

SCHEDULE 1

FOUNDATION PROPOSALS

PART 2

Publication, determination and implementation of foundation proposals

Manner of publication of proposals

- 5.—(1) The governing body 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 sub-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 governing body to which any objections or comments should be sent; and
 - (c) the date (in accordance with paragraph 6) by which any such objections or comments must be sent.
- (3) Within one week of the date of publication under sub-paragraph (1)(a) the governing body must send a copy of the proposals together with the statement published under sub-paragraph (2) to—
- (a) the local authority;
 - (b) where the 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 local authority;
 - (ii) the bishop of a diocese of the Roman Catholic Church any part of which is comprised in the area of the local authority; or
 - (iii) the relevant faith group in relation to the school;
 - (c) where the school is a special school, the parents of every registered pupil at the school; and
 - (d) any other body or person that the governing body think appropriate.
- (4) Within one week of receiving a request for a copy of the proposals the governing body must send a copy to the person requesting it.
- (5) Where a governing body publishes a proposal under sub-paragraph (1)(a), they must post a notification of the proposal in a conspicuous place on the school premises and at or near the main entrance to the school, or, if there is more than one main entrance, all of them.

Objections and comments

- 6.—(1) Any person may send objections or comments in relation to proposals to the governing body within four weeks of the date of publication.
- (2) In cases where proposals have been referred to the adjudicator in accordance with paragraph 8 the governing body must forward any objections or comments which they have received under paragraph (1) to the adjudicator within one week of the end of the representation period.

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Governing body as decision maker

7. For the purposes of section 21(2)(f) the governing body of the school to which the proposals relate is prescribed as the person who (subject to paragraph 8) must consider and determine the proposals.

Referrals to adjudicator for consideration and determination

8.—(1) The local authority may, subject to paragraphs 9 and 10, require the governing body to refer proposals falling within sub-paragraph (2) to the adjudicator.

(2) Proposals fall within this sub-paragraph if the proposed alteration would result in a community, foundation, or voluntary controlled school, or community or foundation special school becoming either or both of the following—

- (a) a foundation or foundation special school having a foundation;
- (b) a foundation or foundation special school whose instrument of government provides for the majority of governors to be foundation governors.

9. Where the local authority require a referral to the adjudicator under paragraph 8 they must do so in writing within four weeks of the date of the publication of the proposals.

10. The local authority may only require that the proposals specified in paragraph 8 be referred to the adjudicator if they consider that the proposals will have a negative impact on standards at the school.

11. Where the governing body are required (under paragraph 8) to refer proposals to the adjudicator, they must also send to the adjudicator within one week of the end of the representation period, a copy of the proposals and any objections or comments received.

Withdrawal of proposals

12. 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 of the withdrawal is given to—
 - (i) the local authority;
 - (ii) in cases where the proposals have been referred to the adjudicator, the adjudicator; and
- (c) notification of the withdrawal is placed on the website where the original proposal was published.

Consideration and determination of proposals by the governing body or adjudicator

13.—(1) In determining proposals to which this Schedule applies the governing body may—

- (a) reject the proposals;
- (b) approve the proposals without modifications; or
- (c) approve the proposals with such modifications as the governing body think desirable, having consulted the local authority.

(2) Where proposals are approved by the governing body (whether with or without modifications), the approval may be conditional on the occurrence of an event prescribed in paragraph 16.

(3) Any determination under sub-paragraph (1) must be made within the period of twelve months of the date of publication of the proposals.

14.—(1) Where proposals have been referred to the adjudicator for determination pursuant to paragraphs 8 or 15, 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, having consulted the governing body (unless they proposed the modifications).

(2) Where 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 16.

Referral to the adjudicator post determination

15.—(1) Sub-paragraph (2) applies to proposals which relate to—

- (a) a change of category from voluntary aided to foundation school, without the acquisition of a foundation or a relevant change in the instrument of government; or
- (b) a change of category from voluntary aided to foundation school, together with the acquisition of a foundation or a relevant change in the instrument of government (or both).

(2) For the purposes of section 21(2)(h) the prescribed persons at whose request proposals to which this paragraph applies (after their initial determination by the governing body) must be referred to the adjudicator, are—

- (a) the local authority;
- (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; and
- (c) the bishop of a diocese of the Roman Catholic Church any part of which is comprised in the area of the local authority.

