises as to the persons to whom the authority are required to make the transfer it must be made to such persons as the adjudicator thinks proper.

(3) The authority must pay to the persons to whom the transfer is made their reasonable costs in connection with the transfer.

(4) In this paragraph “the relevant purposes” means, in relation to a transfer to a school’s foundation body, the purposes of the schools comprising the group for which that body acts.