

2013 No. 3109

EDUCATION, ENGLAND

**The School Organisation (Establishment and Discontinuance of
Schools) Regulations 2013**

<i>Made</i>	- - - -	<i>16th December 2013</i>
<i>Laid before Parliament</i>		<i>18th December 2013</i>
<i>Coming into force</i>	- -	<i>28th January 2014</i>

The Secretary of State for Education makes the following Regulations in exercise of the powers conferred by sections 7(3), (4) and (6), 10(3) and (5), 11(5), 13, 15(3), 181(2) and 183(1) and (2) of, and paragraphs 5, 8, 10, 13, 14, 15, 19, 20, and 21 of Schedule 2 to the Education and Inspections Act 2006(a).

PART 1

General

Citation and commencement

1. These Regulations may be cited as the School Organisation (Establishment and Discontinuance of Schools) Regulations 2013 and come into force on 28th January 2014.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Education and Inspections Act 2006;

“EA 1996” means the Education Act 1996(b);

“EA 2002” means the Education Act 2002(c);

“Accessibility Strategy” has the meaning given by paragraph 1 of Schedule 10 to the Equality Act 2010(d);

“competition notice” means a notice published under section 7 inviting proposals from persons other than local authorities for the establishment of any new school falling within section 7(2);

(a) 2006 c. 40. Section 7 was amended by section 126 of the Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), sections 37 and 54 of, and Schedules 11 and 13 to, the Education Act 2011 (c. 21), and S.I. 2010/1158. Section 10 was amended by section 37 of, and Schedule 11 to, the Education Act 2011, and S.I. 2010/1158. Section 11 was amended by section 169 of, and Schedule 1 to, the Education and Skills Act 2008 (c. 25), section 126 of the Apprenticeships, Skills, Children and Learning Act 2009, section 37 of, and Schedule 11 to, the Education Act 2011, and S.I. 2010/1158.

(b) 1996 c. 56.

(c) 2002 c. 32.

(d) 2010 c. 15.

“discontinuance proposals” means proposals published under section 15 by a local authority or by a governing body to discontinue a school;

“Early Years Foundation Stage” has the meaning given in section 39 of the Childcare Act 2006(a);

“representation period” means the period in which objections or comments must be sent as set out in regulation 13(1);

“revocation proposals” means proposals published under paragraph 21(4) of Schedule 2 to the Act;

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

“special educational needs” has the meaning given by section 312(1) of EA 1996(c);

“special school” means a community special or a foundation special school; and

“SSFA 1998” means the School Standards and Framework Act 1998.

(2) In these Regulations, any reference to sections 7, 10, 11, 12 and 15 is a reference to that section of the Act(d).

Revocations and saving provisions

3.—(1) The following are revoked—

- (a) the School Organisation (Establishment and Discontinuance of Schools) (England) Regulations 2007(e);
- (b) the School Organisation (Transitional Provisions) (England) Regulations 2007(f);
- (c) regulations 2 to 16 of the School Organisation and Governance (Amendment) (England) Regulations 2007(g);
- (d) regulation 5 of the School Organisation and Governance (Amendment) (England) Regulations 2009(h);
- (e) the School Organisation (Establishment and Discontinuance of Schools) (Amendment) (England) Regulations 2009(i);
- (f) article 22 of the Apprenticeships, Skills, Children and Learning Act 2009 (Consequential Amendments to Subordinate Legislation) (England) Order 2010(j);
- (g) article 17 of the Young People’s Learning Agency Abolition (Consequential Amendments to Subordinate Legislation) (England) Order 2012(k).

(2) Notwithstanding the provisions of paragraph (1) the School Organisation (Establishment and Discontinuance of Schools) (England) Regulations 2007 continue to apply in relation to those cases where before 28th January 2014—

- (a) a competition notice has been published;
- (b) proposals have been published by a local authority or by any persons under section 10(1) or (2) (publication of proposals with consent of Secretary of State);

(a) 2006 c. 21.

(b) For the meaning of “compulsory school age” see section 8 of the Education Act 1996.

(c) Section 312 was amended by section 57(1) and paragraph 23 of Schedule 7 to the Education Act 1997 (c.44) and section 140(1) and (3), and paragraph 71(a) and (b) of Schedule 30 to the School Standards and Framework Act 1998 (c.31) (“SSFA 1998”).

(d) Section 12 was amended by section 37 of, and Schedule 11 to, the Education Act 2011, and S.I. 2010/1080. Section 15 was amended by S.I. 2010/1158.

(e) S.I. 2007/1288.

(f) S.I. 2007/1355.

(g) S.I. 2007/3464.

(h) S.I. 2009/1556.

(i) S.I. 2009/2984.

(j) S.I. 2010/1941.

(k) S.I. 2012/956.

- (c) proposals have been published by a local authority or by any persons under section 11(1) or (2) (publication of proposals to establish maintained schools (special cases)); and
- (d) proposals have been published by a local authority or by the governing body of a foundation, voluntary or foundation special school under section 15(1) or (2) (publication of proposals to discontinue schools maintained by local authority).

PART 2

Proposals for Establishment of New Schools in a Competition

Prescribed interval after which a competition notice may specify a date for the submission of proposals

4. For the purposes of section 7(3)(c), the prescribed interval is an interval of four weeks from the date of publication of the competition notice.

Competition notices and manner of publication

5.—(1) A competition notice must include an explanation of the competition procedure, including the effect of paragraphs 5A and 7A(a) of Schedule 2 to the Act.

(2) The local authority must publish—

- (a) the competition notice on their website;
- (b) notification of the competition (including the address of the website where the notice is published) in a national newspaper covering education issues and in a local newspaper.

