



Department  
for Education

# **The free school presumption**

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

**November 2019**

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# Summary

## About this departmental advice

1. This advice is non-statutory. It is aimed at local authorities and new school proposers and sets out the department's advice and guidance about how the free school presumption process should operate in practice and the characteristics, qualities and evidence that new school proposers should demonstrate. This guidance applies to all new schools established under the free school presumption.
2. This guidance applies from October 2019 and supersedes all previous versions.
3. The presumption process is the main route by which local authorities establish new schools in order to meet the need for additional places, both in terms of basic need and the need for diverse provision within their areas.
4. The presumption process can be used to deliver all types of schools, including mainstream, alternative provision, special schools, and faith/church schools. Where the proposal is for a primary school, there is a presumption that the specification will include nursery, unless there is a demonstrable reason not to.
5. Local authorities are responsible for determining the specification (more information on the specification can be found at paragraphs 29-32) for the new school and will fund and deliver the site and buildings and work with the approved sponsor to establish the school. The department provides support and advice to local authorities and sponsors throughout the process and will appoint a lead contact for each project to assist local authorities and successful sponsors in its delivery.
6. The presumption process sits alongside the central mainstream free schools programme. Wave 14 of the free schools programme targets areas with the lowest educational standards where there is also enough basic need for additional school places to merit establishing a whole new school. We are keen to receive applications for schools that will bring innovation to the wider education system and diversity to local provision. In all cases, applications need to show a demonstrable basic need for a high proportion of the additional free places that the free school will provide. For more information, please see the [How to apply to set up a mainstream free school guidance](#).
7. The department announced the voluntary aided capital scheme to support the establishment of new voluntary aided schools in May 2018. Voluntary aided schools can be established by both faith and non-faith groups. Schools created through this scheme will have the same freedoms as existing voluntary aided schools, including over their admissions, and will add to the choice and diversity of provision in their area. The first round of the scheme closed on 1 February 2019. More information about the VA capital scheme can be found [here](#).
8. All new schools established through the presumption process are classified as free schools. 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.

9. The Education Act 2011 changed the arrangements for establishing new schools and introduced section 6A (the 'free school presumption') of the Education and Inspections Act 2006 which requires that, where a local authority identifies the 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 mainstream and special schools; and
- 1 September 2012 for new AP/alternative provision free schools.

10. The legislation that relates to this guidance 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?

11. This advice is for:

- Local authorities; and
- Prospective proposers who may wish to apply to establish a new free school in response to an invitation published by a local authority.

NB: Prospective proposers who meet the published criteria may also apply directly to the department to establish a central free school through the centrally provided programme. Further guidance on how to do so can be found in the ['Free schools: how to apply'](#) guidance.

## Main points

12. 'Proposer' and 'sponsor' in this document refer to the body or group that is proposing the new school.

13. When 'department' is used in this document it is referring to the Department for Education.

14. This guidance relates to new schools established under section 6A of the Education and Inspections Act 2006, which is known as the 'free school presumption'. [Guidance on establishing new maintained schools](#) (including voluntary aided schools) can be found on the [gov.uk](http://gov.uk) website. The circumstances in which a new maintained

school can be established are limited, but include provision for local authorities to approve a proposal for a religious body to establish a voluntary aided school.

15. The presumption process requires local authorities to seek proposals to establish a free school where they have identified the need for a new school in their area. Local authorities that have identified a need for new pupil places and are considering ways to provide them, are advised to contact the relevant Regional Schools Commissioner's office as early as possible to ensure that there is a common understanding of action being taken to provide new school places and to improve the overall quality and diversity of educational provision in the area, including whether any alternative free school applications through the central route have been made.

16. To support this the department will contact the local authority when a new free school is proposed through the central route, and there is also a requirement that all academies which are proposing to expand should first consult the local authority. These measures will ensure a co-ordinated response to the need for additional places as well as quality and diversity of provision.

17. For more guidance on managing the supply of school places, local authorities should also refer to the published guidance on the processes for [opening and closing maintained schools](#) (including [voluntary aided schools](#)), [making prescribed alterations to maintained schools](#) and the guidance on [making significant changes to an open academy and academy closure](#).

18. All presumption projects will be assigned a lead contact in the department at the point the local authority notifies the department of its intention to run a presumption competition. The lead contact will help, advise and challenge all stakeholders to ensure that the new school will operate successfully from day one.

19. If a local authority is running a presumption competition, it can withdraw from the process if it determines that the need for a new school will be met by other means, or that the need for a new school no longer exists.

