



Department
for Education

Opening new schools

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

September 2026

Contents

Summary	4
Transition from previous guidance	4
Expiry or review date	4
What legislation does this guidance refer to?	4
Who is this guidance for?	5
Main points	5
Introduction	8
The Sufficiency Duty	11
Section 7	12
Overview of the section 7 process	12
Responsibilities for securing a site and providing funding	13
Early years	15
Section 7 – the invitation process	16
Step 1: Consultation	16
Step 2: Preparing the specification and impact assessments	17
Step 3: Publishing the invitation notice	19
Step 4: Local authority proposals	21
Step 5: The representation period	21
Step 6: Decision	22
Related proposals	27
Guidance on decision-making	28
Identification of concerns	28
Assessment of proposals	28
Making proposals outside the invitation process (section 10)	31
Important factors when proposing a new school	31
Demand vs need	32
Proposed admission arrangements	32
Early years	32
Funding	32
School premises and playing fields	33
The Section 10 statutory process	34
Stage 1: Consultation	34

Stage 2: Publication	34
Stage 3: Representation	35
Stage 4: Decision	35
Guidance for decision-makers on section 10 proposals	37
Factors to consider when determining section 10 proposals	38
Implementation (Section 7 and Section 10)	42
Implementation duty	42
The school site	42
Financial considerations for academies	43
Governance	44
Admissions	44
Staffing	45
Education policies and safeguarding	45
Obtaining a religious designation	45
Equalities and impact considerations	46
Recording information on Get Information About Schools (GIAS)	46
Modification post determination	47
Revocation	47
Further information	50
Annex A: Conditions for approval of new schools	51
Annex B: Statutory requirements for a specification to be published as part of the 'invitation process'	52
Details to be included in all specifications	52
Details to be included in specifications for special schools	53
Details to be included in specifications for alternative provision	54
Annex C: Statutory information for proposals made under Section 10	55

Summary

This is statutory guidance from the Department for Education ('the department'). Proposers and decision-makers must have regard to it when establishing (opening) a new school.

The purpose of this guidance is to ensure that good quality school places can be provided that best meet the needs of children and families.

This guidance only relates to schools in England.

Transition from previous guidance

This guidance replaces previous guidance on the [free school presumption](#) and on [opening and closing maintained schools](#).

Where a local authority has sought proposals under the free school presumption process prior to 1 September 2026, and specified a date for submission of proposals, the free school presumption guidance shall continue to apply.

Where a local authority, or other proposers, have published proposals under section 10 or section 11 of the Education and Inspections Act 2006 ('the EIA 2006') prior to 1 September 2026, the previous guidance on opening and closing maintained schools should be followed.

If a local authority or other proposer has consulted on a new school prior to 1 September 2026, they do not need to repeat the consultation if the invitation for new school proposals is published after 1 September 2026.

Expiry or review date

This guidance supersedes all previous versions. It will be kept under review, and updated versions will be published if necessary.

What legislation does this guidance refer to?

- [The School Organisation \(Establishment and Discontinuance of Schools\) Regulations 2013](#) as amended by [The School Organisation \(Establishment and Discontinuance of Schools\) \(Amendment\) Regulations 2026](#).
- [Education and Inspections Act 2006](#) as amended by [Education Act 2011](#) and [Children's Wellbeing and Schools Act 2026](#).
- See also: [Further information](#).

Who is this guidance for?

This guidance is relevant to all categories of maintained school¹, academies (excluding 16-19 academies), maintained nursery schools and pupil referral units unless explicitly stated otherwise. It is for those proposing the opening of such a school (for example local authorities, academy trusts, dioceses or other relevant religious authorities), decision-makers (including local authorities and the [Schools Adjudicator](#)), and for those affected by a proposal, including dioceses, parents, other local schools and local communities.

Separate advice is available on [making significant changes \('prescribed alterations'\) to maintained schools](#), [making significant changes to an academy](#), [closing maintained schools](#) and [closure of an academy by mutual agreement](#).

It is the responsibility of local authorities and proposers to ensure that they act in accordance with the relevant legislation and have regard to statutory guidance when seeking to open a new school, and they are advised to seek independent legal advice where appropriate. Similarly, local authorities and the Schools Adjudicator, when making decisions on such proposals, must act in accordance with the law and must have regard to statutory guidance.

Main points

- Before a local authority invites proposals for any type of new school, or another proposer² publishes a proposal for a new school, they should have due regard to the sufficiency framework information set out in part 1 of the [making significant changes to an academy](#) guidance.
- Where a local authority think that a new school should be established in their area, section 7 of the EIA 2006 allows the local authority to invite proposals for different types of school (mainstream schools, special schools, alternative provision schools).
- Alongside proposals from other proposers, a local authority may also decide to add their own proposals for a new school to any proposals received.
- Although proposers may submit proposals for a new academy or for a new school other than an academy, they should demonstrate how effective collaboration will be achieved once the school is operating. The government's expectation is that new schools will ultimately join or form high-quality trusts.

¹ Community, foundation, voluntary aided, voluntary controlled, community special and foundation special.

² In this guidance we use 'other proposers' to indicate proposers that do not include the local authority (for example academy trusts, dioceses or other relevant religious authorities). References in this guidance to 'proposers' includes both local authorities and other proposers. This is slightly different to how "proposers" is used in EIA 2006 where the local authority is identified separately and "proposers" refers to anyone else other than the local authority.

- In all cases, where the local authority has invited proposals for a new school, they will be expected to provide the site for the new school and meet all associated capital and pre-/post-opening revenue costs associated with the establishment of the school.
- Where the local authority has not published their own proposals for a new school and will not have a role in relation to a foundation of a foundation school³, the local authority will be the decision-maker on the proposals, unless the Secretary of State directs the local authority to refer proposals to them.
- Where the local authority has published their own proposals for a new school or will have a role in relation to a foundation of a foundation school, the Secretary of State will be the decision-maker on the proposals (in practice, this will be delegated to the relevant departmental Regional Director).
- Where local authorities are to decide on a set of proposals which include an academy proposal, submitted in response to an invitation notice, the local authority must consult departmental officials (acting on behalf of the Secretary of State) on the proposals. Where a local authority is considering approving an academy proposal under this process, the local authority must obtain the Secretary of State's agreement that they would, in principle, be willing to enter into a funding agreement for that specific academy.
- Where a local authority has not published a relevant notice inviting proposals under section 7, proposers may publish proposals for a new voluntary, foundation or foundation special school under section 10 of the EIA 2006 at any time. A proposal for a new maintained nursery school may also be made at any time under this section.
- Proposals to replace a community, community special, foundation or foundation special school with another maintained school, or a pupil referral unit with another pupil referral unit, may also be made at any time under section 10 of the EIA 2006, as long as a relevant invitation notice has not been published by the local authority.
- The decision-maker for proposals made under section 10 will be the local authority, unless the proposals have been made by the local authority, or relate to the establishment of a foundation school with a foundation in which the local authority will have a role, in which case the decision-maker will be the Schools Adjudicator.
- All invitations for proposals under section 7, and publications of proposals under section 10, must be carried out in line with the statutory process outlined within this guidance. Sufficient regard should be given to all consultation and representation responses, and these exercises should be advertised to a broad audience to ensure they are open, fair and transparent.

³ See footnote 4 for how a local authority might be considered to be involved in a foundation proposal.

- All decisions on proposals to open a school must be made with regard to the factors outlined in this guidance and follow the relevant statutory process. The decision-maker must consider the expressed views of all those affected by a proposal or who have an interest in it, including cross-local authority border interests, and should give appropriate weight to the range of responses from those stakeholders likely to be most directly affected by a proposal.

Introduction

Local authorities have a statutory responsibility to ensure there are enough school places available in their area for every pupil of compulsory school age (the ‘sufficiency duty’). This is set out in section 14 of the Education Act 1996. It is for local authorities, working collaboratively with academy trusts and local partners (including dioceses and other religious authorities), to balance the supply and demand of school places, in line with changing demographics locally.

The amendments to the EIA 2006 made by the [Children’s Wellbeing and Schools Act 2026](#) mean that decision-makers on a new school will be able to choose the proposal that will best meet the needs of children and families. In doing so, they must follow the statutory process set out in Schedule 2 to the EIA 2006 and the Establishment and Discontinuance Regulations (as amended), as the guidance below sets out.

Table 1 summarises the ways in which a new school may be established, who the decision-maker will be and rights of referral. It includes proposals for new schools made in response to an invitation from a local authority under section 7 of the EIA 2006, which we refer to below as ‘the invitation process’, and proposals made under section 10 of the EIA 2006, when no relevant invitation from the local authority under section 7 has been published.

Table 1: Ways to propose a new school

Type of proposal	Proposer	Decision-maker	Who has a right of referral to the Schools Adjudicator / Secretary of State?
Section 7 – Invitation process (The local authority is not one of the proposers and is not involved in foundation proposals ⁴)	Other proposers	Local Authority	No-one. The Secretary of State may direct the local authority to refer proposals to them prior to determination.

⁴ Meaning proposals to establish a foundation school with a foundation established otherwise than under the School Standards and Framework Act 1998, where the local authority is to be involved in one of the ways set out at paragraph 10(2) of Schedule 2 to EIA 2006, that is being a member, trustee or having voting rights in the foundation or appointing someone who will.

