



Department  
for Education

# **Opening and closing maintained schools**

**Statutory guidance for proposers and  
decision-makers**

**November 2018**

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# 1: Summary

## About this guidance

This is statutory guidance from the Department for Education. This means that recipients must have regard to it when carrying out duties relating to establishing (opening) a new school and / or the discontinuance (closing) of an existing school.

The purpose of this guidance is to ensure that good quality school places are provided where they are needed, and that surplus capacity is removed where necessary. It should be read in conjunction with Part 2 and Schedule 2 of the Education and Inspections Act (EIA) 2006 as amended by the Education Act (EA) 2011 and *The School Organisation (Establishment and Discontinuance of Schools) Regulations 2013*.

## Review date

This guidance will be reviewed in November 2019.

## Who is this guidance for?

This guidance is relevant to all categories of maintained school, unless explicitly stated otherwise, and is for those proposing to open and / or close a school (e.g. governing bodies, dioceses and local authorities (LAs)), decision-makers (LAs, the [Schools Adjudicator](#) and governing bodies), and for those affected by a proposal (e.g. dioceses, trustees, parents etc.).

Proposers and decision-makers must have regard to this guidance when making proposals or decisions related to Schedule 2 of [EIA 2006](#) (as amended by [EA 2011](#)) and the [Establishment and Discontinuance Regulations](#).

Separate advice is available on making [prescribed alterations to maintained schools](#) and [significant changes to academies and academy closure by mutual agreement](#). It is the responsibility of LAs and governing bodies to ensure that they act in accordance with the relevant legislation when making changes to or opening or closing a maintained school and they are advised to seek independent legal advice where appropriate.

## Main points

- Where a LA identifies the need for a new school, specifically to meet increased basic need in their area section 6A of EIA 2006 places them under a duty to seek proposals to establish an academy (free school) via the '[free school presumption](#)' process. The LA is responsible for providing the site for the new school and meeting all associated capital and pre-/post-opening costs.

- The final decision on all new free school presumption proposals lies with the [Regional Schools Commissioner](#) (RSC) on behalf of the Secretary of State.
- In November 2018, the department launched a capital scheme for proposers to apply to the department for capital funding to support the creation of new voluntary aided (VA) schools.
- It is possible for any person ('proposer'), in certain circumstances, to publish a proposal for a new school outside of the competitions processes under section 11 of EIA 2006. It is also possible to apply to the Secretary of State for consent to publish proposals to establish a new school under section 10 of EIA 2006.
- All decisions on proposals to open or close a maintained school must be made with regard to the factors outlined in this guidance and follow the [statutory process](#).
- Consultations should be carried out in term time to allow the maximum numbers of people to see and respond to statutory proposals.
- The decision-maker will need to be satisfied that any consultation carried out was appropriate, fair and open, and that the proposer has given full consideration to all the responses received.
- The decision-maker must consider the views of those affected by a proposal or who have an interest in it, including cross-LA border interests. The decision-maker should not simply take account of the number of people expressing a particular view. Instead, they should give the greatest weight to responses from those stakeholders likely to be most directly affected by a proposal – especially parents<sup>1</sup> of children at the affected school(s).
- In determining proposals decision-makers must ensure that the guidance on [schools causing concern](#) (intervening in falling, underperforming and coasting schools) has been considered where necessary.
- Within one week of the date of their publication the documents below **MUST** be sent to the Secretary of State (via [schoolorganisation.notifications@education.gov.uk](mailto:schoolorganisation.notifications@education.gov.uk)):
  - a copy of the statutory proposal
  - a copy of the statutory notice
  - a copy of the decision record on the proposal.
- The School Organisation Team will make the necessary updates to the [Get Information About Schools](#) (GIAS) system.

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<sup>1</sup> A 'parent' should be considered to be anyone who has parental responsibility, including parents, carers and legal guardians.

## 2: Establishment of new schools

The following information sets out details for the establishment of a new maintained school.

Type of Proposal	Proposer	Decision-Maker	Right of appeal to the Adjudicator?
Free School Presumption	Other proposers (academy trusts/sponsors)	RSC (on behalf of the Secretary of State)	No
<p>Section 7 (Stage 1)</p> <p>A free school proposal will be considered first. If a proposal is received and considered suitable the competition ends and the proposer/LA/department, take forward the free school proposal.</p>	Other proposers	RSC (on behalf of the Secretary of State)	No
<p>Section 7 (Stage 2)</p> <p>Where no suitable free school bid is received, proposals submitted for a new foundation, foundation special or voluntary school will be considered.</p>		LA <sup>2</sup> (Schools Adjudicator where the LA is involved in the Trust of a foundation school)	
Section 11	Other proposers	LA <sup>3</sup>	<p>CofE Diocese</p> <p>RC Diocese</p> <p>Proposers (if the LA is the decision-maker)</p>

<sup>2</sup> Where the LA does not make a decision within the prescribed two month period, they must refer the proposal to the Schools Adjudicator.

<sup>3</sup> Where the LA does not make a decision within the prescribed two month period, they must refer the proposal to the Schools Adjudicator.

Type of Proposal	Proposer	Decision-Maker	Right of appeal to the Adjudicator?
Section 10	LA	Schools Adjudicator	No.
	All other proposers	LA (Schools Adjudicator where the LA is involved in the Trust of a foundation school)	Where the LA is the decisioner maker; Proposers CofE Diocese RC Diocese

Related proposals must be considered together. A proposal should be regarded as 'related' if its implementation (or non-implementation) would prevent or undermine the effective implementation of another proposal. Decisions for 'related' proposals should be compatible.