20. Under the presumption route the local authority is responsible for providing the site for the new school and for delivering the capital programme for building the new school. It is the department's expectation that the site be made available free or on a peppercorn basis by the local authority to the trust. The local authority is also responsible for meeting the associated capital and pre/post-opening revenue costs. Basic need capital funding is provided on an unringfenced basis, so that local authorities can provide the places that they need, including through new presumption schools.

21. In respect of any capital development, the local authority is strongly encouraged to use the Department's [Construction Framework](#) which has been proven to deliver value and improve speed of procurement in delivering schools of varying sizes (whether the schools were delivered by the Department or by local authorities) over recent years.

22. The decision on all new free school proposals lies with the Secretary of State. His approval is required as it is the Secretary of State who will enter into a [funding agreement](#)

with the sponsor chosen to run the new school. The Secretary of State will consider any recommendation on the choice of a proposer made by the local authority. However, in some cases the Secretary of State may have additional information about the capacity, capability or the academic track record of a proposer which he will take into account when making his decision. In reaching his decision the Secretary of State will also have regard to quality and the diversity of the existing local provision, the ability of the proposed sponsor to redress social disadvantage, as well as to improve educational standards in an area. The Secretary of State's decision is normally delegated to the Regional Schools Commissioner (RSC) for the area in which the school will be located.

23. In order to promote consistency and simplify processes for local authorities and applicants, we have provided a suggested template for local authority specifications ([annex A](#)) and an application form for sponsors ([annex B](#)). These can be modified to suit local authorities' specific requirements.

24. Following any assessment, the local authority recommends its preferred sponsor to the Secretary of State. In deciding with whom he wishes to enter into a funding agreement, the Secretary of State will take the local authority's assessment into account, along with any additional factors of which he is aware. The Secretary of State reserves the right to agree a sponsor of his own choice (from the [department's list of approved sponsors](#)) on the basis that he may have further evidence about a proposer, or proposers, which means that none of those put forward is suitable. As the intention is to ensure that the school is always established by the most suitable proposer possible, involving a representative of the Secretary of State in the local authority's assessment processes ensures that all relevant and up-to-date evidence is taken into account and that the process of appointing a sponsor runs as smoothly as possible.

25. In addition, guidance and support can be provided by [New Schools Network](#) (NSN) free of charge. NSN is an independent charity that receives a grant from the department to provide advice, guidance and resources to those looking to open new free schools. NSN can also put applicants in contact with previously successful groups. In addition to applicant support, NSN will work with local authorities to promote their presumption competitions. More information can be found on the presumption page of the NSN [website](#).

## Free school presumption process

### Local authority consultation

26. Before launching the competition, local authorities should decide how they will consult on the proposed new school and with whom (e.g. potential providers, other local schools, academies, the wider community, religious organisations/ institutions including diocese and any others affected by the proposals). In conducting their consultation, local authorities should be clear about the type (e.g. mainstream, faith, special educational needs, alternative provision), age range, gender and capacity of the free school they wish to see established, the expected cost and funding available, the proposed site for the new school and the date by which it is expected to open. Feedback gathered through consultation can be helpful and used to help formulate and finalise the local authority's specification for a new school before its publication.

N.B. The above consultation should take place before publication of the specification of the new free school. This is not the formal statutory consultation which sponsors are required to undertake under section 10 of the Academies Act 2010, which takes place during the pre-opening phase i.e. after the sponsor has been selected.

### Impact and equalities assessment

27. 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. Most local authorities will do this when putting together the specification for the school. In order for the Secretary of State to meet his duties under section 9 of the Academies Act 2010 and under section 149 of the Equality Act 2010, local authorities should provide the Secretary of State with a copy of their assessment.

28. In the unlikely event that the Secretary of State has concerns about the level of analysis, he reserves the right to ask the local authority to undertake further work on the impact of the proposed new school and/or the equalities assessment.

### School specification

29. The local authority should prepare a specification which is detailed enough to enable proposers to understand the needs of the local authority and submit the strongest proposal possible.

30. Where possible, local authorities should determine the amount and type of pre- and post-opening funding they will give to the successful sponsor (more information on funding arrangements can be found at paragraphs 57-65), and include this in the specification. This will enable proposers to tailor their proposal according to the funding



available, making for stronger proposals for the local authority to consider. There may be scope for adjustments after the sponsor is appointed, depending on the circumstances (the local authority and successful sponsor will formally agree the funding to be provided). Where it is not possible to provide clear details of funding in the specification, then including an indicative amount and/or details about the factors that the local authority will take into account in determining funding may be helpful.

