



Department
for Education

The free school presumption

**Departmental advice for local authorities
and new school proposers**

February 2016

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Summary

About this departmental advice

1. This advice is non-statutory. It sets out for local authorities and new school proposers the department's advice about how the free school presumption process should operate in practice and the characteristics, qualities and evidence that new school proposers should demonstrate. This advice applies to all new schools established under the free school presumption.

2. New schools established through this process will be classified as free schools with effect from May 2015. This reflects the fact that 'free school' is the department's term for any new provision academy. 'Academy' is the legal term for state-funded schools that are independent of local authority control and receive their funding directly from the government. Schools established through the presumption process are not required to use the term 'free school' in their name: this follows practice within the department's free school programme.

3. The Education Act 2011 changed the arrangements for establishing new schools and introduced section 6A (the free school presumption) to the Education and Inspections Act 2006. Where a local authority thinks there is a need for a new school in its area it must seek proposals to establish an academy (free school). Section 6A came into effect on:

- 1 February 2012 for new schools other than pupil referral units; and
- 1 September 2012 for new pupil referral units.

4. This advice applies from February 2016. This advice supersedes all previous versions.

5. The legislation that relates to this advice includes:

- The Education Act 2011 (EA 2011).
- The Education and Inspections Act 2006 (EIA 2006).
- The Academies Act 2010 (AA 2010).

Who is this advice for?

6. This advice is for:

- Local authorities; and
- Proposers applying to establish a school in response to an invitation published by a local authority, seeking proposals to establish a new free school.

NB: Proposers can also apply directly to the department to establish a free school. Guidance on how to do so can be found in the [‘Free schools: how to apply’ guidance](#).

Key points

7. ‘Proposer’ and ‘sponsor’ in this document refer to the body or group that is proposing the new school.
8. This advice relates to new schools established under section 6A, which is known as the free school presumption. [Guidance on establishing new maintained schools](#) (including voluntary aided schools) is on the gov.uk website.
9. The presumption arrangements require local authorities to seek proposals to establish a free school where they have clearly identified the need for a new school in their area. Under the presumption route the local authority is responsible for providing the site for the new school and meeting the associated capital and pre-/post-opening costs. Prior to this, where local authorities have identified a need for new places and are considering ways to address this, they can liaise with groups that are or are thinking about applying for free school via the Department for Education (DfE) route as part of their review of how best to meet that need. Where a free school (proposed via the DfE route) might meet the identified need, the LA can: postpone a competition; hold a competition in parallel to any application for a central free school; or deem that the proposed free school would meet the identified need and decide not to run a presumption (but see paragraph 45).
10. The decision on all new free school proposals lies with the Secretary of State. Her approval is required as it is the Secretary of State who will enter into a funding agreement with the trust.
11. In order to promote consistency and simplify processes for local authorities and applicants we have provided a template for local authority specifications and an application form for sponsors. These templates can be found in Annex A and B of this advice and can be modified to suit local authorities’ specific requirements.
12. Local authorities must notify the Secretary of State of their plans to seek proposals for a new school as soon as the need for a new school has been agreed. Notifications, including the specification templates, should be sent to freeschool.presumption@education.gsi.gov.uk.
13. Once the local authority has received all the proposals, it must provide the Secretary of State with details of all proposers using the email address overleaf.
14. The local authority may assess all proposals received and can then recommend its preferred proposer. Where local authorities assess the proposals a representative of the Secretary of State will provide the local authority with the department’s evidence

about each of the sponsors. The local authority process should allow a minimum gap of 4 weeks between the department receiving the proposals and the date of the local authority's assessment panel in order to allow DfE officials to gather evidence to inform the local authority's assessment.

15. Local authorities can seek the department's views on the proposers in one of the following ways:

- A DfE official can sit on an assessment panel in an observational capacity, feeding in any information the department holds on a sponsor where relevant;
- A DfE official can be part of the assessment panel, taking part in the assessment and again providing any information the department holds on a sponsor;
- A DfE official can provide written feedback on each sponsor prior to the assessment. Please allow 15 - 20 working days for this.

16. Following this assessment, the local authority recommends its preferred proposer to the Secretary of State. In making her decision on with whom she wishes to enter into a funding agreement, the Secretary of State takes the local authority's assessment into account, along with any additional factors of which she is aware. The Secretary of State's decision is delegated to the Regional Schools Commissioner (RSC) for the area in which the school will be located. The Secretary of State reserves the right to agree a sponsor of her own choice (from the department's list of approved sponsors) on the basis that she may have further evidence about a proposer, or proposers, which means that none of those put forward is suitable. The intention is to ensure that the school is always established by the best proposer possible.

Free school presumption process

Overview

17. Where a local authority thinks a new school needs to be established, section 6A of EIA 2006 places the local authority under a duty to seek proposals to establish an academy (free school) and to specify a date by which proposals must be submitted to the local authority. In considering the need for a new school, local authorities should factor in any other free school projects that the department has approved and are due to open. They should also refer to [published guidance on the process for establishing new maintained schools](#) (including voluntary aided schools) and [guidance on expanding and closing schools](#).