Where a proposal may impact on a proposal to be decided by the [Regional Schools Commissioner](#) (RSC) (e.g. for the establishment of a new free school through the presumption process) the decision-maker should defer taking a decision, where possible, until the RSC (on behalf of the Secretary of State) has taken a decision on the proposal, or where appropriate, grant a conditional approval for the proposal.

## The free school presumption

Where a LA identifies the need for a new school, to meet basic need for additional school places, section 6A of EIA 2006 places the LA under a duty to seek proposals to establish an academy (free school) via the '[free school presumption](#)'.

The LA is responsible for providing the site for the new school and meeting all associated capital and pre-/post-opening revenue costs. All new free school presumption proposals require the RSC's approval (on behalf of the Secretary of State) as it is the Secretary of State who will enter into a funding agreement with the academy trust/sponsor.

Local authorities planning a presumption project to establish a primary school should include nursery provision in the specification, unless there is a demonstrable reason not to do so.

In considering the need for a new school the LA, or the Schools Adjudicator where appropriate, should take account of any proposals they are aware of that will meet that need. If a local authority has received a proposal for a new local authority maintained school, and subsequently identifies the need for a new school, then the local authority can decide the maintained school proposal<sup>4</sup> before deciding whether it is necessary to seek proposals via the free school presumption.

## School competitions

If the free school presumption competition does not yield a suitable proposal, then a statutory competition can be held under section 7 of the EIA 2006. This will not require a separate application for the Secretary of State's approval, because the Secretary of State will inform the LA that approval to hold a section 7 competition is given at the same time as informing the LA that no suitable free school proposal was identified.

The LA is expected to provide premises and meet the capital costs of implementing the winning proposal, and must include a statement to this effect in the notice inviting proposals. Where the estimated premises requirements and/or capital costs of a proposal submitted in response to a competition exceed the initial cost estimate made by the LA, the decision-maker should consider the reasons for the additional requirements and/or costs, as set out in the proposal and whether to agree to their provision.

The specification for the new school is only the minimum requirement; a proposal may go beyond this. Where a proposal is not in line with the specification, the decision-maker should consider the potential impact of the difference to the specification. Free school proposals and proposals for foundation, foundation special and voluntary schools can be submitted into the competition. However, the RSC (on behalf of the Secretary of State) will consider any free school proposals first when making a decision on the case.

If a free school proposal is considered suitable, the competition ends and the proposer works with the department and LA to progress its proposal. If a free school presumption proposal is not considered suitable, or none is received, the competition continues and it is for the LA to decide whether to approve one (or more) of the maintained school proposals. However, if the LA is involved<sup>5</sup> in the Trust of a proposed foundation school, or fails to determine the proposals within 2 months, the [Schools Adjudicator](#) will be the decision-maker.

Where a LA holds a section 7 competition, the LA must follow the statutory process set out in Schedule 2 to EIA 2006 and the [Establishment and Discontinuance Regulations](#). Where appropriate (e.g. where two or more proposals are complementary, and together

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<sup>4</sup> Where the LA does not make a decision within the prescribed two month period, they must refer the proposal to the Schools Adjudicator.

<sup>5</sup> As set out in paragraph 10(2) of Schedule 2 of the EIA 2006



meet the requirements for the new school), the decision-maker may approve all the proposals. For section 7 competitions there is no right of appeal.

## Establishing new provision outside competitive arrangements

It is possible to publish proposals for a new maintained school outside of the competitive arrangements at any time. Sections 10 and 11 of the EIA 2006 permit proposals to establish new schools under certain conditions either with the Secretary of State's consent (section 10 cases) or without (section 11 cases).

In all cases proposals must follow the required statutory process and may be for a school with or without a designated religious character.

### Section 11 proposals

Any persons ('proposer') e.g. a diocese, may publish a proposal, at any time, for a new school outside of the free school presumption and competitions process under section 11 of EIA 2006.

The Secretary of State's consent is not required in the case of proposals for:

- a new community or foundation primary school to replace a maintained infant and a maintained junior school;
- a new voluntary aided school (e.g. in order to meet demand for a specific type of place such as demand from those of a particular faith);
- a new foundation or voluntary controlled school resulting from the reorganisation of existing faith schools in an area, including an existing faith school losing or changing its religious designation;
- a new foundation or community school, where a section 7 competition has been held but did not identify a suitable provider;
- a former independent school wishing to join the maintained sector; and
- a new maintained nursery school.

The statutory process described in [part 4](#) must be followed to establish the new school.

In November 2018, the department launched a capital scheme to support the delivery of new voluntary aided schools.

Proposals to establish new voluntary aided schools are made under section 11, and guidance is available at [www.gov.uk/government/publications/voluntary-aided-schools-capital-scheme](http://www.gov.uk/government/publications/voluntary-aided-schools-capital-scheme).

## Section 10 proposals

It is also possible to apply to the Secretary of State for 'consent to publish' proposals to establish a new school under section 10 of EIA 2006:

- for a community or foundation school to replace an existing maintained school; or
- for a brand new foundation or voluntary controlled school.

Each request for consent will be considered on its merits and the particular circumstances of the case.

Proposers should wait to receive confirmation of consent before following the statutory process in [part 4](#) to establish the new school. The Schools Adjudicator will decide LA proposals (as well as proposals where the LA are involved in the Trust of a proposed foundation school, or fails to determine the proposals within the specified time). The LA will decide proposals from other proposers<sup>6</sup>.