Type of proposal	Proposer	Decision-maker	Who has a right of referral to the Schools Adjudicator / Secretary of State?
Section 7 – Invitation process (The local authority is one of the proposers or is involved in foundation proposals)	Local authority or a proposer of a foundation proposal Other proposers	Secretary of State	No-one
Section 10 To open a maintained nursery school	Local authority	Schools Adjudicator	No-one
Section 10 A new community, community special, foundation or foundation special school which is to replace one or more maintained schools	Local authority	Schools Adjudicator	No-one
Section 10 To replace one or more pupil referral units with another pupil referral unit	Local authority	Schools Adjudicator	No-one
Section 10 To open a new foundation, voluntary or foundation special school (and the local authority is not involved), where there is no invitation notice under section 7	Other proposers	Local authority	Proposers. The Diocesan Board of Education of any Church of England diocese, or the bishop of any Roman Catholic diocese, any part of which is comprised in the local authority area.
Section 10 To open a new foundation, or foundation special school where the local authority will be involved ⁵ , where there is no invitation notice under section 7	Local authority or other proposers	Schools Adjudicator	Proposers. The Diocesan Board of Education of any Church of England diocese, or the bishop of any Roman Catholic diocese, any part of which is comprised in the local authority area.

⁵ See footnote 4.

16-19 academies and sixth forms

The section 7 process cannot be used to establish new 16-19 academies, as they are not schools. Please refer to [16 to 19 education \(non-apprenticeship\): market entry](#) guidance for further information if you are looking to establish a new 16-19 provider. Existing sixth-form colleges may apply to convert to become 16-19 academies, following the [convert to an academy: guidance for sixth-form colleges](#) guidance.

Where a proposer wants to include sixth-form provision as part of a proposal for a new school, they should set out how this complements existing provision as part of the proposal.

Where a school or proprietor wants to add sixth-form provision to an existing school, they should follow the [making significant changes \('prescribed alterations'\) to maintained schools](#) for maintained schools, or the [making significant changes to an academy](#) guidance for academies.

The Sufficiency Duty

Local authorities have a statutory responsibility to ensure there are enough school places available in their area for every pupil of compulsory school age (the 'sufficiency duty'). This is set out in section 14 of the Education Act 1996.

The department provides capital funding to local authorities through Basic Need grant allocations to support them to meet their statutory duty, based on their pupil forecasts and school capacity data. Local authorities can use this funding to create places by expanding or remodelling existing schools, working with any school in their local area to do so, or by creating new schools. Prior to launching an invitation process for a new school, a local authority should be satisfied that there is a need for a new school in a particular area.

Details of how the local authority is expected to meet their responsibilities, and how other parties including, but not limited to, academy trusts, are expected to work with the local authority are set out in part 1 of the [making significant changes to an academy](#) guidance. This includes guidance on the roles and responsibilities of different parties, on forecasting the need for places, on collaboration, transparency, and on working with the department. The Children's Wellbeing and Schools Act 2026 has also created new duties for mainstream state schools and local authorities to co-operate regarding their respective school admissions functions, and for mainstream, special and alternative provision state schools to co-operate with local authorities to help them carry out their place planning functions.

Local authorities that have identified a need for new school places and are considering ways to provide them that could include a new school, should contact the department through their Regions Group contact 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 of educational provision in the area.

Sufficiency of specialist provision

The same duties apply when considering specialist provision for pupils with special educational needs and disabilities (SEND), and those requiring alternative provision. The Children and Families Act 2014 also places duties on local authorities to keep the services and provision available for children and young people with SEND under review as part of the Local Offer duties, working with parents, young people, the full range of educational providers and health and social care partners. The department provides high needs capital allocations to support local authorities to create or adapt places for pupils with SEND or who require alternative provision.

This government is committed to supporting more children and young people with SEND to achieve and thrive in a local mainstream school, reducing the need to travel a long way to access a specialist placement. Where appropriate, local authorities are

encouraged to work with mainstream settings in establishing [inclusion bases](#)⁶ to increase local capacity, alongside other capital adaptations to improve the inclusiveness of mainstream settings, and to consider these as a central part of their local sufficiency planning. Special schools will continue to support children and young people with the most complex needs where these needs require a distinctive offer which only special schools can deliver, so expansions or creation of whole new schools should only be considered in these circumstances. In support of this, the department has commissioned each local area partnership to develop and submit a Local SEND Reform Plan, where they will set out how their high needs sufficiency strategy enables mainstream inclusion.

Section 7

Overview of the section 7 process

If, following a consultation, a local authority determines that there is a need for a new school, including a school that provides alternative provision, they should initiate the 'invitation process' by publishing an 'invitation notice', as set out in section 7 of the EIA 2006. The invitation process provides the opportunity for proposers to submit proposals for a new mainstream school (academy school, voluntary school or foundation school), special school (special academy or foundation special school) or alternative provision academy. The invitation process may not be used to establish a school that provides education only to pupils above compulsory school age. In all cases the local authority is expected to provide premises and meet the capital and revenue costs of implementing the successful proposal.

The government believes that all schools should be able to benefit from effective collaboration and strong community links, and that this is best achieved by moving towards all schools joining or forming high-quality school trusts, including new local authority established trusts. Proposers may submit proposals for a new school other than an academy, though the government's expectation remains that new schools will join or form high-quality trusts. Proposers who take this route will need to set out in their proposal how effective collaboration will be achieved once the school is operating and how they expect the school to move into a high-quality trust over time. Governing bodies of maintained schools are not able to put forward proposals for new schools.

At the same time as other proposers are submitting proposals in response to an invitation notice, the local authority may choose to put forward their own proposals for a new community, community special, foundation or foundation special school or pupil referral

⁶ 'Inclusion base' has replaced the terms 'SEN unit', 'resourced provision', and 'pupil support unit'. Inclusion bases are underpinned by two models: Support bases (commissioned and funded by individual settings and multi academy trusts); and Specialist bases (commissioned and funded by the local authority).

unit. If this is the case, the decision-maker on the proposals will be the relevant departmental Regional Director, on behalf of the Secretary of State. The Regional Director will also be the decision-maker in cases where there is a proposal for a foundation school with a foundation⁷ where the local authority will be a member, charity trustee or have voting rights in the foundation, or the local authority will appoint someone who does.

As a minimum, the EIA 2006 and the Establishment and Discontinuance Regulations require the local authority to:

- Carry out a consultation prior to publishing an invitation notice;
- Develop a specification about the desired school containing specified information and publish the notice and specification in a specified way;
- Provide a way for others to give their views on the proposals;
- Decide which, if any, proposals to approve or refer proposals to the Secretary of State in specific cases (including where the local authority has published their own proposals);
- Where the local authority is making the decision, and the proposals include academy proposals, consult the Secretary of State so that the Secretary of State can confirm whether they would, in principle, be willing to enter into a funding agreement for a particular academy;
- Publish the decision.

Responsibilities for securing a site and providing funding

The school site

For schools that are to be established through the section 7 process, the local authority is expected to provide the site for the new school. Local authorities should carefully consider the location of any new site, having regard to local outdoor air quality, safe travel and provision of suitable outdoor space.

If the successful proposal is for an academy and the land is owned by the local authority, the local authority will be expected to grant the standard departmental model lease to the successful proposer on handover of 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 successful proposer. If the land is owned by a third party, the nature of the lease will need to be discussed with them to reflect individual circumstances.

Where proposals for a new foundation or voluntary school are approved, and the local authority has provided land either through statutory obligation or using discretionary

⁷ Established otherwise than under the School Standards and Framework Act 1998.

powers, the authority must transfer any interest it has in land held for the purposes of the school, which is not playing field land, to either the trustees of the school⁸ or, where the school has no trustees, the school's governing body. The local authority will need, if relevant, to agree with the religious authority the identity of the appropriate trustees of the school and liaise with them in relation to the transfer of land. The land is then to be held by those trustees for the purposes of the school. The local authority must pay to the transferees their reasonable costs incurred in connection with the transfer.

Under [The School Premises \(England\) Regulations 2012](#), all maintained schools are required to have 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. [The Education \(Independent School Standards\) Regulations 2014](#) apply similar requirements to academies.

Capital funding

The local authority is expected to meet the capital costs of a new school. In addition to using their own resources, a local authority can also meet these costs from capital allocations it receives from the department and contributions from housing developers. The department publishes capital grants on GOV.UK. Currently available grants include:

- **Basic need capital funding** which the department allocates to local authorities to support them to meet their statutory duty to secure sufficient school places. They can use this funding to provide places in new schools or through expansions of existing schools. Local authorities' Basic Need capital allocations, together with conditions of grant and guidance are published at [basic need allocations](#).
- **High needs provision capital allocations (HNPCA)** which the department allocates to local authorities to support them to deliver new places in mainstream and special schools, as well as other specialist settings, and to improve the suitability and accessibility of existing buildings. Local authorities' HNPCA, including conditions of grant and guidance are published at [high needs provision capital allocations](#).

Contributions from housing developers are an important way of helping to meet demand for new school places when housing developments are driving pupil numbers. It is for the Local Planning Authority (LPA) to secure developer contributions through section 106 agreements and/or the Community Infrastructure Levy (CIL), and to decide on the local infrastructure needs that this contribution should support.

⁸ By trustee(s) of a school, we mean the body or individuals that hold land on trust either specifically for the purposes of the school or (less commonly) for wider charitable purposes which can include use by a school. They must agree to any changes to that land. This term is not to be confused with the directors of an academy trust company - who are sometimes called trustees.

We would encourage LPAs to secure significant contributions for new school places and work closely with colleagues planning school places in their area, including county councils when the local authority responsible for education is not the LPA. LPAs can approach the department for support on assessing local school infrastructure needs, calculating costs of school provision and negotiations with developers. Guidance for local authorities on securing developer contributions for education is published at [delivering schools to support housing growth](#).