### **Details to include in the specification:**

- Type of school
- Character/Ethos of school
- Phase and age range (will it include nursery / sixth form provision?)
- Opening date
- Final capacity
- Proposed Published Admission Number (PAN) and number of forms of entry on opening, and expected rate of growth
- Proposed admission arrangements, including catchment area if applicable
- Details about transport
- Reasons the new school is required (e.g. due to a new housing development)
- Profile of the area, including data about Free School Meals (FSM); Looked After Children (LAC) and Previously Looked After Children (PLAC); Black, Asian and Minority Ethnic (BAME); Special Educational Needs and Disability (SEND); Key Stage 2 outcomes
- How the proposal will be likely to lead to improvements in the standard, quality and range of educational provision for children with special educational needs
- Details of any planned community use of the school/ whether there be any shared facilities
- Details of the site / building, including details of the ownership
- Details of pre-opening funding to be provided by the local authority
- Details of post-opening diseconomies of scale funding to be provided by the local authority, including underwriting of places and how many years this will be for
- Timelines for the project, including deadline for proposals
- Process the local authority will follow when assessing proposals
- How to apply (including application form)
- Local authority contact details

31. The local authority can send a draft specification to the department for review and comment prior to the specification being published.

### **Contacting the department when planning the project**

Local authorities have found it very useful to engage the support of the department at an early stage, for example, by sending a draft specification to the free school presumption mailbox ([FreeSchool.PRESUMPTION@education.gov.uk](mailto:FreeSchool.PRESUMPTION@education.gov.uk)). This enables the lead contact to use their experience of previous projects to make helpful comments and suggestions, which the local authority can take into account before publishing the final version of the specification. This may increase the likelihood of receiving stronger proposals and reduce the likelihood of problems arising later on in the project.

32.

A model specification template (which can be modified to meet a local authority's specific requirements) along with an example specification, can be found in [annex A](#). A model application form (which aligns with the model specification template) can be found in [annex B](#).

### **Why should the specification include such detailed information?**

The clearer and more specific the requirements in the specification, the more efficient the rest of the process will be and the more likely you will be to attract better quality prospective sponsors. Benefits include:

- Prospective sponsors will be able to respond to specific requirements, and provide higher quality applications
- Fewer applications are likely to be judged to be unsuitable later on
- It will be easier (and quicker) for the local authority to assess the bids against the stated requirements, and present the recommendation to the RSC
- It will be easier (and quicker) for the RSC to appoint the best sponsor (and more likely the RSC will agree with the local authority's recommendation)
- The partnership between the local authority and trust will run more smoothly throughout the delivery process.

## Seeking proposals

33. The local authority should market the presumption competition as widely as possible to ensure that the broadest 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. This will ensure a fair and open competition and the best pool of prospective sponsors.

### **Suggestions to advertise the presumption competition as widely as possible:**

- Publish the specification on the local authority's website and send a copy of the web link to the department ([FreeSchool.PRESUMPTION@education.gov.uk](mailto:FreeSchool.PRESUMPTION@education.gov.uk)) for publication (this is a statutory requirement)
- Include in any local authority newsletter or bulletin which is regularly sent to education providers in their area
- Use the services of [New Schools Network](#) who can generate leads for presumption competitions
- Identify and contact trusts and good or outstanding schools in the local authority area or region which may be interested in applying
- Advertise in the local and national press
- Hold a public meeting for prospective sponsors and local stakeholders to find out more (i.e. a sponsor engagement and information event)
- Where a local authority has more than one project coming up, it may be appropriate to hold an event inviting a wide range of possible sponsors where they can find out details about all the projects
- If there are concerns about a low response rate, contact the department / RSC office who can identify and directly contact potential sponsors of which they are aware.

### **The RSC (when acting on behalf of the Secretary of State) will always ask:**

“Has the local authority followed a robust process, have they run a full, transparent and open competition designed to attract a wide range of applications?”

34. Local good or outstanding schools that are interested in submitting a proposal to run a new school will need to have or acquire academy status and be an approved sponsor. More information on the sponsor approval process is provided at paragraph 56. The [department's list of approved sponsors](#) can be accessed on the gov.uk website.

35. The department will also play a role in generating interest from a range of high quality proposers – by posting [details of new free school proposals](#) on the gov.uk website, encouraging key stakeholders to do the same and by sign-posting proposals to existing sponsors or potential sponsors. The department will also inform SSAT (The Schools Network), Confederation of School Trusts (CST) and NSN, to alert potential proposers to the need for a new school.

### **Length of the competition period**

The local authority should decide how long to allow between publication of the specification and the deadline for submission of proposals. Local authorities should bear in mind that the longer potential sponsors have, the better and more detailed the proposals will be – making it easier for the local authority to assess and make a recommendation. (We recommend at least 6 – 8 weeks, but if the timescale allows, 12-14 weeks may be more appropriate.)