When considering section 10 and 11 proposals, the decision-maker should take into account the number of surplus places in schools elsewhere in the local areas and the predicted medium and long-term need for places, the demand for a particular type of school place, as well as any plans for the reorganisation of schools in the local area.

## Demand v need

Where a LA identifies the need for a new school, to meet basic need, section 6A of EIA 2006 places the LA under a duty to seek proposals to establish a free school via the '[free school presumption](#)'. However, it is still possible for proposers to publish proposals for new maintained school outside of the competitive arrangements.

In evidencing the demand for new school places proposers will need to demonstrate, and in assessing proposals decision-makers should consider:

- the evidence presented for any projected increase in pupil population (such as planned housing developments) and any new provision opening in the area (including free schools), in relation to the number of places to be provided.
- the quality and diversity of schools in the relevant area and whether the proposal will meet or affect the needs of parents; raise local standards and narrow attainment gaps.
- the popularity of other schools in the area and evidence of parental demand for a new school. Whilst the existence of surplus capacity in neighbouring schools should not in itself prevent the creation of new places, they should consider the impact of the new places on existing educational provision in the local area.

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<sup>6</sup> Where the LA does not make a decision within the prescribed two month period, they must refer the proposal to the Schools Adjudicator.

For parental choice to work effectively there may be some surplus capacity in the system as a whole. Competition from additional schools and places in the system will lead to pressure on existing schools to improve standards. However, excessive surplus capacity should be managed appropriately.

## Proposed admission arrangements

In assessing demand, proposers and decision-makers should consider all expected admission applications, not only those from the area of the LA in which the school is situated.

Before approving a proposal the decision-maker should confirm that the admission arrangements of the school are compliant with the [School Admissions Code](#). Although the decision-maker cannot modify proposed admission arrangements, the decision-maker should inform the proposer where arrangements seem unsatisfactory and the admission authority should be given the opportunity to revise them.

## National Curriculum

All maintained schools must follow the National Curriculum unless they have secured an exemption for groups of pupils or the school community<sup>7</sup>.

## School size

Decision-makers should not make blanket assumptions that schools should be of a certain size to be good schools, although the viability and cost-effectiveness of a proposal is an important factor for consideration. The decision-maker should also consider the impact on the LA's budget of the need to provide additional funding to a small school to compensate for its size.

## Equal opportunity issues

The decision-maker must have regard to the Public Sector Equality Duty (PSED), which requires them to have 'due regard' to the need to:

- eliminate discrimination;
- advance equality of opportunity; and
- foster good relations.

The decision-maker must consider the impact of the proposals on the relevant protected characteristics and any issues that may arise from the proposals (e.g. where there is a proposal to establish new single sex provision in an area, there is equal access to single sex provision for the other sex to meet parental demand). Similarly, there should be a

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<sup>7</sup> Under sections 90, 91, 92 and 93 of the Education Act 2002.

commitment to provide access to a range of opportunities which reflect the ethnic and cultural mix of the area, whilst ensuring that such opportunities are open to all.

## **Integration and community cohesion**

Schools have a key part to play in providing opportunities for young people from different backgrounds to learn with, from and about each other; by encouraging, through their teaching, an understanding of and respect for, other cultures, faiths and communities. The proposer and decision-maker should consider the impact of any proposal on local integration and community cohesion objectives and have regard to the [Integrated Communities Strategy](#).

When considering publishing or deciding a proposal, the proposers and the decision-maker should take account of the community to be served by the school and the views of different sections within the community. They should also consider the following points:

- Whether the school will be welcoming to pupils of any faith and none; and show how the school will address the needs of all pupils and parents.
- Whether the curriculum will be broad and balanced and prepare children for life in modern Britain including through the teaching of spiritual, moral, social and cultural (SMSC) education.
- Whether the school will promote fundamental British values of democracy, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths and beliefs and none.
- Whether the school will encourage pupils from different communities, faiths and backgrounds to work together, learn about each other's customs, beliefs and ideas and respect each other's views.

## **Travel and accessibility**

Proposers and decision-makers should satisfy themselves that accessibility planning has been properly taken into account and that the the proposal will not adversely impact on disadvantaged groups.

They should bear in mind that a proposal should not unreasonably extend journey times or increase transport costs, or result in too many children being prevented from travelling sustainably due to unsuitable walking or cycling routes.

A proposal should also be considered on the basis of how it will support and contribute to the LA's duty to promote the use of sustainable travel and transport to school.

Further information is available in the statutory [Home to school travel and transport guidance](#) for LAs.

## Funding

The decision-maker should be satisfied that any land, premises or necessary funding required to implement the proposal will be available and that all relevant local parties (e.g. trustees or religious authority) have given their agreement to the funding arrangements.

Where proposers are relying on the department as the source of capital funding, there can be no assumption that the approval of a proposal will trigger the release of capital funds from the department, unless the department has previously confirmed in writing that such resources will be available.

Where a proposer is proposing a new voluntary aided school under section 11 and has applied for capital funding from the department, the decision-maker may, if satisfied that the department has given written 'in principle' agreement to provide capital funding, approve the proposals conditionally upon the proposer entering into an arrangement with the Department for Education for any necessary building work.

## School premises and playing fields

Under the School Premises (England) Regulations 2012 all maintained schools are required to provide suitable outdoor space in order to enable physical education to be provided to pupils in accordance with the school curriculum; and for pupils to play outside safely.