Revenue funding

Local authorities are also expected to meet the revenue costs of the new provision from within their Dedicated Schools Grant (DSG) allocations. This relates to:

- the annual allocation of revenue funding (which the department recoups or deducts from the local authority's DSG for academies), and any other funding (for example high needs top-up funding) which the local authority 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 including underwriting of places (which local authorities can 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).

Special academies' continuing financial viability depends on local authorities continuing to place children and young people with EHC plans in those schools through the statutory processes (including parental preference rights) in the Children and Families Act 2014. It is important that the school proposers offer the type of places that local authorities need, at a cost they are prepared to fund.

Local authorities decide how many places a special academy will be funded for in the upcoming year from the school's second year of opening, in discussion with the school. The department will pay the funding directly to the academy, with the equivalent amounts deducted from the local authority's DSG.

Early years

Quality early education can break the link between background and opportunity and lead to better outcomes later in life. The government's ambition is that all families have access to high-quality, affordable and flexible early education and childcare, improving both the life chances for every child, helping them be ready for school, and the work choices for every parent. As a part of this, the department expects proposals for new primary schools to include a nursery, except in exceptional circumstances. Proposers can refer to [establishing school-based nursery provision](#) guidance for further information.

Section 7 – the invitation process

The following steps set out the actions that parties involved in the invitation process ‘must’ carry out according to legislation, as well as actions that they ‘should’ carry out to ensure that the process is carried out in a transparent and robust manner that will lead to a high-quality school being established. It is important that all of these actions are given due consideration so that all parties, including the department, proposers, parents and communities, can have confidence in the process carried out.

Step 1: Consultation

Ahead of publishing an invitation notice under section 7 (thus inviting proposals for the new school), the local authority must consult on the question of whether a new school should be established. 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. It is for the local authority to determine the nature and length of the consultation; however best practice is that the consultation should be carried out in term time. Local authorities should also have regard to the Cabinet Office [consultation principles: guidance](#) when deciding how to carry out the consultation.

The consultation process provides a particular opportunity for local authorities to gather information on the impact of any new school on equality, disadvantaged groups and pupils with special educational needs. The consultation can also be used to gain perspectives on the opportunities a new school could offer to promote parental choice. The department will expect local authorities to be able to demonstrate how these issues have been considered (see step 2).

The consultation should be clear about the following:

- The type of school (for example mainstream, special, alternative provision). Where the desired school is a special school, the designated types of SEND that the school will be expected to provide for. A school is not permitted to be both a special school and a provider of alternative provision;
- Age range, sex and capacity of the school they wish to see established;
- Any specific elements of the school’s character that might meet an identified local need – noting that local authorities are encouraged to be as broad as possible at the consultation stage in respect of school character. Special schools and alternative provision schools cannot be designated as having a religious character;
- The expected cost, and funding available;
- The proposed site for the new school;
- The date by which the school is expected to open.

The list below sets out the parties that should normally be consulted prior to publication of an invitation notice for a new school. It is for the local authority to decide on the exact parties to consult, however the local authority should be able to demonstrate that the

consultation process has been broad, open and transparent, and that views have been considered in subsequent stages of the process. Local authorities should be mindful that special schools and alternative provision settings may draw pupils from a wide area, and that consultation with parties across a broader geographical area than for mainstream schools is likely to be appropriate.

The Secretary of State considers that the following bodies should be consulted when any type of school (mainstream, special or alternative provision) is being considered:

- The appropriate dioceses or relevant religious authorities;
- Any local authority likely to be affected by a new school, in particular neighbouring authorities where there may be significant cross-border movement of pupils;
- Any district or parish council covering the proposed location of the school;
- The proprietor (for example the academy trust), governing body, teachers and other staff of any other school that may be affected;
- Parents of any pupils at other schools that may be affected by a new school including, where appropriate, families of pupils at feeder primary schools or members of the local parent carer forum;
- Any trade unions of staff at other schools who may be affected by a new school;
- MPs whose constituencies include the likely location of the new school or whose constituents are likely to be affected by a new school.

The local authority must include any other groups they consider appropriate in the consultation. These could include the following groups (or others):

- Community organisations;
- Bodies that already run multiple schools in the area;
- Relevant health services (for example integrated care boards), where the new school is intended to be a special school.

Step 2: Preparing the specification and impact assessments

As part of the published invitation notice inviting proposals for the new school, the local authority should prepare a specification which is detailed enough to enable proposers to understand the need identified by the local authority and submit the strongest proposal possible. [Annex B](#) explains the statutory information that a specification must include, as a minimum.

The clearer the requirements in the specification, the more efficient the rest of the process will be and the more likely the local authority will be to attract better quality proposals. It is normally useful, however, to avoid being too narrow, in order to encourage a wide range of proposals.

[Annexes D, E and F](#) are provided alongside this guidance to support local authorities. [Annex D](#) provides a template for the specification, which local authorities are

encouraged to use as a basis. This can then be used alongside the proposal template in [Annex E](#), which sets out the information that proposers should include in their proposal, and supporting information that should be provided alongside the proposal (but will not be published). These templates also match the model assessment criteria in [Annex F](#) to smooth the proposal and assessment processes and support quicker decision making.

Impact assessments

As part of the planning process for new schools, local authorities should also undertake assessments of the impact of the desired new school, both in terms of the impact on particular groups of pupils (and others) from an equalities perspective and on existing educational institutions locally. The Secretary of State may ask the local authority to undertake further work on the impact of the proposed new school or the equalities assessment where there are concerns about the level of analysis.

Schools have a key part to play in promoting community cohesion by 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. When considering the specification content, the local authority should consider its impact on community cohesion. This will need to be considered on a case-by-case basis, taking account of the community that will be served by the school and the views of different groups within the community.

Local authorities should be mindful that impact assessments should give due regard to all protected characteristics, including religion and belief, and should not make assumptions about how schools with a religious character may or may not promote community cohesion, but rather consider each proposal fairly on its own merits. Parliament has legislated to allow schools designated with a religious character to apply faith-based admissions criteria when oversubscribed, and nothing in this guidance should be taken to imply a presumption of negative impact on their contribution to community cohesion. These schools continue to operate under the Equality Act 2010 and the public sector equality duty, which underpin their wider role in promoting respect and inclusion.

Working with the department

Prior to sharing the specification and impact assessments with the department, local authorities should complete and submit the '[Notify DfE about establishing a new school](#)' form. A delivery officer will then be assigned and will contact the local authority to provide further details on how to submit their specification and impact assessments via [the relevant Regional Director mailbox](#)⁹. The local authority should also let the department know when they intend to publish the specification and impact assessments. In some

⁹ Found under each individual Regional Director in the 'Who we are' section.

circumstances, Regions Group may choose to provide the local authority with feedback. Local authorities should allow three weeks for Regions Group to review the documents submitted, and if it chooses to, provide any feedback. Taking this feedback into account before publishing the final version of the specification may increase the likelihood of stronger proposals being submitted and reduce the likelihood of problems arising later on in the process.

When sending their draft specification, local authorities should also confirm to the department:

- that the local authority has identified the required capital to establish the new school, the amount and its source (for example the local authority's basic need funding, their own funds or developer contributions);
- that the local authority will meet all pre- and post-opening revenue costs associated with establishing the new school;
- that the local authority will provide a site for the new school;
- the full address and postcode of the proposed site for the new school, or all sites where a school is proposed to operate from split sites (if the school is on a new development, local authorities should provide an approximate or nearest available postcode);
- site ownership or tenure arrangements for the new school, and how these will operate.

Step 3: Publishing the invitation notice

Following the consultation, the local authority must decide whether they still think a new school should be established. If they do, and once they are ready, the local authority must publish a notice inviting proposals on their website. The invitation notice must include:

- a specification for the new school;
- an explanation of the invitation process;
- the deadline for proposals to be submitted;
- an explanation of how a copy of the invitation notice can be obtained.

As part of the explanation of the process, we recommend that the notice includes a description of how proposals will be assessed. We also recommend that the invitation notice includes a proposal template for proposers to use when submitting proposals which is matched to the specification. This will help proposers to ensure they include all the desired information and make comparisons between proposals easier. It will also contribute to faster decision making or contributions to decision making from the department.

Any proposal template should make clear what information in the proposal will be published in step 5 (below), and what information should be included as 'supporting

information', which will not be published (for example because it relates to information about individuals). See [Annex E](#) for a recommended proposal template to match the recommended specification template.

It is important to note that once the proposals are submitted to the local authority, 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 2018. Local authorities should remind proposers of this.

Local authorities may also wish to remind potential proposers that they should avoid engaging with housing developers prior to the outcome of an invitation process, in order to avoid any conflicts of interest or perceptions of bias.

Within one week of the date of its publication on the website, the local authority must send a copy of the notice to:

- the Secretary of State (this should be via [the relevant Regional Director mailbox](#)¹⁰);
- the Diocesan Board of Education of any Church of England diocese any part of which is comprised in the area of the local authority;
- the bishop of any diocese of the Roman Catholic Church any part of which is comprised in the area of the local authority; and
- any other body or person that the local authority thinks is appropriate.

Within one week of receiving a request for a copy of the invitation notice, the local authority must send a copy to the person requesting it.

Publicising the notice

The local authority should market the invitation notice 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 process and the best pool of prospective proposers.

