

**2009 No. 1556**

**EDUCATION, ENGLAND**

**The School Organisation and Governance (Amendment)  
(England) Regulations 2009**

<i>Made</i>	- - - -	<i>23rd June 2009</i>
<i>Laid before Parliament</i>		<i>30th June 2009</i>
<i>Coming into force</i>	- -	<i>1st September 2009</i>

The Secretary of State for Children, Schools and Families makes the following Regulations in exercise of the powers conferred by sections 5(4) and 29(3) of the Education Act 1996<sup>(a)</sup>, sections 144(1) and (2) and 138(7) of and paragraph 10 of Schedule 2 to, the School Standards and Framework Act 1998<sup>(b)</sup>, sections 19 and 24 of the Education Act 2002<sup>(c)</sup>, and sections 7(4) and (6), 10(3), 11(5), 15(3), 19, 21 and 181(2) of and paragraph 8 of Schedule 2 to the Education and Inspections Act 2006<sup>(d)</sup>:

**Citation, commencement and application**

1.—(1) These Regulations may be cited as the School Organisation and Governance (Amendment) (England) Regulations 2009 and come into force on 1st September 2009.

(2) These Regulations apply in relation to England only.

**Amendments to the Education (Transition to New Framework) (School Organisation Proposals) Regulations 1999**

2.—(1) The Education (Transition to New Framework) (School Organisation Proposals) Regulations 1999<sup>(e)</sup> are amended as follows.

(2) After paragraph (2) of regulation 1 insert—

“(3) These Regulations do not apply in relation to England.”.

**Amendments to the Education (Middle School) (England) Regulations 2002**

3.—(1) The Education (Middle School) (England) Regulations 2002<sup>(f)</sup> are amended as follows.

(2) In regulation 2—

(a) in the definition of “governing body” for “section 44 of the School Standards and Framework Act 1998” substitute “section 34 of the Education Act 2002”<sup>(g)</sup>;

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<sup>(a)</sup> 1996 c.56. See section 579 for the definitions of “prescribed” and “regulations”.

<sup>(b)</sup> 1998 c.31.

<sup>(c)</sup> 2002 c.32. See section 212 for the definitions of “prescribed” and “regulations”.

<sup>(d)</sup> 2006 c.40. See section 32 for the definitions of “prescribed” and “regulations”.

<sup>(e)</sup> S.I. 1999/704.

<sup>(f)</sup> S.I. 2002/1983.

<sup>(g)</sup> 2002 c.32.

- (b) in the definition of “middle school proposals” for “section 28(1) and section 28(2) of the School Standards and Framework Act 1998” substitute “section 7, 10, 11 or 19 of the Education and Inspections Act 2006”(a); and
- (c) for the definition of “promoters” substitute—
  - ““proposers” means persons other than a local education authority who have published proposals for the establishment of a new school under section 7, 10 or 11 of the Education and Inspections Act 2006.”.
- (3) In paragraph (1)(b) of regulation 5 for “promoters” substitute “proposers”.
- (4) In paragraph (3)(a) of regulation 6 for “promoters” substitute “proposers”.
- (5) In regulation 7—
  - (a) in paragraph (1) omit “Subject to paragraph (2)”; and
  - (b) omit paragraph (2).

#### **Amendments to the School Governance (Federations) (England) Regulations 2007**

**4.**—(1) The School Governance (Federations) (England) Regulations 2007(b) are amended as follows.

- (2) In regulation 8(3) before sub-paragraph (a) insert—
  - “(za) the Secretary of State;”
- (3) In regulation 9—
  - (a) in paragraph (3) after “authorities” insert “and the Secretary of State within one week of that decision”; and
  - (b) after paragraph (3) insert—
    - “(4) Where any governing body determine under paragraph (1)(c) not to proceed with the proposals for federation, they must give notice of that fact to the Secretary of State within one week of that determination.”.
- (4) In regulation 37—
  - (a) in paragraphs (4) and (8) for “5 days” substitute “one week”; and
  - (b) after paragraph (8) insert—
    - “(9) Where the governing body of a federation decides under paragraph (6)(a) that the relevant school should leave the federation, the governing body must notify the Secretary of State in writing of that decision within one week of that decision.”.
- (5) In regulation 42—
  - (a) in paragraph (1) for “14 days” substitute “one week”; and
  - (b) in paragraph (2) before sub-paragraph (a) insert—
    - “(za) the Secretary of State;”.