(3) Any publication under paragraph (2) must provide details of how copies of the competition notice may be obtained.

(4) Within one week of the date of publication of the competition notice the local authority must send a copy of it to—

- (a) the Secretary of State;
- (b) the Diocesan Board of Education for any diocese of the Church of England any part of which is comprised in the area of the local authority;
- (c) the bishop of a diocese of the Roman Catholic Church any part of which is comprised in the area of the local authority; and
- (d) any other body or person that the local authority think appropriate.

(5) Within one week of receiving a request for a copy of the competition notice the local authority must send a copy to the person requesting it.

Proposals made pursuant to a competition notice

6. Proposals made pursuant to a competition notice must contain—

- (a) information corresponding to the matters specified in the competition notice;
- (b) an explanation of any differences between the information in the proposal and the matters specified in the competition notice; and
- (c) a statement describing the type, character (including any religious character), ethos and admission arrangements of the proposed school.

(a) Paragraphs 5A and 7A were inserted by section 37 of, and Schedule 11 to, the Education Act 2011.

Manner in which proposals are to be published

7.—(1) The local authority must publish on their website the proposals submitted to them pursuant to section 7 and include a statement detailing how copies of the published proposals may be obtained.

(2) Where the local authority are to consider non-Academy proposals^(a) under paragraph 8 of Schedule 2 to the Act, or the adjudicator^(b) is to consider proposals under paragraph 10^(c) of that Schedule, the local authority must publish on their website—

- (a) a statement that any person may object to or comment on the proposals;
- (b) the address to which any objections or comments should be sent; and
- (c) the date (in accordance with regulation 13) by which such objections or comments must be sent.

(3) Within one week of the date of a publication under paragraph (2) the local authority must send a copy of any non-Academy proposals together with any statement published under paragraph (2) to any body or person that the local authority think appropriate.

(4) Within one week of receiving a request for a copy of the proposals the local authority must send a copy to the person requesting it.

PART 3

Proposals for the Establishment of New Maintained Schools with Consent of Secretary of State or in Special Cases

Information to be contained in proposals under section 10

8. Proposals published under section 10(1) and 10(2) must contain the information specified in Schedule 1.

Information to be contained in proposals under section 11

9.—(1) Subject to paragraph (2), proposals published under section 11(A2), (A3), (1), (1A) and (2) must contain the information specified in Schedule 1.

(2) Proposals published under section 11(1) (proposals to establish a new maintained nursery school) need not contain the information specified in paragraphs 7, 8, 10, 12, 18, 23, 24, and 25 of Schedule 1.

Manner in which proposals under sections 10 and 11 are to be published

10.—(1) In respect of their own proposals under sections 10(1), 11(A2), (A3) or (1), the local authority must publish—

- (a) the proposals on their website; and
- (b) a notification of the proposals (including the address of the website where the proposals are published) in a local newspaper.

(2) In respect of proposals under sections 10(2), 11(1A) or (2), the proposers must—

- (a) publish the proposals on a website;
- (b) publish a notification of the proposals (including the address of the website where the proposals are published) in a local newspaper; and

(a) For the meaning of “non-Academy proposals” see paragraph 3A of Schedule 2 to the Education and Inspections Act 2006 (“the Act”).

(b) For the meaning of “adjudicator” see section 25 of SSFA 1998.

(c) Paragraph 10 was amended by section 37 of, and Schedule 11 to, the Education Act 2011.

- (c) within one week from the date of publication under paragraph (2)(a) submit a copy of the proposals to the local authority which it is proposed would maintain the school.
- (3) Any publication under paragraphs (1) or (2) must contain a statement detailing—
- (a) how copies of the proposals may be obtained;
 - (b) that any person may object to or comment on the proposals and the address of the local authority to which any objections or comments should be sent; and
 - (c) the date (in accordance with regulation 13) by which such objections or comments must be sent.
- (4) Within one week of the date of publication under paragraphs (1) or (2)(a) the local authority or proposers (as the case may be) must send a copy of the proposals together with the statement published under paragraph (3) to—
- (a) the Secretary of State;
 - (b) the Diocesan Board of Education for any diocese of the Church of England any part of which is comprised in the area of the local authority;
 - (c) the bishop of a diocese of the Roman Catholic Church any part of which is comprised in the area of the local authority; and
 - (d) any other body or person that the local authority or the proposers (as the case may be) think appropriate.
- (5) Within one week of receiving a request for a copy of the proposals the local authority or proposers (as the case may be) must send a copy to the person requesting it.

PART 4

Proposals for Discontinuance of Schools

Information to be contained in proposals for discontinuance of schools

- 11.** Discontinuance proposals must contain the information specified in Schedule 2.

Publication and submission of discontinuance proposals

12.—(1) In respect of proposals under section 15(1) or (2), the local authority or the governing body (as the case may be) must publish—

- (a) the proposals on a website; and
- (b) a notification of the proposals (including the address of the website where the proposals are published) in a local newspaper.

(2) Any publication under paragraph (1)(a) must contain a statement detailing—

- (a) how copies of the proposals may be obtained;
- (b) that any person may object to or comment on the proposals and the address of the local authority to which any objections or comments should be sent; and
- (c) the date (in accordance with regulation 13) by which such objections or comments must be sent.

(3) On the date of publication under paragraph (1)(a), the governing body must submit to the local authority that maintains the school a copy of their published proposals.

(4) The local authority must on the date of publication under paragraph (1)(a) submit to the governing body of the school a copy of their published proposals.