Under the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013, where proposals for a new VA school provide for the provision of playing fields, the duty to implement that part of the proposal (i.e. to provide the playing field) rests with the local authority.

For Foundation, Foundation Special, and Voluntary Controlled schools, the duty to implement any proposals falls to either the governing body, or local authority, as the proposal respectively provides for them to do so (i.e. the proposal for the new school will specify who will be providing the playing fields, which they then have a duty to actually provide).

[Non-statutory guidelines](#) setting out suggested areas for pitches and games courts are in place.

## Suitability

When considering any proposal for a new maintained school, the decision-maker should consider the proposal on its merits and take into account all matters relevant to the proposal. Any proposal put forward by organisations which advocate violence or other illegal activity must be rejected. In order to be approved, a proposal should demonstrate that, as part of a broad and balanced curriculum, the proposed new school would promote the spiritual, moral, cultural, mental and physical development of pupils at the school and of society, as set out in the department's guidance on [Promoting fundamental British values through SMSC](#).

### 3: School closures (discontinuance)

Under Section 15 of the EIA 2006, a LA can propose the closure of ALL categories of maintained school. The statutory process is set out in [part 4](#). The governing body of a voluntary, foundation or foundation special school may also publish proposals to close its own school following the statutory process. Alternatively, it may give [at least two years' notice of its intention to close](#) the school to the Secretary of State and the LA.

The table below sets out a summary of the process for closing a maintained school.

Proposer	Type of proposal	Decision-maker	Right of appeal to the Adjudicator?
LA	Following a statutory process to close a community, community special or maintained nursery school	LA <sup>8</sup>	CofE Diocese RC Diocese
	Following a statutory process to close a foundation, foundation special or voluntary (VC or VA) school	LA <sup>9</sup>	CofE Diocese RC Diocese GB Trustees
Governing Body	Following a statutory process to close a voluntary (VC or VA), foundation or foundation special school	LA <sup>10</sup>	CofE Diocese RC Diocese GB Trustees

NB: the LA must make a decision within a period of two months of the end of the representation period. If they fail to make a decision within that time then the proposal must be referred to the [Schools Adjudicator](#).

The decision-maker should be satisfied that there are sufficient surplus places elsewhere in the local area to accommodate displaced pupils, and the likely supply and future demand for places in the medium and long term. The decision-maker should take into account the overall quality of alternative places in the local area and the popularity of other local schools.

<sup>8</sup> Where the LA does not make a decision within the prescribed two month period, they must refer the proposal to the Schools Adjudicator .

<sup>9</sup> Where the LA does not make a decision within the prescribed two month period, they must refer the proposal to the Schools Adjudicator .

<sup>10</sup> Where the LA does not make a decision within the prescribed two month period, they must refer the proposal to the Schools Adjudicator .

Reasons for closing a maintained school include, but are not limited to, where:

- wider school reorganisation means that the school is now surplus to requirements (e.g. because there are surplus places elsewhere in the local area which can accommodate displaced pupils, and there is no predicted demand for the school in the medium or long term);
- it is to be [‘amalgamated’ with another school](#);
- it has been judged inadequate by Ofsted and there is no sponsored academy solution;
- it is to [acquire, lose or change its religious character](#);
- it is no longer considered viable; or
- it is being replaced by a new school.

## Schools causing concern

In determining proposals, decision-makers must ensure that the guidance on [schools causing concern](#) (intervening in failing or underperforming schools) has been considered where necessary.

## Rural schools and the presumption against closure

Decision-makers should adopt a presumption against the closure of rural schools. This does not mean that a rural school will never close, but the case for closure should be strong and a proposal must be clearly in the best interests of educational provision in the area. When producing a proposal to close a rural primary school, the proposer must consider:

- the likely effect of the closure of the school on the local community;
- the proportion of pupils attending the school from within the local community i.e. is the school being used by the local community;
- educational standards at the school and the likely effect on standards at neighbouring schools;
- the availability, and likely cost to the LA, of transport to other schools;
- whether the school is now surplus to requirements (e.g. because there are surplus places elsewhere in the local area which can accommodate displaced pupils, and there is no predicted demand for the school in the medium or long term);
- any increase in the use of motor vehicles which is likely to result from the closure of the school, and the likely effects of any such increase; and
- any alternatives to the closure of the school.



'Rural primary school', in this context, means any school referred to in the [Designation of Rural Primary Schools \(England\) Order](#). Proposers should also consider the above factors when proposing the closure of a rural secondary school. Rural secondary schools are identified on the Get Information about Schools database using the Office for National Statistics' [Rural and Urban Area Classification](#). Decision-makers should consider this indicator when deciding a proposal for the closure of a rural secondary school. Where a school is not recorded as rural on GIAS, the decision-maker can consider evidence provided by interested parties that a particular school should be regarded as rural.

The presumption against the closure of rural schools does not apply in cases where a rural infant and junior school on the same site are being closed to establish a new primary school.

In order to assist the decision-maker, the proposer of a rural school closure should provide evidence to show that it has carefully considered:

- alternatives to closure including: federation with another local school; conversion to academy status and joining a multi-academy trust; the scope for an extended school to provide local community services and facilities e.g. child care facilities, family and adult learning, healthcare, community internet access etc;
- transport implications i.e. the availability, and likely cost of transport to other schools and sustainability issues;
- The size of the school and whether it puts the children at an educational disadvantage e.g. in terms of breadth of curriculum or resources available;
- the overall and long term impact on local people and the community of the closure of the village school and of the loss of the building as a community facility; and
- wider school organisation and capacity of good schools in the area to accommodate displaced pupils.