## **Notifying the department – specification and proposals**

36. 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 competition has been agreed. Local authorities should forward the following documents to [freeschool.PRESUMPTION@education.gov.uk](mailto:freeschool.PRESUMPTION@education.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 (i.e. local authority's basic need funding);
  - ii. that the local authority will meet all pre- and post-opening revenue costs associated with establishing the new school;
  - iii. that the local authority will provide the site for the new school;
  - iv. of the full address and postcode 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 or nearest available postcode);
  - v. of site ownership or tenure arrangements and how these will operate for the new school;
- their impact and equalities assessment;
- a link to the local authority's webpage where the relevant information will be available to interested parties.

37. Once the specified date for submitting the proposals to the local authority has passed and the local authority has received all the proposals, the local authority must provide the Secretary of State (using the email address above) with details of the steps they have taken to seek proposals and any proposals submitted to them, including details of all proposers.

38. If the local authority has not received any proposals or they are concerned about the quality of the proposals they have received, they should contact the lead contact at the department at the earliest possible opportunity to discuss next steps.

39. 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.

## Assessing proposals

40. Local authorities can use the model criteria at [annex C](#) when assessing the proposals they have received, adapting them as necessary in line with their specification.

41. The assessment of proposals should be based on the criteria as set out in the published specification and a clear and transparent process should be followed. The model documentation in the annexes to this guidance provides a framework designed to make the assessment process straightforward for local authorities and applicants alike.

42. Taking into account all the information provided, the local authority should assess all applications they have received and put forward a recommendation to the department supported by the reasons for that recommendation. The recommendation should give strong, credible evidence that the new presumption free school will raise the overall standard of educational provision, reduce social disadvantage in the local area, and add high quality places to the system.

43. By involving the department in the assessment of proposals, a local authority will ensure that the process of appointing a sponsor runs as smoothly as possible. The department can share up-to-date and relevant information to help the local authority identify the best possible and most appropriate proposal. Local authorities can seek the department's views on the proposers in one of the following ways:

- A department official can sit on an assessment panel as an observer, feeding in any information the department holds on a sponsor where relevant;
- A department official can be part of the assessment panel, taking part in the assessment and again providing any relevant information the department holds on a sponsor;
- A department official can provide written feedback on each sponsor prior to the assessment, without being involved in the assessment panel.

44. The departmental lead contact will provide the local authority with relevant written evidence of the capacity, capability and recent performance of each proposer in writing, prior to the assessment panel, regardless of whether or not they are directly involved in the assessment process.

### **Departmental representation on assessment panels**

Local authorities who have invited their departmental lead contact onto the assessment panel found it extremely useful, especially for reporting the results of the assessment and providing their recommendation (and the reasons for it) to the RSC. The department can also offer the names of appropriately qualified departmental officials, aside from the lead contact, to sit on the panel. They told us that:

- It streamlined their assessment process (no need to build in an extra stage to consider the department's evidence).
- It made it easier to show that they had taken the departments comments into account when making their recommendation.
- The lead contact gave useful advice as to how to present the recommendation to the RSC.
- It meant that the recommendation to the RSC could be made jointly by the local authority and lead contact.

45. Please allow a minimum 4-week period before the proposed date of the assessment panel in order to allow the department to gather evidence about each of the proposers. The purpose of this is both to reduce the time it takes to reach a final decision and to ensure the local authority has access to the same information as the Secretary of State when making a decision.

46. Assessment panels can assess proposals in different ways. It is for the local authority to determine how the proposals they receive will be assessed. Many local authorities prefer to include an interview as part of the process, where each bidder is invited to present their case and answer questions to provide clarification and further detail, whereas some prefer to assess the bids on paper only. In addition to inviting the department's lead contacts to sit on the panel, some local authorities invite local councillors or representatives from the local community to join the assessment panel too (to provide a local and strategic context to the new school).

## **Due diligence**

47. The local authority should undertake due diligence checks on all applicants, so that the Secretary of State can be satisfied about their suitability to set up and run a free school, before deciding whether or not to enter into a funding agreement with any proposer. 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.

## Scoring

48. 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'.

The local authority may choose to decide to prioritise some criteria over others. If so, we recommend that this should be made clear in the specification and/or application form which criteria they will give weight to over others.

## Local authority recommendation

49. Local authorities should provide their assessments of each application to the Secretary of State at the earliest opportunity, including the scoring given for each proposal. This assessment will enable the RSC, on behalf of the Secretary of State, to decide on the most suitable proposer to take forward the new free school.

50. Whilst the local authority can recommend its preferred sponsor, it is necessary for the Secretary of State (via the RSC) to make the final decision with whom he will enter into a funding agreement.