(5) Within one week of the date of publication the local authority or governing body (as the case may be) must send a copy of the proposals together with the statement published under paragraphs (1) and (2) to—

- (a) the Secretary of State;

- (b) the Diocesan Board of Education for any diocese of the Church of England any part of which is comprised in the area of the local authority;
 - (c) the bishop of a diocese of the Roman Catholic Church any part of which is comprised in the area of the local authority;
 - (d) where the school is a special school, the parents of every registered pupil at the school; and
 - (e) any other body or person that the local authority or the governing body (as the case may be) think appropriate.
- (6) Within one week of receiving a request for a copy of the proposals the local authority or the governing body (as the case may be) must send a copy to the person requesting it.

PART 5

Consideration of proposals by a local authority or by the schools adjudicator

Objections and comments

13.—(1) Where the local authority are to consider the proposals under paragraph 8 of Schedule 2 to the Act, or the adjudicator is to consider proposals under paragraph 10 of Schedule 2, any person may send objections or comments in relation to proposals published in accordance with sections 7, 10, 11 or 15 to the local authority within four weeks of—

- (a) the date of publication of the proposals; or
- (b) in relation to proposals published in accordance with section 7 where there are Academy and non-Academy proposals, the date on which a statement is published in accordance with regulation 7(2) in respect of the non-Academy proposals.

(2) In cases where proposals have been referred to the adjudicator in accordance with paragraph 10 of Schedule 2 to the Act, the local authority must forward any objections or comments which they have received under paragraph (1) to the adjudicator within two weeks of the end of the representation period.

(3) In cases where proposals have been referred to the adjudicator in accordance with paragraph 10 of Schedule 2 to the Act, the local authority may forward any objections or comments of their own in relation to any of the proposals to the adjudicator within two weeks of the end of the representation period.

Period in which proposals are to be determined under paragraph 8(3) and 8(4) of Schedule 2 to the Act

14. The local authority must determine whether to give approval under paragraph 8(3) or (4) of Schedule 2 to the Act within two months of the end of the representation period.

Period in which proposals are to be determined under paragraph 19 of Schedule 2 to the Act

15. The local authority's determination under paragraph 19(1)(a) of Schedule 2 to the Act must be made within two months of the end of the representation period.

Conditional approvals

16.—(1) The events listed in paragraph (2) are the prescribed events that may be specified in an approval given under paragraph 8(5) of Schedule 2 to the Act.

- (2) The prescribed events are—

(a) Paragraph 19 was amended by section 37 of, and Schedule 11 to, the Education Act 2011.

- (a) the grant of planning permission under Part 3 of the Town and Country Planning Act 1990(a);
- (b) the acquisition of the site on which the new school is to be constructed;
- (c) the acquisition of playing fields to be provided for the school;
- (d) the securing of any necessary access to a site referred to in sub-paragraph (b) or playing fields referred to in sub-paragraph (c);
- (e) the entering into an agreement for any necessary building project supported by the Department for Education;
- (f) the making of any scheme relating to any charity connected with the school;
- (g) the establishment of any foundation meeting the requirements of section 23A of SSFA 1998(b);
- (h) the formation of any federation (within the meaning of section 24(2) of EA 2002(c)) of which it is intended that the proposed school should form part, or the fulfilling of any other condition relating to the proposed school forming part of a federation;
- (i) in the case of maintained schools which are not special schools, the agreement to any change to admission arrangements of any other school or schools specified in the approval;
- (j) in the case of a proposal under sections 7, 10 or 11 for a maintained school or maintained special school, the decision of the Secretary of State not to enter into any agreement under section 1 of the Academies Act 2010(d) for the establishment of an Academy;
- (k) in the case of discontinuance proposals, the entering into any agreement under section 1 of the Academies Act 2010 for the establishment of an Academy;
- (l) in the case of discontinuance proposals, the agreement of the Secretary of State to extend or enlarge an existing Academy;
- (m) in the case of proposals to establish a maintained school in place of an existing independent school, the securing of approval by the Secretary of State to relax the requirements of the School Premises (England) Regulations 2012(e) as provided for by section 543(1) of EA 1996(f);
- (n) in the case of proposals to establish any other maintained school, the securing of approval by the Secretary of State to relax the requirements of the School Premises (England) Regulations 2012 in respect of school playing fields as provided for by section 543 (1) of EA 1996;
- (o) in the case of proposals whose funding is dependent upon capital receipts from the disposal of any school land or buildings, the securing of consent from the Secretary of State for the disposal as provided for by paragraph 2 of Schedule 1 to the Academies Act 2010(g) or section 77 of SSFA 1998(h), or determination in accordance with Schedule 22 to SSFA 1998(i) as applicable;
- (p) in the case of proposals to establish a maintained school, the Secretary of State making a direction under section 90 of EA 2002(j) that the National Curriculum for England shall not apply or shall apply with modifications;

(a) 1990 c. 8.

(b) Section 23A was inserted by section 33(1) of the Education and Inspections Act 2006 and amended by section 354(1) of, and Schedule 7 to, the Charities Act 2011 (c 25), S.I. 2010/1158, and S.I. 2011/1396.

(c) Section 24(2) was amended by section 19(1), and (4)(c) of the Education (Wales) Measure 2011.

(d) 2010 c 32. Section 1 was amended by sections 52 and 53 of the Education Act 2011.

(e) S.I. 2012/1943.

(f) Section 543(1) was amended by section 140(1) of, and Schedule 30 to, SSFA 1998.

(g) Schedule 1 was substituted by section 63 of, and Schedule 14 to, the Education Act 2011.

(h) Section 77 was amended by section 36(b) of, and Schedule 4 to, the Act, sections 54 and 63 of, and Schedules 13 and 14 to, the Education Act 2011, and S.I. 2010/1158.

(i) Schedule 22 was amended by section 36(b) of, and Schedule 4 to, the Act, S.I. 2010/1080 and S.I. 2010/1158.