## **Nursery schools and the presumption against closure**

Decision-makers should adopt a presumption against the closure of nursery schools. This does not mean that a nursery school will never close, but the case for closure should be strong and the proposal should demonstrate that:

- plans to develop alternative early years provision clearly demonstrate that it will be at least equal in quantity to the provision provided by the nursery school with no loss of expertise and specialism; and
- replacement provision is more accessible and more convenient for local parents.

In considering a proposal to close a school which currently includes early years provision, the decision-maker should consider whether the alternative early years provision will integrate preschool education with childcare services and/or with other services for young children and their families.

## **Balance of denominational provision**

In deciding a proposal to close a school that has been designated with a religious character, decision-makers should consider the effect that this will have on the balance of denominational provision in the area, as well as the number of pupils currently on roll, the medium and long term need for places in the area, and whether standards at the school have been persistently low. For example, if an infant and a junior school of a particular religious character in an area are to close and be replaced with a new all-through school, then there should normally be a preference for that new school to be of the same religious character as the predecessor schools.

## **Community services**

Some schools may be a focal point for family and community activity, providing extended services for a range of users, and their closure may have wider social consequences. Where the school is providing access to extended services, provision should be made for the pupils and their families to access similar services through their new schools or other means.

## **Amalgamations**

There are two ways to amalgamate two (or more) existing maintained schools:

- The LA or governing body (depending on school category) can publish a proposal to close two, or more, schools and the LA, or a proposer other than the LA (e.g. diocese, faith or parent group, Trust), depending on category, can publish a proposal to open a new school. Where this is a presumption school, this will be subject to publication of a section 6A notice (see [part 2](#)). This will result in a new school number being issued.
- The LA and / or governing body (depending on school category) can publish a proposal to close one school (or more) and enlarge / change the age range / transfer site (following the statutory process as / when necessary) of an existing school, to accommodate the displaced pupils. The remaining school would retain its original school number, as it is not a new school, even if its phase has changed.

## Existing schools wishing to acquire, change or lose a religious character

It is not possible for an existing maintained school to make any change to its religious character. Instead the LA or governing body must publish a proposal to close the existing school, and a proposer, normally a faith organisation, must issue a 'related' proposal to establish a new voluntary or foundation school with a religious character. This can be done by either gaining the Secretary of State's consent under section 10 or as a special case under section 11 of EIA 2006.

In **ALL** cases, before the religious designation flexibilities can be utilised, the proposer will need to [apply separately, to the Secretary of State, for the new school to be designated with a religious character](#). This would normally be done once the proposal for the new school has been approved.

Schools designated with a religious character that close will automatically have the designation revoked.

Where two or more schools have amalgamated, the successor school may need to reapply for religious designation. Upon gaining a religious designation, a school cannot immediately change its admissions policy to include faith-based criteria. It will need to have consulted on, and determined, its admission arrangements in accordance with the [School Admissions Code](#).

## Two years notice of closure – voluntary and foundation schools

In addition to the statutory process for closure in [part 4](#), the governing body of a voluntary or foundation school may, subject to specified provisions<sup>11</sup>, give the Secretary of State and the LA at least two years' notice of their intention to close the school.

The trustees of a foundation or voluntary school must give their governing body at least two years notice if they intend to terminate the school's occupation of its site. The minimum two years' notice allows the LA and / or governing body time to make alternative arrangements for pupils.

## Closure of a community or foundation special school in the interests of pupils

The Secretary of State may direct<sup>12</sup> a LA to close a community special or foundation special school if he considers it is in the interests of the health, safety or welfare of the pupils. Prior to making the direction, the Secretary of State must consult: the LA, any

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<sup>11</sup> As outlined in section 30 of the SSFA 1998, and including those in the DBE Measure 1991.

<sup>12</sup> Section.17 of EIA 2006

other LA who would be affected by the closure of the school; for a foundation special school with a foundation, the person(s) who appoints the foundation governors; and any other person(s) the Secretary of State considers appropriate.