#### **Amendments to the School Organisation (Establishment and Discontinuance of Schools) (England) Regulations 2007**

**5.**—(1) The School Organisation (Establishment and Discontinuance of Schools) (England) Regulations 2007(c) are amended as follows.

- (2) In the heading for regulation 4 insert “a” after “which”.
- (3) At the beginning of regulation 12 insert “Subject to regulation 12A”.
- (4) After regulation 12 insert—

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(a) 2006 c.40.

(b) S.I. 2007/960.

(c) S.I. 2007/1288; amended by S. I. 2007/3464.

### **“Maintained nursery schools**

**12A.** Where the school is to be a maintained nursery school paragraphs 2, 8(c) to (f), 10, 12 to 15, 17, 24, 28, 30, 31, 33, 34 and 38 of Schedule 3 do not apply.”.

(5) In regulation 13—

- (a) in paragraph (1)(b) before “the relevant details” insert “Subject to paragraph (1A)”;
- (b) after paragraph (1) insert—

“(1A) Where the school is to be a maintained nursery school paragraphs 31, 34(c) to (f), 36, 38, 39, 42 and 44 of Schedule 5 do not apply.”; and

- (c) in paragraph (5) for “requests a copy within 1 week of the date of publication” substitute “requests a copy within 1 week of receipt of the request.”.

(6) In regulation 20—

- (a) after paragraph (m) insert—

“(ma) in the case of proposals published under section 15, the agreement of the Secretary of State to extend or enlarge an existing Academy;”;

- (b) at the end of paragraph (p) omit “and”;

- (c) at the end of paragraph (q) omit “and”;

- (d) after paragraph (q) insert—

“(qa) in the case of proposals published under section 15, the decision of the Secretary of State to establish a new further education college under section 16 of the Further and Higher Education Act 1992(a); and ”; and

- (e) in paragraph (r) for “(q)” substitute “(qa)”.

(7) In paragraph 41 of Schedule 2 omit “; and a statement that the proposers intend to ask the Secretary of State to designate the school as a school with such a religious character”.

(8) In paragraph 50 of Schedule 3 omit “; and a statement that the proposers intend to ask the Secretary of State to designate the school as a school with such a religious character”.

(9) In paragraph 20 of Schedule 4 after “existing provision” insert “that is recognised by the local education authority as reserved”.

(10) In Schedule 5—

- (a) in paragraphs 27 and 51 omit “; and a statement that the proposers intend to ask the Secretary of State to designate the school as a school with such a religious character”;

- (b) omit paragraph 58.

### **Amendments to the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007**

**6.—**(1) The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007(b) are amended as follows.

(2) In paragraph 15(3) of Schedule 1 for “6 months” substitute “12 months”.

(3) Omit paragraphs 2 and 13 of Schedule 2.

(4) In Schedule 3—

- (a) for paragraph 16 substitute—

“**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) a statement that includes how the proposals will—

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(a) 1992 c.13.

(b) S.I. 2007/1289; amended by S.I. 2007/3464.