(j) Section 90 was amended by sections 48 and 103(2) of, and Schedules 1 and 3 to, the Childcare Act 2006, sections 174 and 192 of, and Schedule 12 to, the Apprenticeships, Skills, Children and Learning Act 2009, and section 26 of, and Schedule 8 to, the Education Act 2011. Section 90 was also amended by S.I. 2010/1158.

- (q) in the case of discontinuance proposals, 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
- (r) where the proposals in question depend upon any of the events prescribed in subparagraphs (a) to (q) occurring by a specified date in relation to proposals relating to any other school or proposed school, the occurrence of such an event.

Time limits for local authority referrals to adjudicator prior to determination

17.—(1) The local authority must refer to the adjudicator any proposals under paragraph 10 of Schedule 2 to the Act within two weeks of the end of the representation period.

(2) In cases where the local authority are required to refer proposals to the adjudicator under paragraph 13(b) of Schedule 2 (duty to refer where determination delayed) to the Act, they must do so within one week of the end of the two month period referred to in regulation 15.

Referrals to the adjudicator at the request of a relevant person

18.—(1) A request by a relevant person under paragraph 14(1)(c) of Schedule 2 to the Act that proposals determined by the local authority be referred to the adjudicator must be made within four weeks of the date of the notification of the determination.

(2) The local authority's referral under paragraph 14(1) of Schedule 2 to the Act together with any reasons given by the authority for their determination must be made within one week of receipt of a request submitted in accordance with paragraph (1).

(3) A referral made under paragraph 14(1) of Schedule 2 to the Act must include any objections or comments in relation to the proposals received by the local authority together with minutes of the meeting at which the proposals were considered and any papers considered by the authority at that meeting.

Duty to refer related proposals

19.—(1) Subject to paragraph (2), a reference by the local authority under paragraph 15 of Schedule 2 (duty to refer related proposals) to the Act must be made within the same period referred to in paragraph (1) or (2) of regulation 17 as applicable.

(2) Where there is more than one period for referring proposals under paragraph 15 of Schedule 2 to the Act, the period for referring the proposals is the latest period for referring any of the proposals as referred to in paragraph (1) or (2) of regulation 17 as applicable.

Notification of determinations

20.—(1) The local authority must publish on their website a decision under paragraph 8 or a determination under paragraph 21(3) of Schedule 2 to the Act within one week of making the decision or determination and in both cases publish their reasons.

(2) The local authority must notify the following persons of a decision under paragraph 8 or a determination under paragraph 21(3) of Schedule 2 to the Act together with their reasons—

- (a) the adjudicator;
- (b) the proposers;
- (c) the Secretary of State;
- (d) the Diocesan Board of Education for any diocese of the Church of England any part of which is comprised in the area of the local authority;

(a) 1992 c. 13. Section 16 was amended by section 140(3) of, and Schedule 31 to, SSFA 1998, section 111(1) of the Learning and Skills Act 2000 (c. 21), and S.I. 2010/1158.
 (b) Paragraph 13 was amended by section 37 of, and Schedule 11 to, the Education Act 2011.
 (c) Paragraph 14 was amended by S.I. 2010/1080.

- (e) the bishop of a diocese of the Roman Catholic Church any part of which is comprised in the area of the local authority; and
- (f) any other body or person that the local authority think appropriate.

(3) In the case of any determination made by a local authority pursuant to paragraph 19 of Schedule 2 to the Act, the local authority must notify the governing body of the school which is the subject of the proposals and the Secretary of State.

(4) The local authority must notify the persons referred to in sub-paragraphs (b) to (d) of paragraph (2) if they refer any proposals or matter to the adjudicator under paragraph 10, 11 or 13(a) of Schedule 2 to the Act or pursuant to a direction under paragraph 12 of that Schedule.

(5) The adjudicator must notify the persons referred to in sub-paragraphs (b) and (c) of paragraph (2) and the local authority of the adjudicator's decision in relation to a referred proposal or matter, together with reasons for the decision.

(6) The local authority or the adjudicator (as the case may be) must notify the proposers or the local authority (as the case may be) of any further proposals referred to the local authority or the adjudicator (as the case may be) which appear to relate to the original proposals for the purposes of paragraph 9(2)(b) of Schedule 2 to the Act.

Publication of revocation proposals

21.—(1) Schedule 3 has effect for the purpose of applying, with modifications where specified, provisions of Part 1 of Schedule 2 to the Act in relation to revocation proposals.

(2) Revocation proposals must contain—

- (a) a description of the original proposals as published in accordance with sections 7, 10, 11 or 15;
- (b) the date of publication of the original proposals;
- (c) details of who published the original proposals; and
- (d) a statement as to why it is proposed that, in accordance with paragraph 21(3) of Schedule 2 (duty to implement proposals) to the Act, paragraph 21(1) of that Schedule should not apply in relation to the original proposals.

(3) The local authority or the proposers (as the case may be) must publish—

- (a) the revocation proposals on a website; and
- (b) a notification of the revocation proposals (including the address of the website where the proposals are published) in a local newspaper.

(4) Any publication under paragraph (3) must contain a statement detailing—

- (a) how copies of the revocation proposals may be obtained;
- (b) that any person may object to or comment on the revocation proposals and the address of the local authority to which any objections or comments should be submitted; and
- (c) the date by which such objections or comments must be submitted.

(5) A proposer must submit their revocation proposals to the local authority that maintain the school within one week of the date of publication.

(6) Within one week of the date of publication the local authority or the governing body (as the case may be) must send a copy of the proposals together with the statement published under paragraph (4) to—

- (a) the Secretary of State; and
- (b) any other body or person that the local authority or the governing body (as the case may be) think appropriate.