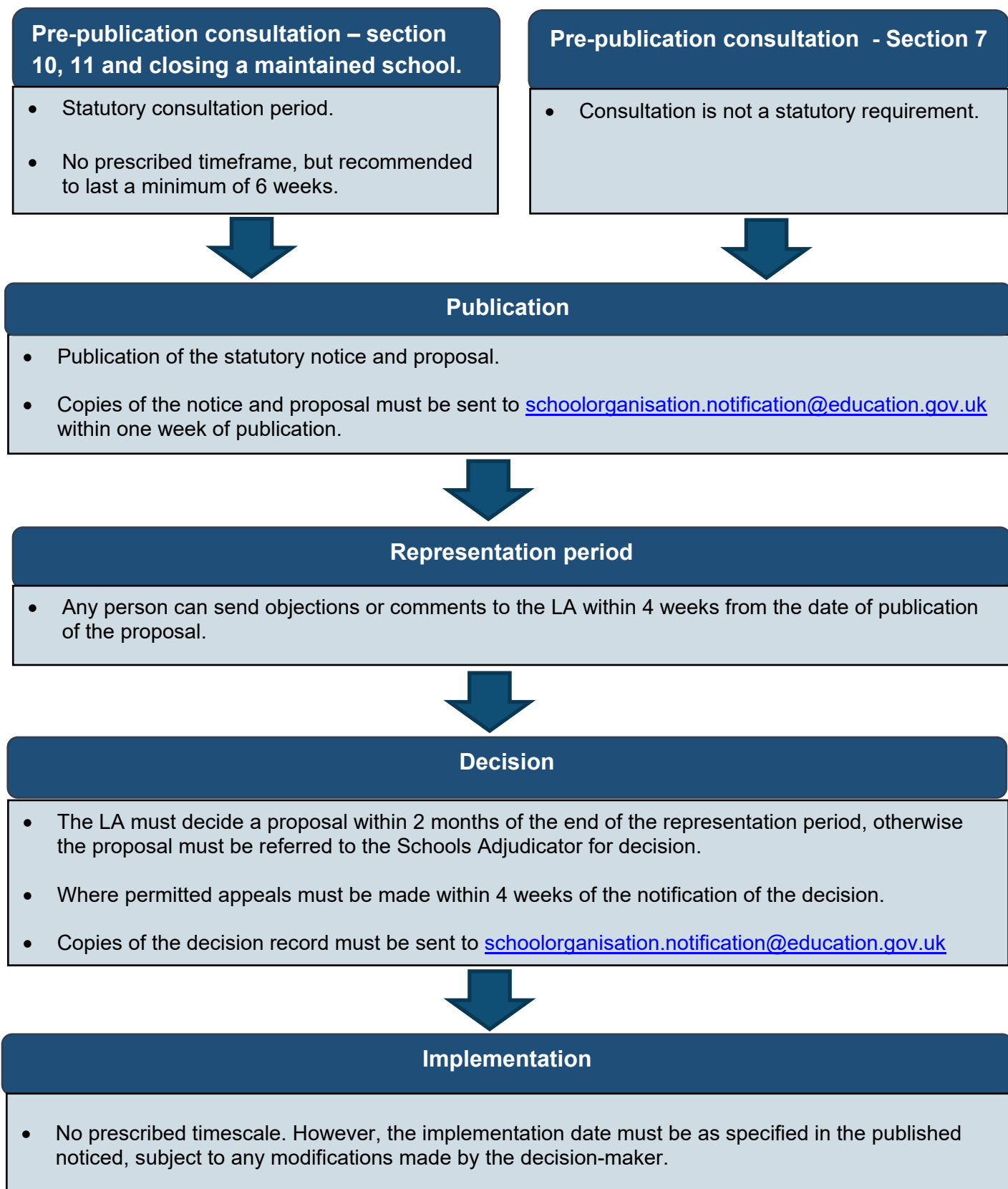
The Secretary of State must give notice of the direction in writing to both the governing body and the head teacher of the school. The school must be closed on the date specified by the Secretary of State.

## **Temporary school closures**

A proposal to close a school is not required where a school will temporarily cease to operate due to a rebuild. Where a school operating over multiple sites proposes to cease operations on one (or more) of its sites the proposal will be for a [prescribed alteration](#) and not a school closure.

## 4: The statutory process

The statutory process below **must** be followed for opening<sup>13</sup> and closing<sup>14</sup> a maintained school.



<sup>13</sup> Under sections 10 and 11 of EIA 2006

<sup>14</sup> Under section 15 of EIA 2006

## Pre-publication consultation

The proposer may use the pre-publication consultation to consider a range of options (e.g. for the possible wider reorganisation of provision), however this is not a substitute for the statutory representation period as set out in legislation. The statutory representation period must cover the specific opening or closure proposal of the school in question.

It is for the proposer to determine the nature and length of the pre-publication consultation. It is best practice for consultations to be carried out in term time to allow the maximum number of people to respond. The Cabinet Office guidance on [Consultation principles](#) can be used for other examples of best practice.

## Publication

A statutory proposal should be published within 12 months of initial consultation period being completed. This is so that it can be informed by up-to-date feedback. A proposal must contain the information specified in either Schedule 1<sup>15</sup> for establishing a new school (see [Annex C](#)) or Schedule 2 for closing a school (see [Annex B](#)) of the Establishment and Discontinuance Regulations.

The proposer must publish the full proposal on a website along with a statement setting out:

- how copies of the proposal may be obtained;
- that anybody can object to, or comment on, the proposal;
- the date that the representation period ends; and
- the address to which objections or comments should be submitted.

A brief notice containing the website address of the full proposal must be published. This must be published in a local newspaper and may also be published in a conspicuous place on the school premises, such as at all of the entrances to the school.

Within one week of the date of publication of a section 10 or 11 proposal to open a new school, the proposer **MUST** send a copy of the proposal to the LA which it is proposed would maintain the school.

On the day of publication of a proposal to close a school the proposer **MUST** send a copy of the proposal to the governing body/LA (as appropriate).

In all cases, within one week of the date of publication on the website, the proposer **MUST** send a copy of the proposal and the information set above to:

- the Secretary of State ([schoolorganisation.notifications@education.gov.uk](mailto:schoolorganisation.notifications@education.gov.uk));

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<sup>15</sup> Of the School Organisation (Establishment and Discontinuance) (England) Regulations 2013.

- the parents of every registered pupil at the school - where the proposal is to close a special school;
- the local Church of England diocese(s);
- the local Roman Catholic diocese(s); and
- any other body or person that the proposer thinks is appropriate (e.g. relevant faith group).

Within one week of receiving a request for a copy of the proposal the proposer must send a copy to the person requesting it.

## Related proposals

A proposal for one change can be linked to another proposal(s). For example, an amalgamation where two schools are closing and are to be replaced by a completely new school, or if the need for the closure is the result of an area-wide reorganisation and long-term LA planning.