To be able to demonstrate they have done this, the local authority should consider promoting the invitation notice in a range of local and national educational media, holding engagement events for potential proposers and directly contacting education providers in the region with a strong educational track record (whilst being careful not to show any undue preference for a particular provider). As a minimum, the department expects local

¹⁰ Found under each individual Regional Director in the 'Who we are' section.

authorities to notify dioceses, academy trusts, relevant neighbouring authorities, and other local partners and providers with a local presence about the invitation.

The invitation period

The local authority should decide how long to allow between publication of the invitation notice and the deadline for submission of proposals (the 'invitation period'). The minimum length of time for the invitation period is six weeks, but up to 12 weeks may be appropriate in some circumstances. Local authorities should consider the need to stick to overall project timelines, whilst also bearing in mind that the longer the invitation period, the better and more detailed the proposals will be – making them easier for decision-makers to assess.

Step 4: Local authority proposals

A local authority may decide to add their own proposals for a new school to any other proposals submitted. If a local authority chooses to do so, the local authority should send their completed proposals to [the relevant Regional Director mailbox](#)¹¹ by the same deadline as other proposers have been given to submit their proposals to the local authority. This will be published in the invitation notice. The local authority should not amend their proposals once submitted to the department.

The local authority should refrain from reviewing proposals from other proposers before they complete their own, if they intend to publish their own proposals.

Step 5: The representation period

Within two weeks of the invitation period closing, the local authority must publish on their website all proposals they have received, along with their own proposals if they decided to make them. The location of the proposals on the local authority's website should be straightforward to find.

The two-week period should only be used for the administrative tasks involved with publishing proposals; it should not be used to request any changes to proposals or make any changes to a local authority's own proposals.

If the proposal template in [Annex E](#) has been used, the local authority does not need to publish any supporting information submitted with proposals. This is to allow confidentiality in the supporting information, and to ensure the published proposals are not unmanageably large.

¹¹ Found under each individual Regional Director in the 'Who we are' section.

Accompanying the proposals on the local authority's website must be a statement that any person may object to, or comment on, the proposals, the address to send objections or comments to and the date by which they must be received. There must be a statement explaining how copies of the proposals can be obtained.

Where the local authority has identified particular parties that it would be appropriate to send copies of the proposals to, it must do so within one week of publication of the proposals, alongside the statement mentioned in the paragraph above. Similarly, if the local authority receives a request for copies of the proposals, it must send a copy of the proposals to the person requesting them within one week of receiving the request.

Once the proposals have been published on the local authority's website, the representation period begins and must last four weeks. During the representation period, any person or organisation can submit comments on the proposals to the local authority, to be taken into account by the decision-maker. It is good practice for a local authority to promote the opportunity for comment, including to interested parties such as those mentioned in step 1 above in relation to consultation. This will help ensure that relevant perspectives are captured and can inform decision-making.

The local authority must send copies of the proposals, with all objections and comments, to the Secretary of State within two weeks of the end of the representation period. This should be done by sending them to [the relevant Regional Director mailbox](#)¹².

Step 6: Decision

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

The assessment of proposals should follow a clear and transparent process and should reflect the information contained in the invitation notice. [Annex F](#) provides suggested model criteria for assessing proposals, aligning with the specification and proposal templates provided. This is designed to provide a straightforward process for both local authorities and proposers.

When issuing a decision, the decision-maker can:

- reject the proposals;
- approve the proposals without modification;
- approve the proposals with such modifications as they think desirable; or

¹² Found under each individual Regional Director in the 'Who we are' section.

- approve the proposals, with or without modification¹³, subject to certain conditions¹⁴ (such as the granting of planning permission) being met by a specified date. A non-exhaustive list of conditions that could be applied to approval is set out at [Annex A](#).

A proposal can be withdrawn by the proposer at any point before a decision is taken. When revoking a proposal prior to a decision being made, the proposer must send written notice to the local authority and, where the proposal has been referred to the Secretary of State, also to the Secretary of State.

The decision-maker

The local authority will normally be the decision-maker on proposals unless:

- The local authority has put forward their own proposal, or
- The local authority or someone appointed by the local authority, is to be a member or a charity trustee of the foundation of a proposed foundation school or is to have voting rights in such a foundation.

In these circumstances, the decision-maker will be the Regional Director on behalf of the Secretary of State.

Where the local authority is the decision-maker, the Secretary of State has the right to refer a decision to themselves at any point before it is taken and may use this, for example, where determination is taking an unreasonably long time.

Decisions by the local authority where there are no academy proposals

If the local authority is the decision-maker and there are no proposals for a new academy, the local authority can decide on the proposals without departmental representation in the decision-making process.

As above, the proposals and any comments received during the representation period must be forwarded to the Secretary of State within two weeks of the end of the representation period. This can be achieved by sending them to [the relevant Regional Director mailbox](#)¹⁵.

¹³ Although the decision-maker cannot modify proposed admission arrangements, the decision-maker should inform the proposer where arrangements seem non-compliant with the School Admissions Code, and the admission authority should take the decision-maker's comments on board as part of the implementation of proposals.

¹⁴ If these conditions are not met by the specified date, the decision-maker must consider the proposals afresh.

¹⁵ Found under each individual Regional Director in the 'Who we are' section.

Decisions by the local authority where there is one, or more, academy proposals

This section explains the process where the local authority is to be the decision-maker and the proposals received include one or more proposals for an academy.

Whilst local authorities do have latitude to design the assessment process, there are several mandatory elements of the process, as set out below (these are indicated with the word 'must'). The department recommends that the following structure is followed to ensure that the assessment is compliant with legislation and that departmental input can be effectively captured.

- As above, the proposals and any comments received during the representation period must be forwarded to the Secretary of State within two weeks of the end of the representation period. This can be achieved by sending them to [the relevant Regional Director mailbox](#)¹⁶.
- If there are any academy proposals, the local authority must consult the department on all proposals. The department will provide initial feedback on academy proposers and highlight any concerns it might have about the suitability of any proposers. The department will also consider the geographical coherence of the academy proposer, meaning the spread and nature of its other schools in the local area. This may take up to four weeks.
- The proposals can then be scored by the local authority (see below) and shortlisting can take place, if desired, ahead of interviews.
- Prior to the interviews, the department will provide the local authority with feedback on the performance of any academy trusts being interviewed, using the principles of the published [commissioning high-quality trusts](#) guidance. This may take up to four weeks. The local authority should review the published performance data for any schools that other proposers already run (for example using the [compare the performance of schools and colleges in England](#) service, alongside information from the education track record section of the proposal template). This information can be used, in conjunction with the assessment of the written proposals to formulate questions for the interviews.
- Interviews of the shortlisted proposers can then take place, and the scores for the proposals amended in line with responses. Regions Group should be invited to be part of any interview panels so that they can choose to attend if they consider that there is a reason to do so.
- If proposals to open a new academy are still under consideration after interviews, the local authority should seek agreement in principle from the Secretary of State

¹⁶ Found under each individual Regional Director in the 'Who we are' section.

(delegated to the Regional Director and obtained via [the relevant Regional Director mailbox](#)¹⁷) of their willingness to enter into a funding agreement with any of the academy trusts still under consideration for the academy that they are proposing.

- The local authority may not approve a proposal for a particular academy until the Secretary of State's agreement in principle has been received.
- The local authority may then make a final decision on the proposals and communicate the decision as below.

Local authority role in decisions taken by the Regional Director

As above, where the local authority has put forward their own proposals (alongside other proposals, or on their own in the absence of other proposals) then the Regional Director will be the decision-maker, on behalf of the Secretary of State. This is also the case where the local authority, or someone appointed by the local authority, is to be a member or a charity trustee of the foundation of a proposed foundation school or is to have voting rights in such a foundation.

As above, the proposals and any comments received during the representation period must be forwarded to the Secretary of State (they should be sent to [the relevant Regional Director mailbox](#)¹⁸) within two weeks of the end of the representation period. When forwarding the proposals and comments from the representation period to the Secretary of State, the local authority can add their own comments on the proposals, so that their views can be taken into account. This is to mirror the opportunity that other proposers have during the representation period.

Where the department is to be the decision-maker on proposals, on behalf of the Secretary of State, then the local authority must notify the following of their referral to the Secretary of State:

- the proposers;
- the Diocesan Board of Education of any Church of England diocese any part of which is comprised in the area of the authority;
- the bishop of any Roman Catholic diocese any part of which is comprised in the area of the authority; and
- any other body considered appropriate.

¹⁷ Found under each individual Regional Director in the 'Who we are' section.

¹⁸ See footnote 17.

In these circumstances, if there are a large number of proposals, the department will carry out shortlisting along the lines of the process above before holding interviews and making a decision.

The local authority should factor in that it may take up to 14 weeks for the Regional Director to make a decision, depending on the number and type of proposals.

Equal opportunity issues

The decision-maker must comply with the Public Sector Equality Duty (PSED), which, when making their decision, requires them to have due regard to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- advance equality of opportunity between those who share a relevant protected characteristic and those who do not share it; and
- foster good relations between those who share a relevant protected characteristic and those who do not share it.

In general, most issues related to equality issues should be covered by the local authority's impact assessments when the local authority prepares the specification, and these impact assessments may then be used by the decision-maker when making their decision. If the decision-maker intends to approve a proposal that deviates from the essential requirements of the specification, however, the decision-maker will need to ensure they give specific consideration to these deviations from an equalities perspective.