(a) Paragraphs 10 and 13 were amended by section 37 of, and Schedule 11 to, the Education Act 2011.

(b) Sub-paragraph (2) was amended by section 37 of, and Schedule 11 to, the Education Act 2011.

(7) Within one week of receiving a request for a copy of the proposals the local authority or the governing body (as the case may be) must send a copy to the person requesting it.

(8) Where the initial decision in relation to the original proposals was made by the adjudicator, the local authority must refer the revocation proposals, together with any objections or comments in relation to them to the adjudicator, within two weeks of the end of the period for making objections and comments set out in paragraph 5(a) of Schedule 2 to the Act as modified by Schedule 3 to these Regulations.

Modifying proposals or specifying a later date for a conditional approval

22.—(1) In relation to paragraph 21(2) of Schedule 2 (power to modify proposals or specify a later date in respect of conditional approval) to the Act, the local authority must refer to the adjudicator cases where the initial decision in relation to the original proposals was made by the adjudicator, within two weeks of receipt of the request from the proposers, or the decision of the local authority (as the case may be).

(2) Where proposals are modified under paragraph 21(2)(a) of Schedule 2 to the Act, the local authority or the adjudicator (as the case may be) must notify the Secretary of State within one week of the date of the proposals being modified.

References to the adjudicator at the request of a relevant person after determination under paragraph 21(4) of Schedule 2 to the Act

23. Where a reference is made under paragraph 14 of Schedule 2 to the Act as modified by Schedule 3, then within the time specified under paragraph 14(1) of Schedule 2 as modified by Schedule 3 the local authority must send to the adjudicator—

- (a) any objections or comments in relation to the proposals;
- (b) minutes of the meeting at which the proposals published under paragraph 21(4) of Schedule 2 to the Act were considered; and
- (c) any papers considered by the local authority at that meeting.

Schools established outside the area of the relevant local authority

24.—(1) Part 1 of Schedule 4 has effect for specifying the modifications to which section 7 and Schedule 2 to the Act are to be subject where proposals published under section 7 relate to a school which is proposed to be situated in an area other than that of the local authority which published the notice.

(2) Part 2 of Schedule 4 has effect for specifying the modifications to which section 10 and 11 and Schedule 2 to the Act are to be subject where proposals published under section 10 or 11 relate to a school which it is proposed be established in an area other than that of the local authority which it is proposed should maintain the school.

16th December 2013

John Nash
Parliamentary Under Secretary of State
Department for Education

(a) Paragraph 5 was amended by section 37 of, and Schedule 11 to, the Education Act 2011.

SCHEDULE 1

Regulations 8 and 9

Information to be included in section 10 and section 11 proposals to establish a new school

Contact details

1. The name and contact address of the local authority or the proposers (as the case may be).

Implementation

2. The date on which it is proposed that the school be opened or, where it is proposed that the opening be implemented in stages, the dates of and information about each stage.

3. Where the proposals are to establish a voluntary, foundation or foundation special school, a statement as to whether the proposals are to be implemented by the local authority or by the proposers, and if the proposals are to be implemented by both,

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

Reason for the new school

4. A statement explaining the reason why the new school is considered necessary and whether it is to replace an existing school or schools.

Category

5. The category of school that it is proposed be established (a foundation or foundation special school and, if so, whether it is to have a foundation, a voluntary school, a community or community special school, or a local authority maintained nursery school) and, if required by section 10, a statement that the Secretary of State's consent has been obtained to publish the proposals.

Ethos and religious character

6. A short statement setting out the proposed ethos of the school, including details of any educational philosophy, which it is proposed that the school will adhere to.

7. If it is proposed that the school is to have a religious character, confirmation of the religion or religious denomination in accordance with whose tenets religious education will, or may be required to be provided at the school; 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. Where it is proposed that the school—

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

Pupil numbers and admissions

9. The numbers (distinguishing between compulsory and non-compulsory school age pupils), age range, sex, and special educational needs of pupils (distinguishing between boarding and day pupils) for whom provision is to be made at the school.

Admission arrangements

10. Except in relation to proposals for special schools, the proposed admission arrangements and over-subscription criteria for the new school including, where the school is proposed to be a foundation or voluntary school which is to have a religious character—

- (a) the extent to which priority for places is proposed to be given to children of the school's religion or religious denomination; and
- (b) the extent, if any, to which priority is to be given to children of other religions or religious denominations or to children having no religion or religious denomination.

Early years provision

11. Where the proposals are to include provision for pupils aged two to five—

- (a) details of how the early years provision will be organised, including the number of full-time and part-time pupils, the number of places, 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 for the establishment of the school are consistent with the integration of early years provision with 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 settings outside of the maintained school sector which deliver the Early Years Foundation Stage within three miles of the school; and
- (e) the reasons why schools and settings outside the maintained school sector which deliver the Early Years Foundation Stage within three miles of the school and which have spare capacity, cannot make provision for any forecast increase in the numbers of such children.

Sixth form provision

12. Where it is proposed that the school will provide sixth form education, how for 16 to 19 year olds in the area 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 available to them.

Special educational needs provision

13. Whether the school will have provision that is recognised by the local authority as reserved for children with special educational needs and, if so, the nature of such provision.

14. Details of the proposed policy of the school relating to the education of pupils with special educational needs.

15. Where the school will replace existing educational provision for children with special educational needs—

- (a) a statement on how the proposer believes the proposal is likely to lead to improvements in the standard, quality and range of educational provision for these children;
- (b) details of the improvements that the proposals will bring in respect of—
 - (i) access to education and associated services including the curriculum, wider school activities, facilities and equipment with reference to the local authority's Accessibility Strategy;
 - (ii) access to specialist staff, both education and other professionals, including any external support or outreach services;

- (iii) access to suitable accommodation; and
- (iv) supply of suitable places.