Where surplus capacity in the local area necessitates a proposal for closure and there are sufficient places in neighbouring schools to accommodate the displaced pupils, this should be evidenced in the proposal.

Where proposals are related, this should be made clear in any informal or formal representation periods, in published notices, and proposals. All notices should be published together / or as one notice (e.g. where one school is to be enlarged because another is being closed a single notice could be published) and specified as 'related'.

Related proposals must also be considered together and, where possible, decisions should be made at the same time.

## Representation

Except where the school is a rural primary school or a special school where there are prescribed consultees (see [Annex A](#)), proposers of a school closure should consult organisations, groups and individuals they feel to be appropriate during the representation period (the information in Annex A can be used for examples). The information that **MUST** be included in a closure proposal is summarised at [Annex B](#). The information that **MUST** be included in a proposal to establish a new school under the section 10 or 11 processes is summarised in [Annex C](#).

The representation period starts on the date of publication of the statutory proposal and must last for four weeks. During this period, any person or organisation can submit comments on the proposal, to the LA, to be taken into account by the decision-maker. It is also good practice for LAs to forward representations to the proposer (subject to any issues of data protection or confidentiality) to ensure that they are aware of local opinion.

The decision-maker will need to be satisfied that the proposer has met the statutory requirements. The decision-maker must consider **ALL** the views submitted during the representation period, including all support for, objections to, and comments on the proposal.

## Decision

The LA will be the decision-maker on a school closure proposal, unless the closure proposal is 'related' to another proposal that is to be decided by the [Schools Adjudicator](#).

The Schools Adjudicator will decide LA proposals for new schools (and cases where the LA is involved in the Trust of a proposed foundation school). The LA will decide proposals for new schools from other proposers.

If the LA does not make a decision within a period of two months of the end of the representation period, they must, within a week of the end of that two month period, refer the case to the Schools Adjudicator.

The body or individual that takes the decision must have regard to the statutory decision-makers guidance contained in this document.

When issuing a decision, the decision-maker can:

- reject the proposal;
- approve the proposal without modification;
- approve the proposal with such modifications as they think desirable, after consulting the LA and/or proposer (as appropriate); or
- approve the proposal – with or without modification – subject to certain conditions<sup>16</sup> (such as the granting of planning permission) being met.

A proposal can be withdrawn by the proposer at any point before a decision is taken. When doing so the proposer must send written notice to the LA and the [Schools Adjudicator](#) (if the proposal has been sent to them). A notice must also be placed on the website where the original proposal was published.

Where the LA is the decision-maker, within one week of making a determination they must publish their decision and the reasons for such a decision being made on their website. They must arrange for notification of the decision and reasons for it to be sent to:

- The Secretary of State (via [schoolorganisation.notifications@education.gov.uk](mailto:schoolorganisation.notifications@education.gov.uk))
- the governing body/proposers (as appropriate);
- the Schools Adjudicator;

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<sup>16</sup> As specified in regulation 16 of the Establishment and Discontinuance Regulations



- the local Church of England diocese(s);
- the local Roman Catholic diocese(s);
- for a special school, the parents of every registered pupil at the school;
- any other body considered appropriate (e.g. other relevant religious authority); and
- The trustees of the school (where relevant e.g. site trustees).

Where the Schools Adjudicator is the decision-maker, where possible they should send notification of the decision and reasons for it, within one week of making a determination to the LA and the Secretary of State (via [schoolorganisation.notifications@education.gov.uk](mailto:schoolorganisation.notifications@education.gov.uk)) to ensure the appropriate records can be updated and to allow for any actions required as a consequence of the decision to be completed (e.g. an admissions preference exercise following approval to close a school).

## Rights of appeal against a decision

For rights of appeal against decisions on establishment proposals, see table on page 6. For rights of appeal against decisions on closure proposals, see table on page 15.

Within one week of receipt of an appeal, a LA decision-maker must send the proposal, representations received and the minutes and papers for the meeting at which it considered the proposals to the [Schools Adjudicator](#).

There is no right of appeal against determinations made by the Schools Adjudicator. Adjudicator decisions can be challenged only by Judicial Review in the Courts.

## Implementation

There is no maximum limit on the time between the publication of a proposal and its proposed date of implementation. However, decision makers should be confident the proposers have good justification (for example an authority-wide reorganisation) if they propose a timescale longer than three years.

The proposer must implement a proposal in the form approved, including any modifications made by the decision-maker.

The school organisation team will make the necessary changes to the school(s) GIAS record(s).

For proposals to establish a new school, the proposer should contact the school organisation team (via [schoolorganisation.notifications@education.gov.uk](mailto:schoolorganisation.notifications@education.gov.uk)) one month before the proposed opening date to confirm that the new school will be opening on time. It is at this point that a GIAS record will be established and your school will be assigned a URN.

## Modification post determination

If it proves necessary, due to a major change in circumstance, or it being unreasonably difficult to implement a proposal as approved, the proposer can propose modifications (e.g. to the implementation date) to the decision-maker before the approved implementation date. However, proposals cannot be modified to the extent that new proposals are substituted for those that have been published.

## Revocation

If the proposer does not wish to implement an approved proposal because doing so would be unreasonably difficult or circumstances have changed (so that implementation would be inappropriate) the proposer must publish a revocation proposal, to be relieved of the duty to implement. A revocation proposal must contain:

- a description of the original proposal as published;
- the date of the publication of the original proposal; and
- a statement as to why the duty to implement the original proposal should not apply.