- (i) improve the educational or training achievements;
    - (ii) increase participation in education or training; and
    - (iii) expand the range of educational or training opportunities,  
for 16-19 year olds in the area;
  - (b) a statement as to how the new places will fit within the 16-19 organisation in an area;
  - (c) evidence—
    - (i) of local collaboration in drawing up the proposals; and
    - (ii) that the proposals are likely to lead to higher standards and better progression at the school;
  - (d) the proposed number of sixth form places to be provided.”;
  - (b) in paragraph 25A(2)—
    - (i) in sub-paragraph (a) omit “and 2”; and
    - (ii) in sub-paragraph (b) omit “and 13”;
  - (c) in paragraph 28(1)(a) for “16(2)” substitute “(16)(d)”;
  - (d) in paragraph 29(2) after “the publication of the proposals” insert “except where there are related proposals to which sub-paragraph (1) applies.”;
  - (e) in paragraph 29(3)—
    - (i) in paragraph (a) omit “,2”;
    - (ii) in paragraph (b) omit “,13”; and
    - (iii) omit paragraph (c);
  - (f) in paragraph 38(1)—
    - (i) in paragraph (g) for “arrangements of” substitute “arrangements relating to the school or”;
    - (ii) after paragraph (k) insert—
      - “(ka) where the proposals are to alter the upper age limit of the school, the decision of the Secretary of State to establish a new further education college under section 16 of the Further and Higher Education Act 1992;”;
    - (iii) in paragraph (1) for “(k)” substitute “(ka)”;
  - (g) For paragraph (b) of paragraph 38(2) substitute—
    - “(b) in a case where the change arises from a variation made pursuant to section 88E of SSFA 1998 and under the School Admissions (Admissions Arrangements)(England) Regulations 2008(a), where the variation is required to be referred to the adjudicator, if the adjudicator determines that the variation should have effect without modifications; and”.
- (5) Omit paragraphs 2 and 19 of Schedule 4.
- (6) In Schedule 5—
- (a) for paragraph 16 substitute—
    - “**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) a statement that includes how the proposals will—
      - (i) improve the educational or training achievements;
      - (ii) increase participation in education or training; and
      - (iii) expand the range of educational or training opportunities,

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(a) S.I. 2008/3089 as amended by S.I. 2009/1099.

- for 16-19 year olds in the area;
- (b) a statement as to how the new places will fit within the 16-19 organisation in an area;
- (c) evidence—
  - (i) of local collaboration in drawing up the proposals; and
  - (ii) that the proposals are likely to lead to higher standards and better progression at the school;
- (d) the proposed number of sixth form places to be provided.”;
- (b) in paragraph 25A(2)—
  - (i) in paragraph (a) omit “and 2”; and
  - (ii) for paragraph (b) substitute “(b) 18 of Part 4 to Schedule 4.”;
- (c) in paragraph 28—
  - (i) in sub-paragraph (1) (a) for “16(2)” substitute “16(d)”;
  - (ii) in sub-paragraph (3)(A) for “governing body” substitute “local education authority”; and
  - (iii) in sub-paragraph (6) for “governing body” substitute “local education authority”;
- (d) in paragraph 29—
  - (i) in sub-paragraph (2) after “the publication of the proposals” insert “except where there are related proposals to which sub-paragraph (1) applies.”;
  - (ii) in paragraph (a) of sub-paragraph (3) omit “,2”;
  - (iii) omit paragraph (b) of sub-paragraph (3);
  - (iv) in paragraph (c) of sub-paragraph (3) omit “,19”; and
  - (v) omit paragraph (d) of sub-paragraph (3);
- (e) in paragraph 38(1)—
  - (i) in paragraph (g) omit “arrangements of” and insert “arrangements relating to the school or”;
  - (ii) after paragraph (k) insert—
    - “(ka) where the proposals are to alter the upper age limit of the school, the decision of the Secretary of State to establish a new further education college under section 16 of the Further and Higher Education Act 1992;”;
  - (iii) in paragraph (l) for “(k)” substitute “(ka)”;
- (f) For paragraph (b) of paragraph 38(2) substitute—
  - “(b) in a case where the change arises from a variation made pursuant to section 88E of SSFA 1998 and under the School Admissions (Admissions Arrangements)(England) Regulations 2008(a), where the variation is required to be referred to the adjudicator, if the adjudicator determines that the variation should have effect without modifications; and”

#### **Amendments to the Information as to Provision of Education (England) Regulations 2008**

7.—(1) The Information as to Provision of Education (England) Regulations 2008(b) are amended as follows.

- (2) In paragraph 4 of Schedule 1 for sub-paragraphs (a) to (c) substitute—

“(a) a five year period in the case of such pupils for whom primary education is so provided; and

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(a) S.I. 2008/3089; amended by S.I. 2009/1099.  
 (b) S.I. 2008/4; amended by S.I. 2008/3089.