Single sex school

16. Where the school is to admit pupils of a single sex—

- (a) evidence of local demand for single sex education and how this will be met if the proposals are approved; and
- (b) a statement giving details of the likely effect the new school will have on the balance of provision of single sex education in the area.

Curriculum

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

Relevant experience of proposers

18. Evidence of any relevant experience in education held by the proposers including details of any involvement in the improvement of standards in education.

Effects on standards and contributions to school improvement

19. Information and supporting evidence on—

- (a) how the school will contribute to enhancing the diversity and quality of education in the area; and
- (b) how the school will contribute to school improvement.

Location and costs

20. A statement about—

- (a) the area or particular community or communities which the new school is expected to serve;
- (b) the location of the site or sites including, where appropriate, the postal address or addresses;
- (c) the current ownership and tenure (freehold or leasehold) on which the site will be held, and if the site is to be held on a lease, details of the proposed lease;
- (d) whether the site is currently used for the purposes of another school and if so why the site will no longer be required by the other school;
- (e) the estimated capital costs of providing the site and how those costs will be met (including the extent to which the costs are to be met by the proposers and the local authority) and how the proposers intend to fund their share of the costs of implementing the proposals (if any);
- (f) whether planning permission is needed under the Town and Country Planning Act 1990, and when it is anticipated that it will be obtained;
- (g) confirmation from the Secretary of State or local authority (as the case may be) that funds will be made available (including costs to cover any necessary site purchase).

(a) Section 78 was amended by sections 48 and 103(2) of, and Schedules 1 and 3 to, the Childcare Act 2006.

(b) Section 80 was amended by section 48 of, and Schedule 1 to, the Childcare Act 2006.

Travel

21. The proposed arrangements for travel of pupils to the school.

Federation

22. Details of any proposals for the school to be established as a federated school.

Voluntary aided schools

23. Where the school is to be a voluntary aided school—
- (a) details of the trusts on which the site is to be held; and
 - (b) confirmation that the governing body will be able and willing to carry out their obligations under Schedule 3 to SSFA 1998.(a)

Foundation schools

24. Where the school is to be a foundation or foundation special school, confirmation as to—
- (a) whether it will have a foundation and if so, the name or proposed name of the foundation;
 - (b) the rationale for the foundation and the particular ethos that it will bring to the school;
 - (c) the details of membership of the foundation, including the names of the members;
 - (d) the proposed constitution of the governing body; and
 - (e) details of the foundation's charitable objects.

Independent schools entering the maintained sector

25. Where a school is an independent school entering the maintained sector—
- (a) a statement that the requirements of section 11(3) are met;
 - (b) a statement as to whether the premises will meet the requirements of the School Premises (England) Regulations 2012(b) and, if not,
 - (i) details of how the premises are deficient; and
 - (ii) details of how it is intended to remedy the deficiency.

SCHEDULE 2

Regulation 11

Information to be included in discontinuance proposals

Contact details

1. The name and contact address of the local authority or governing body publishing the proposals and the name, address and category of the school it is proposed that should be discontinued.

Implementation

2. The date on which it is proposed to close the school or, where it is proposed that the closure be implemented in stages, the dates of and information about each stage.

(a) 1998 c.31. Schedule 3 was amended by sections 30, 35, 36 and 215 of, and Schedules 3, 4, 18 and 21 to the Act, S.I. 2002/906 and S.I. 2010/1158

(b) S.I. 2012/1943

Reason for closure

3. A statement explaining the reason why closure of the school is considered necessary.

Pupil numbers and admissions

4. The numbers (distinguishing between compulsory and non-compulsory school age pupils), age range, sex, and special educational needs of pupils (distinguishing between boarding and day pupils) for whom provision is currently made at the school.

Displaced pupils

5. A statement and supporting evidence about the need for school places in the area including whether there is sufficient capacity to accommodate displaced pupils.

6. Details of the schools or further education colleges at which pupils at the school to be discontinued will be offered places, including—

- (a) any interim arrangements;
- (b) the provision that is to be made for those pupils who receive educational provision recognised by the local authority as reserved for children with special educational needs; and
- (c) in the case of special schools, the alternative provision made by local authorities other than the local authority which maintain the school.

7. Details of any other measures proposed to be taken to increase the number of school or further education college places available in consequence of the proposed discontinuance.

Impact on the community

8. A statement and supporting evidence about the impact on the community of the closure of the school and any measures proposed to mitigate any adverse impact.

Rural primary schools

9. Where proposals relate to a rural primary school designated as such by an order made for the purposes of section 15, a statement that the local authority or the governing body (as the case may be) considered section 15(4).

Balance of denominational provision

10. Where the school has a religious character, a statement about the impact of the proposed closure on the balance of denominational provision in the area and the impact on parental choice.

Maintained nursery schools

11. Where proposals relate to the discontinuance of a maintained nursery school, a statement setting out—

- (a) the local authority's assessment of the quality and quantity of the alternative provision compared to the school proposed to be discontinued and the proposed arrangements to ensure the expertise and specialism continues to be available; and
- (b) the accessibility and convenience of replacement provision for local parents.

Sixth form provision

12. Where the school proposed to be discontinued provides sixth form education, the effect for 16 to 19 year olds in the area that the closure will have in respect of—

- (a) their educational or training achievements;
- (b) their participation in education or training; and
- (c) the range of educational or training opportunities available to them.

Special educational needs provision

13. Where existing provision that is recognised by the local authority as reserved for pupils with special educational needs is being discontinued, a statement as to how the local authority or the governing body (as the case may be) believe the proposals are likely to lead to improvements in the standard, quality and/or range of the educational provision for these children.