The proposer must publish the revocation proposal on a and a brief notice of the proposal in a local newspaper. Details of what must be included in this notice are the same as in the [publication section](#).

Proposers must send the revocation proposal to the LA within one week of the date of publication on the website. Where the original proposal was decided by the [Schools Adjudicator](#), the LA must refer the revocation proposal together with any comments or objections within two weeks of the end of the representation period to the Schools Adjudicator.

The decision-maker must determine the revocation proposal within two months of the end of the representation period. The decision-maker should make such persons aware of the decision as they consider appropriate. This should include:

- The Secretary of State (via [schoolorganisation.notifications@education.gov.uk](mailto:schoolorganisation.notifications@education.gov.uk))
- the governing body/proposers (as appropriate);
- the Schools Adjudicator;
- the local Church of England diocese(s);
- the local Roman Catholic diocese(s);
- for a special school, the parents of every registered pupil at the school;
- any other body considered appropriate (e.g. other relevant faith organisation); and
- the trustees of the school (where relevant e.g. site trustees).

## Annex A: School closure consultations

In the case of the closure of a rural primary school or a community or foundation special school, prior to publishing a statutory notice and proposal, proposers **must**, under section 16(1) of EIA 2006 consult:

- The LA (as appropriate);
- The registered parents of registered pupils at the school;
- where the LA is a county council the local district or parish council where the school that is the subject to the proposal is situated; and
- in the case of a special school – any LA which maintains an EHC plan or statement of special educational needs in respect of a registered pupil at the school.

The Secretary of State considers that these bodies, along with those listed below should be consulted in the case of the proposed closure of all schools:

- the governing body (as appropriate);
- pupils at the school<sup>17</sup>;
- (if a proposal involves, or is likely to affect a school which has a particular religious character) the appropriate diocese or relevant faith group<sup>18</sup>;
- the trustees of the school (if any);
- teachers and other staff at the school;
- any LA likely to be affected by the proposal, in particular neighbouring authorities where there may be significant cross-border movement of pupils;
- the governing bodies, teachers and other staff of any other school that may be affected;
- parents of any pupils at other schools who may be affected by the proposal including where appropriate families of pupils at feeder primary schools;
- any trade unions who represent staff at the school; and representatives of any trade union of staff at other schools who may be affected by the proposal;
- MPs whose constituencies include the school that is the subject of the proposal or whose constituents are likely to be affected by the proposal; and
- any other interested organisation / person that the proposer thinks are appropriate.

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<sup>17</sup> Under section 176 of the Education Act 2002.

<sup>18</sup> Under the DBE Measure 1991 Church of England schools must consult with their diocese before making closure proposals.

## **Annex B: Statutory proposals for school closures**

As set out in Schedule 2 to the Establishment and Discontinuance Regulations the information below **must** be included in a proposal to close a school:

### **Contact details**

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**

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.

### **Reason for closure**

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

### **Pupil numbers and admissions**

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**

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

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.

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

## **Impact on the community**

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**

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**

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**

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**

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
- the range of educational or training opportunities available to them.

## **Special educational needs provision**

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**

Details of length and journeys to alternative provision.

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

## **Annex C: Statutory proposals for establishing a new school.**

As set out in the Establishment and Discontinuance Regulations the information below must be included in section 10 and 11 proposals to establish a new school:

### **Contact details**

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

### **Implementation**

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.

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**

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

### **Category**

Whether the school will be a foundation or foundation special schools (and, if so, whether it is to have a foundation), a voluntary schools (and whether it will be voluntary controlled or voluntary aided), 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**

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.

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.

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**

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**

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**

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

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.

Where the addition of sixth-form provision is being proposed, a change of age-range will be required and proposers should refer to the prescribed alterations guidance.

## Special educational needs provision

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

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

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

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

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

## Relevant experience of proposers

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

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

## Location and costs

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 LA (as the case may be) that funds will be made available (including costs to cover any necessary site purchase).

## Travel

The proposed arrangements for travel of pupils to the school.

## **Federation**

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

## **Voluntary aided schools**

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.

## **Foundation schools**

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.

## Annex D: Further Information

This guidance primarily relates to:

- [The Education and Inspections Act 2006](#), as amended by the [Education Act 2011](#)
- [The School Standards and Framework Act 1998](#), as amended by the [Education Act 2002](#)
- [The School Organisation \(Establishment and Discontinuance of Schools\) Regulations 2013](#)
- [The School Organisation \(Prescribed Alterations to Maintained Schools\) \(England\) Regulations 2013](#)
- [The free school presumption – Departmental advice for local authorities and new school proposers \(May 2018\)](#)
- [Presumption against the closure of primary schools](#)
- [Rural and Urban Area Classification](#)
- [The Religious Character of Schools \(Designation Procedure\) Regulations 1998](#)
- [How to apply for religious designation](#)
- [Schools Adjudicator](#)
- [School Admissions Code](#)

It also relates to:

- [School Governance \(Constitution\) \(England\) Regulations 2012](#)
- [School Governance \(Roles, Procedures and Allowances\) \(England\) Regulations 2013](#)
- [Governors handbook](#).
- [School Premises \(England\) Regulations 2012](#)
- [The School Companies Regulations 2002](#) as amended by the [2003 Regulations](#) and the [2014 Regulations](#)
- [Change your charity's governing document](#)
- [Academies Act 2010](#)
- [Making significant changes to an existing academy and Closure by Mutual Agreement \(2018\)](#);
- [Regional Schools Commissioner](#)
- [Consultation principles](#)



Department  
for Education

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