Publishing decisions

Once the local authority has made a decision or has been informed of a decision made by the Secretary of State, they must publish the decision on their website within two weeks. They must also arrange for notification of the decision being published to go to the following within one week of publication of the decision:

- the Secretary of State (this should be sent via [the relevant Regional Director mailbox](#)¹⁹);
- the proposers;
- the Diocesan Board of Education of any Church of England diocese any part of which is comprised in the area of the relevant authority;
- the bishop of any Roman Catholic diocese any part of which is comprised in the area of the relevant authority; and

¹⁹ Found under each individual Regional Director in the 'Who we are' section.

- any other body or person considered appropriate.

A local authority may choose to provide feedback or a rationale for the decision to the proposers and other relevant parties; this is at the local authority's discretion.

Related proposals

A proposal under section 10 (to open a school outside the invitation process) or section 15 (to close a school) of the EIA 2006 should be regarded as 'related' to a section 7 proposal if its implementation (or non-implementation) would prevent or undermine the effective implementation of the other proposal. Where proposals are related, this should be made clear in information during consultation and representation periods, in published notices, and in proposals. If a proposal is referred to the Secretary of State, the local authority must notify the Secretary of State of any proposals under section 10 or 15 that appear to be related. Similarly, if a proposal under section 10 or 15 of the EIA 2006 is received by a local authority that is related to a decision already under consideration by the Secretary of State, the Secretary of State must be informed. In practice, this can be done through notifying [the relevant Regional Director mailbox](#)²⁰.

²⁰ Found under each individual Regional Director in the 'Who we are' section.

Guidance on decision-making

Identification of concerns

Where the department is to have a role in the assessment process, either because the Regional Director is the decision-maker, or there are academy proposals, the department will first determine whether there are any known concerns about the suitability of any of the proposers. Where the department is the decision-maker, proposals where there are such concerns may not be scored and the proposal may be rejected.

The main reasons why the department may recommend to a local authority that a proposal be rejected at this stage are:

- If the proposer is an academy trust and it is in receipt of a Notice to Improve, or where concerns exist regarding the proposer's compliance with the financial or governance requirements set out in the Academy Trust Handbook and its funding agreement. Similarly, if the proposer is not an academy trust, but there are substantial concerns about the financial or governance arrangements of the proposer that may impact on the opening of the new school.
- If it is not clear how a proposer, that does not already have a presence in a geographical area, would contribute to effective collaboration in the context of local school improvement needs. Similarly, if there is a concern that the addition of a new school in a particular area would undermine the geographical coherence of the proposer. Proposers or local authorities who are concerned that this principle may result in particular proposals being discounted should discuss their concerns with Regions Group at an early stage, before submitting their proposal.

Assessment of proposals

Where they are the decision-maker, local authorities have the freedom to decide how they will score proposals but should adopt a transparent and consistent approach that does not penalise particular types of school. Where proposals contain deviations from the specification, local authorities will want to consider whether these deviations are acceptable but should not rule out proposals for having a religious character that is different to any that may have been expressed as 'desirable' in the specification.

[Annex F](#) contains model criteria that the department recommends is used to assess proposals and check that they contain all the required information. The following description sets out how the department will score proposals where the Regional Director is the decision-maker, which local authorities may wish to replicate.

Scoring

The 'essential information' section of the proposal will not be scored, but the overall proposal will be assessed on whether it meets the needs set out in the local authority's

specification. Where there are major discrepancies (for example where the proposed school is a different phase or sex than set out in the specification, or where the proposal is for a mainstream school and the specification is for a special school or alternative provision, or vice versa), the proposal may be rejected. Where there are smaller discrepancies, these will likely be discussed at interview to determine their impact. Differences between the intended religious character set out in the proposal, and any religious character that the local authority has expressed as desirable in the specification should not be considered a 'major discrepancy'.

As set out in the model criteria, proposals will then be scored according to four sections:

- The vision
- The plan for education
- Capability and capacity
- Finance

The four sections will be scored individually as follows:

0 = The proposal meets the requirements in the model criteria to an 'inadequate' degree

1 = The proposal meets the requirements in the model criteria to an 'adequate' degree

2 = The proposal meets the requirements in the model criteria to a 'good' degree

3 = The proposal meets the requirements in the model criteria to an 'excellent' degree

Note: At the shortlisting stage, the educational track record of proposers will not be assessed as part of section D (capability and capacity) in [Annex F](#), but this information will be assessed prior to interviews and used to determine the final score for section D.

Making decisions

To reflect the relative size and importance of the different sections, a weighting (multiplier) will then be applied to the scores for each section as follows:

- The vision (x1)
- The plan for education (x3)
- Capability and capacity (x2)
- Finance (x1)

This will give a total out of a maximum score of 21.

After the shortlisting stage, the proposals with the highest scores that meet the essential requirements of the specification will proceed to interview. The interviews will then cover any areas where scores are lower, where there are minor discrepancies from the essential information or where clarity is needed, as well any issues that may have been identified by the department (for example after reviewing information on the performance of proposers who run existing schools).

After the interviews the scores will be revised, based on responses in the interviews, to give a final score. The proposal with the highest score that meets the essential requirements of the specification to a satisfactory degree will be deemed the successful proposal. If two or more proposals have the same score, the proposals will be compared to see which proposer has the strongest capability and capacity (in line with the wording of the model criteria). Alternatively, if none of the proposals are considered to have achieved a satisfactory score, they will all be rejected.

Making proposals outside the invitation process (section 10)

Section 10 of the EIA 2006 permits certain proposals for new establishments to be made at any time without an invitation notice from a local authority. In all cases, proposers must follow the required [statutory process](#).

The following types of proposal are permissible under section 10, when no relevant²¹ invitation notice has been published by a local authority:

- Proposals by a local authority for a new maintained nursery school (n.b. this is the only route to establish a maintained nursery school).
- Proposals by a local authority for a new community, community special, foundation or foundation special school, which is not to be a school providing education suitable only to the requirements of persons above compulsory school age, and which is to replace one or more existing maintained schools.
- Proposals by a proposer other than a local authority (for example a relevant religious authority or charitable trust) for a new voluntary, foundation or foundation special school. This could be, for example, to meet a particular demand for a specific type of faith provision in an area, or to replace already existing provision, including independent provision or, in the case of a foundation special school proposal, a non-maintained special school.
- Proposals by a local authority for a new pupil referral unit to replace one or more existing pupil referral units.

Where the proposer is the local authority or the local authority is proposed to be involved in the foundation (established otherwise than under the School Standards and Framework Act 1998 (SSFA 1998)) of a proposed foundation school by being, or appointing, members or charity trustees of the foundation or by having voting rights in the foundation, the decision will fall to the Schools Adjudicator. In all other cases, the local authority will be the decision-maker.

Important factors when proposing a new school

Proposers must include the information in [Annex C](#), as a minimum, when setting out proposals outside the invitation process, and their proposal should demonstrate that they have considered the factors in this section when making proposals to establish a new school. Proposers are also advised to have regard to the '[guidance for decision-makers on section 10 proposals](#)' section below, to understand how to prepare the best proposal.

²¹ Meaning no invitation notice under which the same proposals could be made.

Demand vs need

Proposers (who are not the local authority) should discuss their plans with their local authority to understand both current and future forecast levels of need for their proposed school and to consider how proposals fit with any plans their local authority has to manage excess surplus capacity in the area. Proposers should also consider the impact of the new places on existing educational provision in the local area.

Proposers should also take steps to understand parental demand for the new school places and the type of provision being proposed, in light of the quality and diversity of provision available in the local area.

Proposed admission arrangements

Proposers should set out their intentions for the admission arrangements of the proposed school as part of the proposal.

Proposers of mainstream schools should also set out how they intend to apply oversubscription criteria (for example distance from the school, or any other criteria permitted under the [School Admissions Code](#)). Where the proposal is for a voluntary or foundation school, this should include whether the school will be designated as having a religious character and apply faith-based admissions criteria. Proposers should ensure that they consider all expected admission applications when considering demand for the school, including those from outside the local authority area in which the school is situated.

Special schools do not admit pupils on the basis of the School Admissions Code. Generally, they are permitted only to admit pupils with EHC plans, or, on a temporary basis, pupils whose needs are being assessed, or in certain other exceptional circumstances (as set out in section 34 (5)-(8) of the Children and Families Act 2014). See paragraph 1.29 of the [SEND code of practice: 0 to 25 years](#) for more information.

Early years

As with schools proposed through the [section 7 process](#), the department expects proposals for new primary schools to include a nursery, except in exceptional circumstances (see [establishing school-based nursery provision](#) for further information).

Funding

Proposers should satisfy themselves that any necessary funding required to implement the proposal will be available. Approval of a proposal, either by the local authority or by the Schools Adjudicator, does not obligate the department to provide capital funding to support the creation of the new school, or indicate that it will do so.

School premises and playing fields

For new foundation, foundation special, and voluntary schools proposed under section 10, the proposal should set out who is providing the site and the playing fields²². The expectation is that the school site will normally be provided by the proposer, rather than the local authority.

In the case of proposals to establish a maintained school in place of an existing independent school, the school will need to meet the requirements of the School Premises (England) Regulations 2012; any exceptions to this condition would need to be considered and approved by the Secretary of State under section 543(1) of the Education Act 1996, which allows for such exceptions in special cases.

Where proposals for a new foundation or voluntary school are approved, and the local authority is providing land either under a statutory obligation or using discretionary powers, the authority must transfer any interest it has in land held for the purposes of the school which is not playing field land to either the trustees of the school or, where the school has no trustees, the school's governing body. The local authority may need, if relevant, to agree with the religious authority the identity of the appropriate trustees of the school and liaise with them in relation to the transfer of land. The land is then to be held by those trustees for the purposes of the school. The local authority must pay to the transferees their reasonable costs incurred in connection with the transfer.