(b) a seven year period in the case of such pupils for whom secondary education is so provided,  
such period commencing at the start of the school year which begins in the year in which information is provided to the Secretary of State.”.

### **Transitional Provisions**

8.—(1) Regulation 6(2) does not apply to proposals published under section 19(3) of the Education and Inspections Act 2006 more than six months before 1st September 2009.

(2) Regulation 6(4)(d) and (6)(d)(i) does not apply to proposals published under section 19(1) or (3) of the Education and Inspections Act 2006 more than four weeks before 1st September 2009.

*Vernon Coaker*  
Minister of State

23rd June 2009

Department for Children, Schools and Families

### **EXPLANATORY NOTE**

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

These Regulations make various amendments to regulations relating to school organisation and school governance.

Regulation 2 revokes the Education (Transition to New Framework)(School Organisation Proposals) Regulations 1999 in relation to England.

Regulation 3 makes amendments to the Education (Middle Schools)(England) Regulations 2002 so that various definitions reflect current legislation relating to school organisation and school governance.

Regulation 4 amends the School Governance (Federations) (England) Regulations 2007 so as to provide that where a governing body publishes federation proposals a copy of the proposals must be sent to the Secretary of State within one week of publication. The governing body must also notify the Secretary of State of their decision on the proposals. Where a school is planning to leave a federation, the governing body must also notify the Secretary of State.

Regulation 5 amends the School Organisation (Establishment and Discontinuance of Schools)(England) Regulations 2007 so as to correct minor drafting errors and so as to add two further conditional approvals:

Regulation 5(6)(a) amends regulation 20 so that approval for school closure proposals may also be conditional on the agreement of the Secretary of State to extend or enlarge an existing Academy.

Regulation 5(6)(d) amends regulation 20 so that approval for sixth form school closure proposals may also be conditional on a decision by the Secretary of State to establish a new further education college.

Regulation 5(9) amends paragraph 20 of Schedule 4 so as to bring it in line with policy intention to only require the special education needs (“SEN”) Improvement Test to be applied whenever changes are proposed to existing provision ‘that is recognised by the local education authority as reserved for pupils with SEN’.

Regulation 6 amends the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 so as to correct minor drafting errors in addition to the following:

Regulation 6(2) extends the timeframe in which a governing body must make a decision on a foundation proposal from 6 months to a year.

Regulation 6(3) omits paragraphs 2 and 13 of Schedule 2 and regulation 6(5) omits paragraphs 2 and 19 of Schedule 4 which provided for statutory proposals to be published for increases in the school's 'PAN' (Published Admission Number i.e. the maximum number of pupils that a school is normally permitted to admit) during the school year. Regulations 6(4)(b) and (e) omits the analogous provisions in Schedule 3 and regulation 6(6)(b) and (d)(ii) to (v) omits the analogous provisions in Schedule 5. It is now intended that any changes to the number of pupils admitted should be consulted on as part of the annual admissions determinations arrangements.

Regulation 6(4)(a) and (6)(a) amends Schedules 3 and 5 to add additional requirements to the information that must be included in sixth form proposals.

Regulation 6(4)(d) and (6)(d)(i) allows for the length of the representation period for an excepted expansion proposal to be extended from 4 weeks to 6 weeks if it is "related" to another proposal which has a prescribed representation period of 6 weeks.

Regulation 6(4)(f)(ii) and (6)(e)(ii) amends Schedules 3 and 5 to add a new conditional approval: where the proposals are to alter the upper age limit, the decision of the Secretary of State to establish a new further education college.

Regulation 7 amends the Information as to Provision of Education (England) Regulations 2008 so as to alter the information required for forecasting the numbers of registered pupils.

Regulation 8 makes transitional provisions relating to amendments made to the School Organisation (Prescribed Alterations to Maintained Schools)(England) Regulations 2007 by regulation 6(2), (4)(d) and (6)(d)(i).

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STATUTORY INSTRUMENTS

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