51. The local authority's preference is supported in the majority of cases. However, there are times when the evidence the department holds about sponsors means that a different sponsor may be more suitable. Involving the department in their assessment of proposals can therefore help local authorities to factor in all the relevant information.

52. Experience has shown that the more evidence that the local authority supplies to the department on how it reached the decision on its preferred sponsor, including any scores, any narrative from the assessment process and the rationale for their recommendation, the more likely the Secretary of State (via the RSC) is to support their decision.

53. If none of the proposers are deemed to be suitable, the Secretary of State reserves the right to put in place a proposer of his own choice.

54. Local authorities should await the Secretary of State's final decision before making any announcement of its recommendation, or providing feedback to any applicants.

55. 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 departmental lead contact as required. The Secretary of State will consider signing a funding agreement with the successful proposer once he is content that the school is ready to open successfully.

56. 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 in the competition and provide them with feedback as appropriate. In cases where the Secretary of State has chosen a different proposer to that of the local authority, the relevant RSC should inform the unsuccessful applicants.

## Sponsor approval

57. The Secretary of State will only consider entering into a funding agreement with an approved academy sponsor. (See [the department's approved academy sponsor list](#)). New proposers, who are not already an approved academy sponsor, 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 an approved academy sponsor will also 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 academy sponsor, the local authority should immediately advise the proposer to apply to become a sponsor. It is important to note that if a proposer's application to become an approved academy sponsor is rejected by the RSC they will not be eligible to sponsor the new school.

## Funding arrangements

58. The local authority is responsible for providing the site for the new school and meeting the associated capital costs.

59. Local authorities are also required to meet the revenue costs of the new provision. This relates to:

- the per-pupil revenue funding (which the ESFA recoups from the local authority and pays directly to the school)
- all funding for pre-opening development costs and post-opening funding required to address diseconomies of scale as the school builds up to capacity (which local authorities should make provision for in their growth funds to support increases in pupil numbers relating to basic need, as detailed in the [Pre-16 schools funding: guidance for 2019 to 2020](#)).



60. Once the Secretary of State (via the RSC) has made a decision on the sponsor of the new school, the local authority and the sponsor should work together to resolve any funding related issues as quickly as possible. Once the two parties have agreed a reasonable and mutually acceptable funding allocation to cover pre- and post-opening costs, as well as the timing of any payments, they should inform the lead contact.

61. The department expects local authorities to provide sustainable underwriting arrangements for presumption free schools in support of the pupil forecasts agreed between the trust and the local authority. This can provide the necessary reassurance of the financial viability of the new school ahead of the funding agreement. This can be achieved by the local authority agreeing to underwrite the per-pupil revenue funding for new presumption free schools by guaranteeing pupil numbers in the [Authority Proforma Tool \(APT\)](#). Alternatively the local authority can choose to fund any unfilled places that it has agreed to underwrite directly using its growth fund. Such payments should be listed in the local authority's APT the following year.

62. The department will provide a one-off Project Development Grant (PDG) payment of £25,000 to the successful proposer towards meeting the legal costs associated with establishing the new school.

63. The Secretary of State will not enter into a funding agreement for a new presumption free school without adequate assurances that the school will be financially viable in its initial years as it builds up to capacity, and once operating at steady-state. In determining the financial viability of the school, the local authority and successful sponsor will need to consider the minimum viable number (MVN) for the school; i.e. the minimum number of pupils required in order to be financially viable. This is not the same as the school's published admission number (PAN) and will need to be understood in the context of any post-opening diseconomies funding and financial underwriting arrangements that the local authority will provide. When the local authority and sponsor have reached agreement on the school's MVN, this information (along with the background to the decision) should be provided to the department, which may provide constructive challenge to ensure that the local authority and successful sponsor are confident in their agreed MVN for the school.

## **Factors to take into account when determining the MVN and financial viability**

- The financial capacity of the sponsor for the project
- Financial plans produced by the sponsor
- The agreed post-opening support to be provided by the local authority
- The size and phase of the school
- Curriculum plans
- Staffing plans
- Build-out rates of the local housing development (if the new school is linked to a new development)
- Impact on other local schools
- A clear understanding of local school place planning dynamics including basic need and sufficiency of places.

64. If, at any point prior to opening, the financial viability of the school looks uncertain, the local authority should consider deferring opening until sufficient demand exists, or assess what options are available to ensure the school's viability (e.g. additional diseconomies funding or underwriting of pupil places). The local authority should engage with the department's lead contact at an early stage to decide on the best way to address the situation.