If any doubt or dispute arises as to the persons to whom that transfer is to be made, it must be made to such persons as the Schools Adjudicator thinks proper.

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. Where proposals for a new voluntary aided school provide for the provision of playing fields, the duty, under Schedule 2 of the EIA 2006, to implement that part of the proposal (meaning to provide the playing field) rests with the local authority²³. Again, the local authority is not required to transfer playing fields to the trustees of the school or governing body.

²² Paragraphs 22-26 of EIA 2006 set out the detailed expectations around implementation of proposals in relation to the site and playing fields.

²³ This is not a requirement where a new voluntary aided school is to be established in place of one or more existing independent, foundation or voluntary schools which is being discontinued on or before the date of implementation of the proposals, and those playing fields:

- (i) were part of the premises of any of the existing schools (whether it was an independent school or a foundation or voluntary school), and
- (ii) (if it was a foundation or voluntary school) were not provided by the authority.

The Section 10 statutory process

This section sets out the stages of the statutory process. The statutory process described below must be followed when opening maintained schools, including maintained nursery schools and pupil referral units, outside of the 'invitation process' in accordance with section 10 of EIA 2006.

Stage 1: Consultation

It is a statutory requirement for the proposer to consult any relevant parties they think are appropriate before publishing proposals under section 10. Please refer to the list of parties set out in the [section 7 consultation section](#), which sets out who the Secretary of State considers should be consulted ahead of publishing proposals for new schools.

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. Proposers should have regard to Cabinet Office [consultation principles: guidance](#) when deciding how to carry out the consultation.

Stage 2: Publication

If a proposer wishes to proceed, a specific proposal should be published within 12 months of the 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 Schedule 1 to the Establishment and Discontinuance Regulations 2013, as amended by the School Organisation (Establishment and Discontinuance of Schools) (Amendment) Regulations 2026 (also set out in [Annex C](#) to this guidance).

Where the local authority is the proposer, the local authority must publish the proposal on their website. Where the proposer is not the local authority, the proposer must publish the proposal on a website, send a copy of the proposal to the local authority within one week from the date of publication, and notify the local authority of the website where the proposal has been published. The local authority must then publish this website address on their own website within one week of receiving it.

Alongside the proposal, the proposer must include on their website a statement setting out:

- how copies of the proposal may be obtained;
- that anybody can object to, or comment on, the proposal;
- the date by which any objections or comments must be received (which is to be four weeks from publication on the local authority's website – the representation period); and
- the address of the local authority to which objections or comments should be submitted.

In all cases, within one week of the date of the proposer publishing proposals on a website, the proposer must send a copy of the proposal, and the information set out above to:

- the Secretary of State (should be sent via schoolorganisation.notifications@education.gov.uk);
- the Diocesan Board of Education of any Church of England diocese any part of which is comprised in the relevant area;
- the bishop of any diocese of the Roman Catholic Church any part of which is comprised in the area of the relevant authority; and
- any other body or person that the proposer thinks is appropriate (for example any relevant religious authority).

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

Stage 3: Representation

The representation period starts on the date that the proposer publishes the proposal and must last for four weeks. During this period, any person or organisation can submit comments on the proposal, to the local authority, to be taken into account by the decision-maker. Local authorities should forward copies of 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 followed the statutory process and must consider all of the comments and objections submitted to the local authority during the representation period.

Stage 4: Decision

As set out in [table 1](#) above, the local authority will be the decision-maker on most proposals under section 10 and must make a decision within two months of the end of the representation period. The Schools Adjudicator will decide proposals for new schools made by the local authority and cases where one of the proposals has the local authority involved in the foundation of a proposed foundation school with a foundation in one of the ways set out in paragraph 10(2) of Schedule 2 to the EIA 2006. The local authority must refer such proposals to the Schools Adjudicator, along with any objections or comments they have received, within two weeks of the end of the representation period. The local authority may add any objections or comments of their own and send these to the Schools Adjudicator alongside any others they have received within two weeks of the end of the representation period.

The Schools Adjudicator will also be the decision-maker in any case where the local authority does not make a decision within a period of two months of the end of the

representation period. Where this happens, the local authority must, within one week of the end of that two-month period, refer the case to the Schools Adjudicator.

Where a local authority is required to refer proposals to the Schools Adjudicator, then the local authority must inform the following:

- the Secretary of State (should be sent via schoolorganisation.notifications@education.gov.uk);
- the proposers;
- the Diocesan Board of Education of any Church of England diocese any part of which is comprised in the area of the relevant authority; and
- the bishop of any Roman Catholic diocese any part of which is comprised in the area of the relevant authority.

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; or
- approve the proposal, with or without modification, subject to certain conditions²⁴ (such as the granting of planning permission) being met by a specified deadline²⁵ – see [Annex A](#) for suggested conditions that a decision-maker may choose to apply.

A proposal can be withdrawn by the proposer at any point before a decision is taken. When revoking a proposal prior to a decision being made, the proposer must send written notice to the local authority and (where the proposal has been referred to the Schools Adjudicator) also to the Schools Adjudicator.

Where the local authority is the decision-maker, within two weeks of making a decision, they must publish their decision on their website. They should also inform the proposers of the reasons for their decision. Within one week of publishing the decision, they must also arrange for notification of the decision to be sent to:

- the Secretary of State (should be sent via schoolorganisation.notifications@education.gov.uk);
- the proposers;

²⁴ If these conditions are not met, the decision-maker must consider the proposals afresh.

²⁵ Decision-makers may specify an alternative date at the request of proposers.

- the Diocesan Board of Education of any Church of England diocese any part of which is comprised in the area of the local authority;
- the bishop of any Roman Catholic diocese any part of which is comprised in the area of the relevant authority; and
- any other body considered appropriate (for example trustees of the school).

Where the Schools Adjudicator is the decision-maker, they must notify the proposers, the local authority and the Secretary of State of their decision (should be sent via schoolorganisation.notifications@education.gov.uk). Where possible this should be done within one week of deciding, to ensure the appropriate records can be updated and to allow for any actions required as a consequence of the decision to be completed.

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

Related opening and closing proposals must be considered together and, where applicable, referred to the Schools Adjudicator together. Related prescribed alterations proposals should also be considered and, where possible, determined at the same time.

Rights to refer local authority decisions to the Schools Adjudicator

Proposers may refer any decision by the local authority to reject proposals made under section 10 to the Schools Adjudicator. In addition, the Diocesan Board of Education of any Church of England diocese, or the bishop of any Roman Catholic diocese, any part of which is comprised in the area of the local authority, may also refer a decision on any section 10 proposal to the Schools Adjudicator. Any requests for the proposals to be referred must be made within four weeks of the date of the notification of a decision on a proposal.

Within one week of receipt of a request for a referral, a local authority must send the proposal, any reasons it chose to give for its decision, representations received and the minutes and papers for the meeting at which it considered the proposals to the Schools Adjudicator.

Guidance for decision-makers on section 10 proposals

It is important that a clear and transparent process is followed during the assessment of proposals. The decision-maker may want to refer to the model criteria in [Annex F](#) to understand the department's expectation for proposals for new schools. In addition, the decision-maker should consider the following factors before giving approval for any proposals and should be satisfied that there are no significant grounds for concern.

Factors to consider when determining section 10 proposals

Demand and need

When considering proposals to establish new provision, the decision-maker should be satisfied that the proposer has demonstrated demand for the provision being proposed. This should include:

- evidence of any projected increase in pupil population (for example driven by planned housing developments) above existing school capacity and any new provision opening in the same area, 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 the needs of parents and children, raise local standards and narrow attainment gaps;
- the popularity of other schools in the area and evidence of parental demand for a new school; and
- surplus capacity should be a serious consideration – decision-makers should consider the impact of the new places on existing good educational provision in the local area, and accumulating high levels of surplus should be avoided.

Proposed admission arrangements

Before approving a proposal for a mainstream school, the decision-maker should confirm that any details of the admission arrangements for the school set out in the proposal are compliant with the [School Admissions Code](#). The final admission arrangements will be determined separately, so it may not be necessary for the decision-maker to make modifications to the proposals to deal with any aspects that do not appear to comply with the School Admissions Code, but the decision-maker should alert the proposer to these aspects. The admission authority should take the decision-maker's comments on board as part of the implementation of proposals.

Balance of denominational provision

The balance of denominational provision is an important part of considerations in relation to the Public Sector Equality Duty. Decision-makers should consider what impact the proposal will have on the balance of denominational provision in the area, the quality of the provision available and parental demand in the area for the different types of provision.

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. Where one school has a religious character and the other does not, or has a different religious character, both proposers and decision-makers should consider what would best meet the needs of the local community.

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 (for example charitable trustees or religious authorities, third party landowners) have given their agreement to the funding arrangements and the terms of the school's occupancy of the land.

Approval does not obligate the department to provide capital funding to support the creation of the new school or indicate that it will do so.

Travel

Local authorities have a duty to arrange free-of-charge travel assistance for eligible children and to promote sustainable home to school travel. Further information is available in the statutory guidance on [travel to school for children of compulsory school age](#).