(3) A request under sub-paragraph (2) must be made within four weeks of the determination by the governing body.

(4) Where a request is made, the governing body must submit the proposals and any objections or comments made in relation to the proposals to the adjudicator within one week of receiving it.

Conditional approvals

16. 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 making of any scheme relating to any charity connected with the school; and
- (b) the establishment of a foundation within the meaning of section 23A of SSFA 1998(1).

Provision for notification of determinations

17.—(1) Within one week of making the determination, the governing body must notify the local authority of the decision together with reasons, which must be published on the website where the original proposal was published.

(1) Section 23A was inserted by section 33(1) of the Act.

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(2) In the case of any determination made by the adjudicator pursuant to paragraph 14 or 15 the adjudicator must notify the governing body and local authority of their decision together with reasons, which must be published on the website where the original proposal was published.

(3) Where any determination relates to proposals to which paragraph 15(1) applies the adjudicator must also notify the prescribed persons in paragraph 15(2) of their decision together with reasons.

Duty to implement proposals and provide information to the Secretary of State

18.—(1) Subject to the following provisions of this Schedule—

- (a) foundation proposals must be implemented by the governing body in the form in which they were approved; and
- (b) within one week of implementation, the governing body must provide information to the Secretary of State about foundation proposals that have been implemented.

(2) The information in paragraph 18(1)(b) must be provided through the Department for Education’s register of educational establishments.

(3) For the purposes of the provision of information under sub-paragraph (2), regard must be had to any guidance given from time to time by the Secretary of State.

Revocation of proposals (after approval)

19.—(1) If the governing body 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 governing body may determine at any time before implementation that paragraph 18 (duty to implement) is to cease to apply to the proposals.

(2) The governing body 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; and
- (c) a statement as to why it is proposed that, in accordance with sub-paragraph (1), paragraph 18 should not apply in relation to the original proposals.

(4) The governing body 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.

(5) Any publication under sub-paragraph (4)(a) 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 governing body to which any objections or comments should be sent; and
- (c) the date by which such objections or comments must be sent.

(6) Any objections or comments must be sent to the governing body within four weeks of the date of publication of the revocation proposals.

(7) The governing body must determine the revocation proposals within a period ending two months after the end of the representation period.

(8) If the governing body do not make a determination within the period specified in sub-paragraph (7) they must refer the proposals to the adjudicator within one week of the end of that period.

(9) Where the original proposals involve a change of category to a foundation school, before determining proposals under sub-paragraph (1) the governing body must consult the local authority.

(10) Sub-paragraphs (11) to (15) apply where paragraph 15(2) applies to the proposals (voluntary aided to foundation).

(11) The governing body must publish the determination on the website where the original proposal was published.

(12) The governing body must notify the following persons of the determination together with 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 local authority;
- (b) the bishop of a diocese of the Roman Catholic Church any part of which is comprised in the area of the local authority; and
- (c) the trustees of the school (if any).

(13) The persons at whose request revocation proposals must after their determination by the governing body 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 local authority; and
- (b) the bishop of a diocese of the Roman Catholic Church any part of which is comprised in the area of the local authority.

(14) A request under sub-paragraph (13) must be made within four weeks of the initial determination of the revocation proposals by the governing body.

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

Modification post-determination

20.—(1) The governing body may, at any time after determination but before implementation modify the proposals or, where there has been a conditional approval, specify a later date by which the event specified in the approval must occur.

(2) Before modifying proposals for a change of category to a foundation school, or the acquisition of a foundation, the governing body must consult the local authority.

(3) Details of the modification must be published on the website where the original proposal was published.

Proposals not falling to be implemented

21.—(1) Where by virtue of paragraph 19, paragraph 18 (duty to implement) ceases to apply to any proposals, those proposals are to be treated for the purposes of this Schedule as if they had been rejected.

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

- (a) paragraph 18 ceases to apply to the proposals; and

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- (b) the proposals must be considered afresh by the governing body or adjudicator (as the case may be) and paragraphs 13 or 14 apply accordingly.