65. Where a decision is made to defer the project after applications have been received but before a sponsor has been appointed, it may be appropriate to pause the presumption process, rather than formally halt it. When circumstances allow the project to be resumed, the local authority and lead contact can agree whether it is necessary to re-run the competition, or whether to proceed to assess the proposals already submitted, giving those organisations the opportunity to update their original applications.

66. Upon opening, the school will be funded by the ESFA on the same basis as other academies and free schools in the same local authority area (with the exception of Post-Opening Grant (POG), which the ESFA does not pay to presumption free schools).

## Pre-opening guidance

67. The Secretary of State will consider entering in to a funding agreement with the successful sponsor once he is content that the school is ready to open successfully. An outline of how the pre-opening phase would normally work is set out below.

## Roles and responsibilities in the pre-opening phase

68. Once the successful proposer and the local authority have been notified of the Secretary of State's decision on the successful proposer, it will be for the two parties to work together to establish the new school.

### Local authority

69. Presumption projects are funded and delivered by local authorities in response to their sufficiency duty. It is ultimately the local authority's responsibility to lead and fund the capital project and work with the approved sponsor leading the project to set up the school to overcome any risks or issues before the school opens. The local authority is also responsible for the delivery of the site and the buildings solution. Presumption free schools are set up as academies, so after opening the free school will be run by the sponsor and funded by the department in the usual way.

70. During the pre-opening phase, the local authority is responsible for ensuring that the school opens successfully (although ensuring that milestones are met is the successful sponsor's responsibility), leads on the capital build/site delivery, undertakes effective risk management, deals with any unforeseen issues, and agrees appropriate mitigating actions with the successful sponsor.

### Successful sponsor

71. The successful sponsor is responsible for opening a financially and educationally viable school. During the pre-opening phase, the sponsor is usually responsible for the day-to-day project management and producing the project deliverables against key milestones to prepare the free school for opening (except the site – this is the responsibility of the local authority), but the practical arrangements will be for the successful sponsor and local authority to agree.

### The department

72. The department will tailor the support it provides to the needs and experience of the local authority and the successful sponsor. The role and involvement of the department will be flexible in response to the needs of the local authority, offering guidance, support and challenge as required.

73. All presumption projects will be assigned a lead contact in the department. The lead contact will help, advise and challenge to ensure that the school will operate successfully from day one. The departmental lead contact will need to know who is project managing the delivery so that they can periodically monitor and report progress and prepare for a funding agreement at the appropriate time. There will be regular interactions with the lead contact, local authority and successful sponsor, including a number of formal meetings at specified milestones. This will include an initial kick-off meeting at the start of the pre-opening phase to agree the roles and responsibilities of the respective parties involved in the process.

74. At all these meetings, the lead contact will assess the project's overall progress; identify any key risks which might prevent the school from opening on time and operating successfully once open; assess the costs incurred to date and expected future spend. Depending on progress, there may be a need to set up additional meetings.

## **Sponsor 'Section 10' consultation**

75. The successful sponsor is under a duty, under 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. This formal consultation should take place in the pre-opening phase, after the sponsor has been approved by the Secretary of State but before the signing of the funding agreement.

76. The consultation must include the following question: "Should the trust set up the new free school?". We have suggested a few ways to consult in the box below. The departmental lead contact can provide further advice at the appropriate time.

77. There is no specified length of time for the consultation but, as a guide, the department suggests six weeks as a minimum timeframe.

78. The statutory consultation should inform stakeholders and the local community about details of the project. This process is very useful as successful sponsors will also be able to use and build on the feedback and suggestions they receive in the development of policies for the new school. It will also help to raise awareness of the project and could help to increase pupil numbers. Successful sponsors should escalate to the local authority if they experience significant opposition by local residents during or following their consultation.

## **Ways to consult:**

- Public meetings
- Meetings for specific groups
- Local authority, trust and school websites
- Local newsletters
- Social media
- Leaflets
- Letter drops (including pre-paid envelopes may increase the response rate)

## Pre-opening requirements and key differences between presumption and central route free schools

79. There are a number of requirements, some of which are statutory, to be fulfilled during the pre-opening phase, which follow a similar process as central route free school projects. The table below summarises the requirements, please refer to the relevant section of the [pre-opening proposer guidance](#) for further information. Differences between presumption projects and central free school projects are also explained below.

### Articles of Association (statutory)

#### Action required

The department's latest model of [Articles of Association](#) must be adopted by the successful sponsor and sent to the departmental lead contact.

#### Additional information

- There is scope to add or remove specific clauses and / or articles within the model only where this is allowed (as indicated).
- Information on the trust can be added where prompted. No new clauses or revisions to clauses may be added.