Decision-makers should consider how children will travel to the school and should be satisfied that:

- wherever possible, the children the proposers expect to attend the school will be able to travel there sustainably for example by walking, cycling, scooting or using public transport;
- the proposers have sought to avoid children requiring travel arranged by the local authority, as far as possible;
- where travel arranged by the local authority will be needed, the proposers have worked with the local authority school travel team to ensure suitable travel arrangements can be made;
- where children will not be eligible for travel arranged by the local authority, the proposers have sought to avoid excessive journey times for children and excessive travel costs for families; and
- the arrangements for travelling to the school do not adversely impact equality (see below) or disadvantaged groups (for example, those who are eligible for free school meals or pupil premium).

Equal opportunity issues

The decision-maker must comply with the PSED, which requires them to have due regard to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.
- advance equality of opportunity between those who share a relevant protected characteristic and those who do not share it.

- foster good relations between those who share a relevant protected characteristic and those who do not share it.

The decision-maker must consider the impact of the proposals on people who share the relevant protected characteristics and any issues that may arise from the proposals (for example 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). Decision-makers should be satisfied that the proposer has shown a commitment to providing access to a range of opportunities which reflect the ethnic and cultural mix of the area in which a school is located, whilst ensuring that such opportunities are open to all.

Local authorities should be mindful that impact assessments should give due regard to all protected characteristics, including religion and belief, and should not make assumptions about how schools with a religious character may or may not promote community cohesion, but rather consider each proposal fairly on its own merits. Parliament has legislated to allow schools designated with a religious character to apply faith-based admissions criteria when oversubscribed, and nothing in this guidance should be taken to imply a presumption of negative impact on their contribution to community cohesion. These schools continue to operate under the Equality Act 2010 and the public sector equality duty, which underpin their wider role in promoting respect and inclusion.

Suitability

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 [promoting fundamental British values through SMSC](#) guidance. Any proposal put forward by organisations which advocate violence or other illegal activity should be rejected.

Integration and community cohesion

When deciding a proposal, the decision-maker should take account of the community to be served by the school and the views of different sections within the community and should be satisfied that the proposer has done the same. The decision-maker should be satisfied that the proposer has considered the importance of promoting local integration and community cohesion.

Accessibility, inclusion and school design

Decision-makers should be satisfied that proposals demonstrate that the new school site will be accessible and inclusive for all its pupils, including those with SEND, and that the new school will meet the required standards for school premises. In this situation, decision-makers should be satisfied that proposers have had regard to the [school and college design and construction](#) guidance, which include standards and guidance for those involved in the design and construction of school buildings and grounds.

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 department's expectations on certain school sizes are as follows:

Mainstream primary: Minimum of 2 forms of entry of 30 pupils – total capacity 420 pupils.

Mainstream secondary without a sixth form: Minimum of 4 forms of entry of 30 pupils – total capacity 600 pupils.

Mainstream secondary with a sixth form: Minimum of 4 forms of entry of 30 pupils in years 7 to 11 – total capacity 600 pupils plus a minimum of 200 students in the sixth form.

Special: Minimum 70 pupils.

Implementation (Section 7 and Section 10)

The following guidance outlines some of the key considerations that will be relevant for proposers of new schools once a proposal has been approved.

For new academies, further detail is provided in the [pre-opening guide](#), which sets out the steps that proprietors of academies must take before an academy opens. In particular, the pre-opening guide sets out the steps that must be taken before a funding agreement can be signed, including steps on assurance and consultation under section 10 of the Academies Act 2010. The guide also sets out information about Ofsted pre-registration inspections and readiness-to-open meetings for new academies.

Implementation duty

The proposer (and the local authority if they are not the proposer but have a duty to implement some or all of the proposal) must implement a proposal in the form approved, including any modifications made by the decision-maker (unless modifying or revoking the proposal, as set out [below](#)).

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 school site

The department expects local authorities to conduct a robust evaluation of procurement options for any education capital projects and, in doing so, to consider the use of the department's construction frameworks where this is likely to deliver overall savings and advantages. A local authority should encourage academy trusts and other responsible bodies to do the same, should they be procuring a construction project directly.

We strongly encourage local authorities, in developing their local capital plans, as well as the party responsible for providing the site (where it is not the local authority), to refer to the [school and college design and construction](#) guidance. The guidance sets good quality parameters on a wide range of building requirements including acoustics, space, fire, thermal comfort, ventilation, energy and tackling climate change as well as improving access to nature.

Inclusive school design focuses on, for example:

- Spatial sequencing and clear wayfinding for example ramps, wayfinding handrails
- Inclusive sanitary provision for example accessible toilets, changing facilities
- Lighting, thermal comfort and ventilation for example low surface temperature radiators

- Inclusive acoustics for example acoustic wall panels, acoustic pods, acoustic ceilings
- Spaces for re-regulation for example 1:1 restorative spaces or breakout rooms.
- Access to nature for example doors from classrooms for direct access to outside space.

For further information about accessibility and inclusivity of buildings, local authorities should refer to the [school and college design and construction](#) guidance, which includes building bulletins for acoustic design of schools: performance standards ([BB 93](#)), ventilation, thermal comfort and indoor air quality ([BB 101](#)), and area guidelines ([BB 103](#), [BB 104](#)), and how these can be designed to optimise inclusivity and accessibility. Please also refer to [PAS 6463:2022 Design for the mind: Neurodiversity and the built environment](#) guide for further advice.

In due course, the department will also be publishing guidance on adaptations to enhance inclusivity and accessibility in mainstream settings, as well as more targeted guidance on identifying suitable interventions across mainstream settings.

Financial considerations for academies

Once the decision-maker has approved a proposal, the local authority and the successful proposer should work together to resolve any funding related issues as quickly as possible (if the successful proposer is not the local authority). If applicable, 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 department via [the relevant Regional Director mailbox](#)²⁶ (if the new school is an academy).

The department expects local authorities to provide sustainable underwriting arrangements for new schools in support of the pupil forecasts agreed between the successful proposer and the local authority (if applicable). This can provide the necessary reassurance of the financial viability of the new school ahead of opening and ahead of the funding agreement (if the new school is an academy). This can be achieved by the local authority agreeing to underwrite the per-pupil revenue funding for new 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 their growth fund. Such payments should be listed in the local authority's APT the following year.

²⁶ Found under each individual Regional Director in the 'Who we are' section.

Project Development Grant (PDG) funding will not be available for schools established through the section 7 invitation process or under section 10.

In determining the financial viability of the school, the local authority and successful proposer will need to consider the minimum viable number (MVN) for the school, meaning 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), or planned number of places, 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. For academies, when the local authority and successful trust 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 proposer are confident in their agreed MVN for the school.

Governance

The [maintained schools: governance guide](#) sets out expectations for the governance of maintained schools and the [constitution of governing bodies of maintained schools guidance](#) explains how governance structures should be established. For academy trusts, the governance arrangements that must be complied with are set out in the [Academy trust handbook](#). Further advice is given in the [academy trusts: governance guide](#). Annex 3 of the [alternative provision](#) statutory guidance sets out how pupil referral units are managed.

Admissions

Where the successful proposal is for a mainstream academy, the necessary steps to establish admission arrangements for the new school are set out in the admissions section of the [pre-opening guide](#) and in the [School Admissions Code](#).

Where the successful proposal is for a maintained mainstream school, the local authority and successful proposer (where different) should refer to the information available in the [School Admissions Code](#).

Special schools (maintained special and special academies) do not admit pupils on the basis of the School Admissions Code. Generally, they are permitted only to admit pupils with EHC plans, or, on a temporary basis, pupils whose needs are being assessed, or in certain other exceptional circumstances (as set out in section 34 (5)-(8) of the Children and Families Act 2014). See paragraph 1.29 of the [SEND code of practice: 0 to 25 years](#) for more information. The School Admissions Code does not apply to alternative provision academies or pupil referral units. Admissions into alternative provision academies and pupil referral units are arranged by agreement between the school and the commissioner(s) of the provision.

Staffing

When planning for and recruiting staff, it is important that all proprietors have regard to [integrated curriculum and financial planning \(ICFP\)](#) guidance to ensure that the school is established on a sound financial footing. The [pre-opening guide](#) explains the departmental support available to proprietors of new academies in relation to staffing. It also sets out information on staff pay in academies. Guidance on teacher pay is available at [school teachers' pay and conditions](#).

Pensions

Education providers must comply with Teachers' Pension Scheme (TPS) and Local Government Pension Scheme (LGPS) regulations, and with the [Fair Deal](#) for staff pensions guidance published by HM Treasury. This includes ensuring all eligible staff have access to either TPS or LGPS, as relevant to their role. This extends to access for any staff transferring to the school from another employer. Academies and academy trusts should utilise the [Local Government Pension Scheme: academy trusts](#) guidance.

Education policies and safeguarding

Once a proposal has been approved, the governing body or proprietor will need to ensure policies and procedures are in place for the school to ensure it is compliant with statutory requirements. Necessary policies include attendance, behaviour, SEND and safeguarding. Guidance is available to support with developing these policies to ensure they are compliant and effective. Governing bodies of maintained schools should refer to the [maintained schools: governance guide](#) and proprietors of academies should refer to the [academy trusts: governance guide](#). Many of these will need to be in place before a funding agreement for a new academy can be signed.

The responsible body must make sure that they conduct all relevant safer recruitment checks before opening, including vetting and barring checks, and must ensure that the single central record is in place. Details of the statutory requirements can be found in [keeping children safe in education](#) guidance and [working together to safeguard children](#) guidance. Arrangements must also be made for the SENCO and the [designated teacher for looked-after and previously looked-after children](#) to hold qualified teacher status (QTS) prior to opening.