Travel

14. Details of length and journeys to alternative provision.

15. The proposed arrangements for travel of displaced pupils to other schools including how the proposed arrangements will mitigate against increased car use.

SCHEDULE 3

Regulation 21

Modification of provisions of Part 1 of Schedule 2 to the Act, applying to revocation proposals published under paragraph 21(4) of that Schedule

1. Paragraph 1 has effect as if in sub-paragraph (1) for “published under section 7,10,11 or 15” there were substituted “published under paragraph 21(4) of this Schedule”.

2. Paragraph 2 has effect as if after paragraph 2(b) there were inserted—

“(c) in the case of proposals published under paragraph 21(4)—

(i) in the case of original proposals under section 7, the local authority which published the notice under that section, and

(ii) in the case of original proposals under section 10, 11 or 15, the local authority which maintain the school (or in the case of a new school) which it is proposed should maintain the school.”.

3. Paragraph 5 has effect as if for it there were substituted—

“**5.** Any person may object to or comment on proposals published under paragraph 21(4), and such objections and comments must be sent to the relevant authority within four weeks of the date of publication of such proposals.”.

4. Paragraph 13 has effect as if for it there were substituted—

“**13.**—(1) Where the relevant authority determine proposals published under paragraph 21(4), any determination must be made within two months of the end of the period for making objections and comments as prescribed in paragraph 5.

(2) If the authority does not make a determination within the time specified in sub-paragraph (1), they must refer the proposals to the adjudicator within one week of the end of that period.”.

5. Paragraph 14 has effect as if for it there were substituted—

“**14.**—(1) The relevant authority must, if so requested by any relevant person within four weeks of the date of notification of the determination set out in regulations made under paragraph 20, refer to the adjudicator within one week of the date on which they received notice of a request for a referral, any proposals under paragraph 21(4) which the relevant authority have determined under paragraph 21(3), together with any reasons given by the authority for their determination.”.

Modification of sections 7, 10 and 11 of and Schedule 2 to the Act, where schools established outside of area of relevant local authority

PART 1

Proposals published under section 7 where school is to be established in area other than that of local authority that published the notice

1. In relation to proposals published under section 7 which relate to a school which is proposed to be situated in an area other than that of the local authority which published the notice under section 7, section 7 and Schedule 2 to the Act have effect with the following modifications.

2. After section 7(4) insert—

“(4A) In cases where the notice published by the local authority in accordance with section 7(1) specifies that the proposed school is to be situated in an area other than their own (“notice specific cases”), the local authority (“Local Authority A”) must send complete copies of all published proposals that have not been withdrawn to the local authority for the area in which it is proposed that the school will be situated (“Local Authority B”).

(4B) In cases where the notice published by the local authority pursuant to section 7(1) does not so specify that the proposed school is to be situated in an area other than their own, but a proposer includes this in his proposals (“non-notice specific cases”), the local authority (“Local Authority A”) must send a copy of the proposals published by that proposer to the local authority for the area in which it is proposed that the school will be situated (“Local Authority B”).”.

3. For paragraph 8(3) of Schedule 2 to the Act substitute the following—

“(3) Local Authority A may, after seeking and obtaining the recommendation of Local Authority B unless Local Authority B have failed to reach a decision on what recommendation to give—

- (a) reject all the proposals;
- (b) approve any of the proposals without modification; or
- (c) approve any of the proposals with such modifications as the authority think desirable after consulting the body which published the proposals.”.

4. After paragraph 8(3) of Schedule 2 to the Act insert—

“(3A) Local Authority A—

- (a) in notice specific cases, must send copies of all objections and comments received in accordance with regulations made in accordance with paragraph 5(a) together with the proposals they send in accordance with section 7(4A) to Local Authority B within one week from the expiry of the time period specified in regulations for the making of objections and comments on the proposals; and
- (b) in non-notice specific cases, must send copies of any objections and comments received in accordance with regulations made in accordance with paragraph 5(a) in respect only of the proposals sent by the local authority under section 7(4A) to Local Authority B.

(3B) If within two months of the date of expiry of the period in which objections or comments may be made in accordance with regulations made under paragraph 5(a) Local Authority A have failed to make a decision, they must refer all the proposals together with all objections or comments received to the adjudicator.”.

5. After paragraph 8(6) of Schedule 2 to the Act insert the following—

“(6A) Where under sub-paragraph (3), the recommendation of Local Authority B is sought, Local Authority B in deciding what recommendation to give, must have regard to any guidance given from time to time by the Secretary of State.”.

PART 2

Proposals published under section 10 or 11 where school is to be established in area other than that of local authority which it is proposed should maintain the school

1. In relation to proposals published under section 10 or 11 which relate to a school which is proposed to be situated in an area other than that of the local authority which it is proposed should maintain the school, sections 10 and 11, and Schedule 2 to the Act have effect in accordance with the following modifications.

2. After section 10(3) insert—

“(3A) In cases where the proposed school is to be situated in an area other than that of the local authority which it is proposed should maintain the school, the local authority which it is proposed should maintain the school (“Local Authority A”) must send a copy of the proposals to the local authority for the area in which it is proposed that the school will be situated (“Local Authority B”).”.

3. After section 11(5) insert—

“(5A) In cases where the proposed school is to be situated in an area other than that of the local authority which it is proposed should maintain the school, the local authority which it is proposed should maintain the school (“Local Authority A”) must send a complete copy of the proposals to the local authority for the area in which it is proposed that the school will be situated (“Local Authority B”).”.