### Admissions policy (statutory)

#### Action required

- Admissions arrangements must be drafted by the successful sponsor and approved by the department before the statutory section 10 consultation can commence. For changes to admissions, the consultation must last for a minimum of six weeks in order to be compliant with the statutory School Admissions Code.
- To ensure admission arrangements comply with the statutory School Admissions Code, the department expects trusts to draft their arrangements using the relevant [template](#). The completed template should be sent, along with any catchment area maps and application forms (if required), to the departmental lead contact for approval.

#### Additional information

- The successful sponsor must produce admissions arrangements which are compliant with the statutory School Admissions Code, and which will apply in the first year of

opening. Amendments can be made after this within the normal admissions timeframe or by seeking a variation from the department.

- The admission authority for a free school is the academy trust. Sponsors may adopt oversubscription criteria and definitions which are the same as those used by the local authority for community and voluntary controlled schools, however, once the funding agreement has been signed the academy trust will be responsible for the admission arrangements. The trust will also be responsible for dealing with admission appeals.
- Presumption schools are more likely to be part of the local authority's co-ordinated admissions process, though this will be dependent on the timing of the project. The sponsor and the local authority should decide jointly whether this will be appropriate.
- If the funding agreement is not signed before National Offer Day, any offers of places will be conditional, and will be confirmed once the funding agreement is signed.

## **Section 10 consultation (statutory)**

### **Action required**

- The successful sponsor has a statutory duty to consult on whether it should set up the new free school.
- It is a requirement that the successful sponsor produces a report following the end of the consultation period.
- The report will need to be submitted to the department as soon as it is available. As a minimum, the report should include a summary of the results from the consultation; detail of the timescale of the consultation; the methods used (meetings/media/social media) and details of all those responses received.

### **Additional information**

- The consultation should be robust and use a variety of methods to consult stakeholders.
- The consultation document must include the following question: "Should [the trust] set up the new free school?"
- There is no specified length of time for the consultation but, as a guide, the department suggests six weeks as a minimum timeframe. If the consultation includes admissions, it must last for a minimum of six weeks to be compliant with the statutory School Admissions Code.

- Allowances should be made for the availability of stakeholders.

## **Governance plans**

### **Action required**

- Successful sponsors should develop their own governance plan during pre-opening in preparation for the school opening.
- This should include the structure (including the committees), the financial accountability arrangements, and pen portraits of all members and trustees.
- The successful sponsor should inform the department of any major governance changes and send short biographies of any new members or trustees.

### **Additional information**

The basic governance details required ahead of entering into a funding agreement will be obtained by the department during the assessment phase, as part of the sponsor's original application.

## **Disclosure and Barring Service (DBS) checks (statutory)**

### **Action required**

The successful sponsor should send the department confirmation that at least three trustees have had enhanced DBS checks (including the Chair of Trustees).

### **Additional information**

- The Chair of Trustees must obtain an enhanced DBS check countersigned by the Secretary of State.
- The Chair is responsible for ensuring that the other DBS checks are carried out.

## **Principal designate (PD) (or Head teacher) and / or executive head recruitment**

### **Action required**

- The PD should be appointed and in post with enough time to enable them to write policies, procedures, systems, timetable and schemes of work, and to take part in recruitment of other staff and supervise preparations for the opening of the school.



- This is for the local authority and trust to manage, including any risks associated with not recruiting on time.

### **Additional information**

- The successful sponsor will be expected to provide a pen portrait for the PD (and Executive Head where appropriate) to departmental lead contact.
- The department is not usually involved in the recruitment of the PD or other staff. It is good practice however for the local authority to attend PD interviews.

## **Finance and pupil recruitment**

### **Action required**

- The local authority should provide the department with written assurance, via email, of pupil numbers/ commissioned places/ applications (pre-national offer day) and confirm the number of accepted offers (post-national offer day).
- Local authorities will be expected to complete a place build-up table. The departmental lead contact will send the template to the successful sponsor once the project enters pre-opening phase.

### **Additional information**

- If pupil numbers are below the school's break-even number, the local authority and successful sponsor will need to provide reassurance to the department as to how the school will be educationally and financially viable – i.e. confirm that the underwriting agreement will be activated.
- Local authorities are required to meet the per-pupil revenue costs and post-opening costs to cover diseconomies of scale – this is for the local authority and successful sponsor to agree.
- The department does not routinely request or assess financial plans for presumption projects, although can do so.

## **Financial plans**

### **Action required**

- The successful sponsor should develop their own financial plans, together with the local authority, during pre-opening in preparation for the school opening.

- It is the responsibility of the local authority and successful sponsor to manage any associated risks, and to ensure the ongoing financial (and educational) viability of the school.