Local authority consultation

18. It will be for local authorities to decide how to consult on the proposed new school and with whom (eg potential providers, other schools, academies, the wider community, dioceses and any others affected by the proposals). Local authorities should be clear from their school place planning about the type (eg mainstream, faith, special educational needs, pupil referral unit), age range, gender and capacity of the free school they wish to see established and the expected cost. This clarity is particularly important as potential proposers will be submitting bids on the basis of the specification set out by the local authority. A model specification template (which can be modified to meet a local authority's specific requirements) can be found in Annex A.

Impact and equalities assessment

19. As part of the planning process for new schools, local authorities must also undertake an assessment of the impact of the proposal, both on existing educational institutions locally and in terms of impact on particular groups of pupils from an equalities perspective. This is to enable the Secretary of State to meet her duties under section 9 of the Academies Act 2010 and under section 149 of the Equality Act 2010. Most local authorities will do this when putting together the specification, so in practice it will just be a matter of providing the Secretary of State with a copy of their assessment.

20. However, in the unlikely event that the Secretary of State has concerns about the level of analysis, she reserves the right to ask the local authority to undertake further work on its impact and/or equalities assessment.

Seeking proposals

21. The local authority should take all necessary steps to ensure that the widest possible range of groups or organisations that might be interested in establishing the new

school are aware of the opportunity to do so and have sufficient time to develop proposals. Local good or outstanding schools that are interested in submitting a proposal to run a new school will need to have or acquire both academy status and sponsor approval. The [department's list of approved sponsors](#) can be accessed on the gov.uk website. The department will also play a role in generating interest from high quality proposers – by posting [details of new free school proposals](#) on its own website, encouraging key stakeholders to do the same and by sign-posting proposals to existing sponsors or potential sponsors who we are aware are keen to operate in that region. A model application form (which aligns with the model specification template) can be found in Annex B.

Funding arrangements

22. As under the previous new school competition arrangements, the local authority is responsible for providing the site for the new school and meeting the associated capital costs.

23. Local authorities are also required to meet the revenue costs of the new provision. They must make provision in their growth funds to support increases in pupil numbers relating to basic need. This relates to the per-pupil revenue funding in addition to all funding for pre-opening development costs and post-opening funding required to address diseconomies of scale until a school reaches full capacity. This is because the new free school will be funded on a recoupment basis. School funding arrangements allow local authorities to retain funding centrally to cover these costs. This is detailed in the [revenue funding guide for local authorities](#).

24. Local authorities are expected to work with selected proposers to agree a reasonable and mutually acceptable funding allocation for the local authority to cover pre- and post-opening costs.

25. The department will provide a one-off payment of £25,000 to the successful proposer for the legal costs associated with establishing a new free school through this route. Upon opening, the school will be funded by the Education Funding Agency on the same basis as other academies and free schools in the same local authority area.

Notifying the department – school specification

26. The local authority must notify the department as soon as the need for a new school has been agreed, forwarding to the department at: freeschool.presumption@education.gsi.gov.uk.

- a copy of the new school specification, including confirmation:

- i. that the local authority has identified the required capital to establish the new school, the amount and its source (eg local authority's basic need funding);
 - ii. that the local authority will meet all pre- and post-opening costs associated with establishing the new school (paragraphs 22-25);
 - iii. that the local authority will provide the site for the new school;
 - iv. of the address of the site for the new school, or all sites where a school will operate from split sites (if the school is on a new development, local authorities should provide an approximate postcode);
 - v. of site ownership or tenure arrangements and how these will operate for the new school;
- their impact assessment (paragraph 19-20);
 - a link to the local authority's webpage where the relevant information will be available to interested parties.

Notifying the department – proposals

27. Once the specified date for submitting the proposals to the local authority has passed, the local authority must provide the Secretary of State with details of the steps the authority has taken to seek proposals for a free school and any proposals submitted to them.

It is important to note that once the proposals are submitted to the department the information provided, including personal information, may be subject to publication or disclosure in accordance with the Freedom of Information Act 2000 and the Data Protection Act 1998. Local authorities may wish to remind applicants of this.

28. Normally the local authority chooses to assess the proposals and in this case there should be a 4-week period before the assessment panel in order to allow DfE officials to gather evidence about each of the proposers.

Sponsor approval

29. The Secretary of State will only consider entering into a funding agreement with an approved sponsor. (See [the department's approved sponsor list](#)). New proposers will need to be assessed by the department through the normal sponsor approval route. (See [the department's sponsor approval process](#)). We recommend that local authorities make it clear when publishing their invitation for proposals that proposers that are not approved by the department will have to go through this approval process and should contact the department at the outset, and certainly before submitting a formal proposal to the local

authority. If a proposer is not an approved sponsor the local authority should immediately advise the proposer to apply to become a sponsor.

Assessing proposals

30. Most local authorities carry out an assessment of the proposals and we have provided model criteria (see Annex C) that align with the assessment criteria for free schools to simplify the assessment process and enhance consistency.