4. For paragraph 8(4) of Schedule 2 to the Act substitute the following—

“(4) Local Authority A may, after seeking and, unless Local Authority B have failed to reach a decision on what recommendation to give, obtaining the recommendation of Local Authority B—

- (a) reject all the proposals;
- (b) approve any of the proposals without modification; or
- (c) approve any of the proposals with such modifications as the authority think desirable after consulting the body who published the proposals.”.

5. After paragraph 8(4) of Schedule 2 to the Act insert the following—

“(4A) Local Authority A must send copies of all objections and comments received in accordance with regulations made in accordance with paragraph 5(a) together with the proposals they send in accordance with section 10(3A) or 11(5A) as applicable to Local Authority B within one week of the expiry of the time period specified in regulations for the making of objections and comments on the proposals.

(4B) If within two months of the date of expiry of the period in which objections or comments may be made in accordance with regulations made under paragraph 5(a) Local Authority A have failed to make a decision, they must refer all the proposals together with all objections or comments received to the adjudicator.”.

6. After paragraph 8(6) of Schedule 2 to the Act insert the following—

“(6A) Where under sub-paragraph (4), the recommendation of Local Authority B is sought, Local Authority B in deciding what recommendation to give, must have regard to any guidance given from time to time by the Secretary of State.”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe various matters relating to proposals for the establishment and discontinuance of schools pursuant to the provisions contained in Part 2 of the Education and Inspections Act 2006 (“the Act”).

Regulation 4 prescribes the interval after which a date can be set for proposals in response to a competition notice to be sent to the local authority.

Regulation 5 prescribes the information to be contained in a notice (“competition notice”) published by a local authority inviting proposals for the establishment of a foundation, voluntary or foundation special school (other than one providing education suitable only to the requirements of persons above compulsory school age), or an Academy.

Regulation 6 prescribes the information that has to be contained in proposals for the establishment of a new school made pursuant to a competition notice.

Regulation 7 prescribes the manner in which details of proposals that a local authority have received in response to a competition notice must be published, the requirement to make copies of proposals available, and also those bodies to whom copies of proposals should be sent.

Regulation 8 with Schedule 1 prescribes the information to be contained in proposals for the establishment with the consent of the Secretary of State—

- by a local authority of a new community or community special school, or a new foundation or foundation special school, (other than one providing education suitable only to the requirement of persons above compulsory school age); or
- by other persons (proposers) of a new foundation, voluntary or foundation special school (other than one providing education suitable only to the requirements of persons above compulsory school age).

Regulation 9 with Schedule 1 prescribes the information that has to be contained in proposals for the establishment—

- by a local authority of a new maintained nursery school, or a new foundation or foundation special school providing education suitable only to the requirements of persons above compulsory school age; or
- by any persons of a new foundation, voluntary or foundation special school which is to provide education suitable only to the requirements of persons above compulsory school age, is to replace an independent school that is not an Academy, a city technology college or city college for the technology of the arts, or in the case of a new foundation special school, is to replace a non-maintained special school.

Regulation 10 prescribes the manner in which the details of proposals made pursuant to sections 10 and 11 of the Act that they have received or made themselves must be published by the local authority, the requirement to make copies available and also those bodies to whom copies of proposals should be sent.

Regulation 11 with Schedule 2 prescribes the information that has to be contained in proposals made, either by a local authority or the governing body, to discontinue a maintained school. Regulation 12 prescribes the manner in which the details of proposals to discontinue a school that the local authority have received or made themselves must be published by the local authority, the requirement to make copies available and also those bodies to whom copies of proposals must be sent.

Regulation 13 provides for the making of objections or comments to the local authority in relation to published proposals and for the time period in which they may be made.

Regulation 14 prescribes in relation to proposals the time period in which a local authority must determine whether to give approval under paragraph 8(3) or 8(4) of Schedule 2 to the Act.

Regulation 15 prescribes the period within which a local authority must make a determination in relation to proposals to discontinue a school where there have been no objections to the proposals or any objections made have all been withdrawn.

Regulation 16 prescribes the events that may be specified in a conditional approval.

Regulation 17 prescribes the time within which the local authority must refer matters to the adjudicator.

Regulation 18 prescribes the time within which requests made by a relevant person under paragraph 14(1) of Schedule 2 to the Act must be made, and the time within which such requests must be referred to the adjudicator.

Regulation 19 prescribes the period of time in which related proposals must be referred to the adjudicator pursuant to paragraph 15 of Schedule 2 to the Act.

Regulation 20 prescribes the persons that must be notified of a decision taken under paragraph 8 or 21(3) of Schedule 2 to the Act.

Regulation 21 prescribes the information that must be contained in proposals that the original proposals should not be implemented and the manner of publication of such proposals. Schedule 3 to these Regulations modifies the application of Schedule 2 to the Act where proposals are published under paragraph 21(4) of Schedule 2 to the Act. Regulation 21(8) provides that the local authority must refer to the adjudicator paragraph 21(4) proposals (and the time within which they must be made) where the initial decision was made by the adjudicator.

Regulation 22 prescribes cases that must be referred to the adjudicator, the time within which such referrals must be made and the persons who must be consulted before proposals are modified or a later date for a conditional approval is set under paragraph 21(2) of Schedule 2 to the Act.

Regulation 23 with Schedule 3 makes provision for references to the adjudicator by relevant persons following a determination by a local authority under paragraph 21(4) of Schedule 2 to the Act.

Regulation 24 with Schedule 4 modifies sections 7, 10 and 11 of, and Schedule 2 to, the Act in relation to proposals to establish schools in an area outside the area of the relevant local authority.

An impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen since the net impact is to reduce burdens and constraints on governing bodies, and it will not impose any additional cost or increase the workload for schools and local authorities.

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