## Additional information

- Trusts are expected to produce a three-year financial plan, in a format of their own choosing, to demonstrate that the new free school will be financially viable with sustainable contingencies and surpluses each year.
- A [presumption version](#) of the mainstream financial template is available on [gov.uk](#) if sponsors would like to use this.
- This is an expectation, and the department does not routinely request or assess financial plans for presumption projects, although the department may do so at any point during pre-opening.

## Education policies (statutory- Ofsted pre-registration)

### Action required

- The successful sponsor should develop their own curriculum plans, schemes of work and education policies in preparation for the school opening.
- The departmental lead contact will require confirmation from the successful sponsor that education policies have been produced.
- Relevant statutory education policies should be in place for the school's Ofsted pre-registration, including:
  - plan showing layout of premises and buildings;
  - preventing bullying policy;
  - safeguarding and promoting welfare of pupil's policy;
  - safeguarding and health and safety of pupils on visits policy;
  - behaviour policy;
  - School complaints procedure.
- Provide confirmation to the department's lead contact that the following are in place:
  - Finalised educational development plan (3-5 years)
  - Staff appointment procedures and equal opportunities policy
  - SEN policies

## **Additional information**

- The school's education vision should be as per the sponsor application agreed by the Regional Schools Commissioner (RSC) during the assessment phase.
- The sponsor should check whether the local authority requires them to submit the education policies to them for approval or for information.
- For presumption projects the department does not usually request an education brief or policies, except statutory policies required prior to the Ofsted pre-registration.

## **Impact and equalities assessment (statutory)**

### **Action required**

- The local authority should carry out their own impact and equalities assessment.
- The successful sponsor should provide the departmental lead contact with a copy of the assessment, once it is completed.

### **Additional information**

- The department will seek reassurance from the local authority that the new free school will not impact negatively on other local schools.
- For presumption projects the department will not usually write to local authorities seeking their views on the likely impact of opening a new free school on existing maintained schools, academies, FE institutions and AP/special schools in the area.

## **Funding agreement**

### **Action required**

Before the funding agreement can be signed the department will require the above key requirements to be in place. The department will also need to be assured that the school will be educationally and financially viable.

### **Additional information**

- The funding agreement can be signed at any point up to the date of opening in a presumption project.
- The funding agreement should be entered into as early as practically possible in order to provide greater clarity for pupils and parents, and to enable the successful sponsor to recruit staff with confidence that the school will open on the preferred date.

- In addition to the key requirements above, the department will also require:
  - Written development funding agreement between the local authority and the approved sponsor to be in place (should be completed prior to 'kick-off' meeting);
  - Completed land questionnaire;
  - Completed Heads of Terms;
  - Completed Equalities process record (statutory);
  - Arrangements made for Get Information About Schools (GIAS) registration (statutory);
  - Completed financial and governance health-check.

More detailed guidance on the above processes can be found in the [pre-opening proposer guidance](#) for centrally provided free schools.

## Halting the presumption process

80. If the local authority decides, prior to proposals being submitted, that circumstances have changed 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 central route free school will meet the identified need), then the local authority can halt the presumption process and withdraw the specification on these grounds. If this happens, the local authority should ensure that they inform the departmental lead contact at the earliest possible opportunity.

81. If proposals have been received, then the local authority will need to seek the Secretary of State's permission to halt the competition, providing him with evidence that the basic need no longer exists or has reduced to such an extent that a new school is no longer needed. The local authority should send their request to the departmental lead contact at the appropriate time. The Secretary of State will consider this evidence when making his decision, but must be satisfied that the local authority is able to meet its statutory duties under section 14 of the Education Act 1996.

## Other useful information

82. Local authorities must continue to plan for and secure sufficient school places for their area in line with their duties under section 14 of the EIA 1996.

83. Where the new provision free school is [designated as a faith school](#), the school can apply up to 50% of pupil admissions by reference to faith (when the school is oversubscribed).

84. There is a presumption that 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.

85. Following reviews of the post-16 landscape, there is a general expectation that new secondary schools will not include a sixth form.

## Further sources of information

- [Education Act 2011](#)
- [Education and Inspections Act 2006](#)
- [Academies Act 2010](#)
- [New Schools Network](#)
- [Confederation of School Trusts](#)
- [SSAT\(The Schools Network\)](#)

## You may also be interested in

- [Alternative provision free schools/academies](#)
- [Free schools](#)
- [New school proposals](#) – information and links seeking proposers to establish a new free school under the free school presumption
- [Opening and closing maintained schools](#)
- [Sponsored academies](#)
- [University technical colleges](#)
- [Voluntary aided schools](#)



Department  
for Education

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