31. The assessment of the applications should be based on criteria set out in the published specification (we recommend using the criteria set out in Annex C as a basis - please adapt these as necessary) and a clear and transparent process should be followed. The purpose of the model documentation is to provide a framework that makes the process straightforward for local authorities and applicants alike. Taking into account all of the information provided, the local authority should then assess all the applications and put forward a recommendation together with its reasons for the recommendation. The recommendation should give strong, credible evidence that the new free school will raise the overall standard of education available in the local area, adding high quality places to the system.

32. Ideally as part of the assessment panel, a DfE official will provide the local authority with details of the capacity, capability and recent performance of each proposer, either in person or as a written document.

33. The purpose of this is to ensure that all relevant data on individual sponsor capacity, capability and track record is taken into account in rating the suitability of those sponsors who have submitted a proposal.

34. Local authorities should provide the Secretary of State, at the earliest opportunity, with their assessments, including their scoring of the proposals. This assessment will enable the RSC, on behalf of the Secretary of State, to decide on the most suitable proposer possible to take forward the new free school. If none of the proposers are suitable, the Secretary of State reserves the right to put in place a proposer of her own choice. LAs should await the Secretary of State's decision before making any public announcements.

Scoring

35. We recommend that each criterion is scored using a 4 point scale. So that:

0 = The evidence and argument contained in the application is 'inadequate'.

1 = The evidence and argument contained in the application is 'adequate'.

2 = The evidence and argument contained in the application is 'good'.

3 = The evidence and argument contained in the application is 'excellent'.

It may be that different weight is given to certain criteria and if so we recommend that this is made clear in the specification and/or application form.

Funding agreement

36. Before deciding whether or not to enter into a funding agreement with any proposer, the Secretary of State will need to be satisfied about their suitability to set up and run a free school. The local authority should therefore undertake due diligence checks on new proposers. Any proposals put forward by organisations which advocate violence or other illegal activity will be rejected. In order to be approved, proposals should demonstrate that they would support UK democratic values including respect for the basis on which UK laws are made and applied; respect for democracy; support for individual liberties within the law; and mutual tolerance and respect. In order to enable the Secretary of State to take an informed decision, the department may ask proposers to provide additional information about themselves and to consent to checks being carried out.

37. As soon as a suitable proposer is agreed 'in principle' by the Secretary of State, the department will notify the local authority, the successful proposer and the local MP. It will then be for the successful proposer to work towards establishing the new school, with support from the local authority and the department as required. The Secretary of State will consider signing a funding agreement with the proposer once she is content that the school is prepared to open.

38. Once the local authority has been notified of the successful proposer, it is their responsibility to inform other applicants that they have not been successful.

Sponsor consultation

39. The successful proposer is under a duty, as required by section 10 of the Academies Act 2010, to consult such persons as it thinks appropriate on whether it should enter into a funding agreement for the new school with the Secretary of State.

40. The local authority will continue to have an interest because of its duties to secure sufficient suitable schools.

Communication

41. All documentation submitted to the department should be sent to:
freeschool.presumption@education.gsi.gov.uk

42. The department will publish on the gov.uk website details of those [local authorities that are seeking to establish new schools](#), including links to their websites. The department will also inform SSAT (The Schools Network), FASNA (Freedom and Autonomy for Schools - National Association) and NSN (New Schools Network), to alert potential proposers to the need for a new school.

Other useful information

43. LAs must continue to plan for and secure sufficient schools and places for their area in line with their duties under section 14 of the EIA 1996.

44. Where the new provision free school is designated as a faith school the admission arrangements must provide for at least 50% of the intake to be given priority, when the school is oversubscribed, without reference to faith.

45. Once the local authority has identified a need and has published a specification for a new school, the local authority must follow through the presumption process until any proposals received have been submitted to the Secretary of State along with the local authority's assessment.

46. If, however, the local authority decides, prior to proposals being submitted, that circumstances change such that it is no longer satisfied that there is any need for a school (for example, where a housing project has been cancelled or where a proposed free school will meet the identified need), then the presumption process can be halted and the specification withdrawn on these grounds. If proposals have been submitted, then local authorities must seek the Secretary of State's approval to halt the presumption process.

Further sources of information

- Education Act 2011 <http://www.legislation.gov.uk/ukpga/2011/21/contents/enacted>
- Education and Inspections Act 2006
<http://www.legislation.gov.uk/ukpga/2006/40/contents>
- Academies Act 2010 <http://www.legislation.gov.uk/ukpga/2010/32/contents>
- New Schools Network <http://www.newschoolsnetwork.org/>
- Freedom and Autonomy for Schools National Association <http://www.fasna.org.uk/>
- SSAT(The Schools Network) <http://www.ssatuk.co.uk/>

You may also be interested in

- New School Proposals – information and links seeking proposers to establish a new free school under the free school presumption
<https://www.gov.uk/government/publications/new-school-proposals>
- Free Schools
<https://www.gov.uk/types-of-school/free-schools>
- Sponsored Academies
<https://www.gov.uk/types-of-school/academies>
- University Technical Colleges
<https://www.gov.uk/government/collections/opening-a-utc>
- Alternative Provision Units
<https://www.gov.uk/government/collections/alternative-provision-academies>



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