Obtaining a religious designation

If a proposer would like particular religious beliefs to be specifically reflected in the curriculum, staffing and admissions policies of a new school, then the proprietor will need to seek a religious designation. This is a legal recognition that the school will have a religious character.

Proposers should refer to the [religious character designation: guide to applying](#) for how to obtain a religious designation and should ensure they obtain approval from the relevant religious authority before applying.

Equalities and impact considerations

[Section 149 of the Equality Act 2010](#) requires all public authorities, when exercising their functions and making decisions, to have due regard to the three limbs of the PSED.

These are to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under that Act.
- advance equality of opportunity between those who share a relevant protected characteristic and those who do not share it.
- foster good relations between those who share a relevant protected characteristic and those who do not share it.

Proprietors of new schools have a continuing duty to meet their obligations under the Equality Act 2010 throughout the pre-opening phase and once the school is open.

For academies, the Secretary of State has a statutory duty to consider the potential equality impact of their decision before deciding whether to enter into a funding agreement and will need to take account of whether the proprietor has complied with PSED during the pre-opening phase.

In addition, ahead of the funding agreement being signed, the Secretary of State will make an assessment under section 9 of the Academies Act 2010 of the impact of a proposed new academy on nearby maintained schools, academies, institutions within the further education sector and alternative provision in the area in which the institution is proposed to be situated.

Recording information on Get Information About Schools (GIAS)

For maintained schools, proposers should contact schoolorganisation.notifications@education.gov.uk at least one month before the proposed opening date to confirm the opening. A GIAS record will be established, and the school will receive a URN and DfE number.

For academies, the Regions Group delivery officer will provide the academy trust with a GIAS application form. Once completed, the department will register the academy on GIAS and issue a URN and DfE number. For more details, refer to the [pre-opening guide](#).

Modification post determination

If it proves necessary, for example due to a major change in circumstance, or it being unreasonably difficult to implement a proposal as approved, the proposer can propose modifications (for example to amend 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 approved.

For section 7 proposals, the local authority or the Secretary of State (where the decision in relation to the original proposal was decided by the Secretary of State) will be the decision-maker on whether there should be any modifications post determination. If the Secretary of State is to be the decision-maker, the local authority must refer the request to modify the proposals within two weeks of receiving it from the proposer, or where the local authority was the proposer, within two weeks of their decision that the proposals should be modified. The local authority must notify the proposers and Secretary of State of their decision (should be sent via [the relevant Regional Director mailbox](#)²⁷) within one week of making a decision on a modification request, or, where the decision has been made by the Secretary of State and the local authority was not the proposer, the local authority must notify the proposer within one week of receiving the Secretary of State's decision.

For section 10 proposals, the local authority or the Schools Adjudicator (where the decision in relation to the original proposal was decided by the Schools Adjudicator) will be the decision-maker for whether there should be any modifications post determination. If the decision is to be made by the Schools Adjudicator, the local authority must refer the request to modify the proposals within two weeks of receiving it from the proposer, or where the local authority was the proposer, within two weeks of their decision that proposals should be modified. The local authority or Schools Adjudicator must notify the proposers and Secretary of State of their decision (should be sent via schoolorganisation.notifications@education.gov.uk) within one week of decision.

Revocation

If the proposer does not wish an approved proposal to be implemented 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 remove 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;

²⁷ Found under each individual Regional Director in the 'Who we are' section.

- details of who published the original proposal; and
- a statement as to why the duty to implement the original proposal should not apply.

For section 7 proposals, the proposer (where they are not the local authority) must send the revocation proposal to the local authority to publish on their website within one week of publishing on the website where they published the revocation proposal. For section 10 proposals the proposer must publish the revocation proposal on a website. In either case the publication must also include a statement to make clear:

- that any person may object to or comment on the revocation proposal and the address of the local authority to which any objections or comments should be submitted; and
- the date by which such objections or comments must be submitted (which must be within four weeks of publication of the proposals);
- how a copy of the revocation proposal may be obtained.

Within one week of publication, the local authority must send copies of the proposal and the statement referred to above to:

- the Secretary of State (this should be sent via [the relevant Regional Director mailbox](#)²⁸); and
- any other body or person that the proposer thinks appropriate.

Where the local authority receives a request for a copy of the revocation proposal, the local authority must send a copy to the person requesting it.

The decision-maker on a revocation proposal will be the same person who made the initial decision on the original proposal. Where this is the Schools Adjudicator or the Secretary of State, the local authority must refer the revocation proposal to them, together with any comments or objections, within two weeks of the end of the representation period. Where the Secretary of State was the decision-maker, this should be via [the relevant Regional Director mailbox](#)²⁹.

For section 10 proposals, proposers may ask the local authority to refer any decision by the local authority on revocation proposals made to the Schools Adjudicator. In addition, the Diocesan Board of Education of any Church of England diocese, or the bishop of any Roman Catholic diocese, any part of which is comprised in the area of the local authority, may also request referral of the decision to the Schools Adjudicator. Any requests for the

²⁸ Found under each individual Regional Director in the 'Who we are' section.

²⁹ See footnote 28.

proposals to be referred must be made within four weeks of the date of the notification of a decision on a proposal.

Within one week of receipt of a request for a referral, a local authority must send the proposal and any reasons given for the decision to the Schools Adjudicator.

Further information

This guidance primarily relates to the following, which can be referred to for further information:

- [Education and Inspections Act 2006](#), as amended by [Education Act 2011](#) and [Children's Wellbeing and Schools Act 2026](#)
- [School Standards and Framework Act 1998](#), as amended by the [Education Act 2002](#)
- [The School Organisation \(Establishment and Discontinuance of Schools\) Regulations 2013](#), as amended by the [2026 regulations](#)
- [The Religious Character of Schools \(Designation Procedure\) Regulations 1998](#)
- [Religious character designation: guide to applying](#)
- [The Schools Adjudicator](#)
- [School Admissions Code](#)

It also relates to:

- [School Governance \(Constitution\) \(England\) Regulations 2012](#)
- [School Governance \(Roles, Procedures and Allowances\) \(England\) Regulations 2013](#)
- [Maintained schools: governance guide](#)
- [Academy trusts: governance guide](#)
- [School Premises \(England\) Regulations 2012](#)
- [The School Companies Regulations 2002](#) as amended by the [2003 Regulations](#) and the [2014 Regulations](#)
- [The School Organisation \(Prescribed Alterations to Maintained Schools\) \(England\) Regulations 2013](#) as amended by the [2025 Regulations](#)
- [Tell the Charity Commission about a change to your charity](#)
- [Academies Act 2010](#)
- [Making significant changes to an academy](#)
- [Closure of an academy by mutual agreement](#)
- [Regional Department for Education Directors](#)
- [Consultation principles: guidance](#)
- [Basic need allocations](#)
- [High needs provision capital allocations](#)

Annex A: Conditions for approval of new schools

The following list sets out conditions that a decision-maker could place upon approval of a new school. This list is non-exhaustive.

- a) The granting of planning permission under Part 3 of the Town and Country Planning Act 1990;
- b) The confirmation of a site for the school including suitable playing field land, and confirmation of securing suitable terms of occupancy for the school on that land
- c) The entering into an agreement for any necessary building project supported by the Department for Education;
- d) The making of any scheme relating to any charity connected with the school;
- e) The establishment of any foundation meeting the requirements for a foundation set out in section 23A of SSFA 1998;
- f) The formation of any federation of which it is intended that the proposed school should form part, or the fulfilling of any other condition relating to the proposed school forming part of a federation;
- g) In the case of a proposal under sections 7 or 10 for a maintained school or maintained special school, the decision of the Secretary of State not to enter into any agreement under section 1 of the Academies Act 2010 for the establishment of an academy;
- h) In the case of proposals to establish any other maintained school, the securing of approval by the Secretary of State to relax the requirements of the School Premises (England) Regulations 2012 in respect of school playing fields as provided for by section 543 (1) of the Education Act 1996, which allows for exceptions in special cases;
- i) In the case of proposals whose funding is dependent upon capital receipts from the disposal of any school land or buildings, the securing of consent from the Secretary of State for the disposal as provided for by Part 1 of Schedule 1 to the Academies Act 2010 or section 77 of SSFA 1998, or determination in accordance with Part 3 of Schedule 1 to the Academies Act 2010 (which relates to land held for the purposes of an academy) and Schedule 22 to SSFA 1998 (which relates to other disposals of land) as applicable;

Annex B: Statutory requirements for a specification to be published as part of the ‘invitation process’

Details to be included in all specifications

As set out in Schedule A1 to the Establishment and Discontinuance Regulations, the following details must be included in the specifications for mainstream schools, special schools and alternative provision.

Part 1 – Information about the new school

Reason for the new school

A statement explaining the reason why the new school should be established.

A summary of the local authority’s strategy for children with special educational needs and disabilities and how the establishment of the school is compatible with that strategy.

Geographical area

A statement describing the geographical area where the majority of the children who will be eligible for admission to the school reside.

Funding

The funding that will be made available for the establishment of the school, including the funding that will be made available prior to the opening of the school.

Part 2 – Requirements for the new school

Mainstream, special or alternative provision school

Whether the school should be a mainstream school, special school or alternative provision school.

Location

The location of the site or sites including, where appropriate, the postal address or addresses.

The current ownership and tenure (freehold or leasehold) on which the site will be held, and if the site will be held on a lease, details of the proposed lease.

Ethos and religious character

A short statement setting out the ethos which the school should have. If there is a particular religious character which the local authority desires the school to have or a particular philosophy the school should adhere to, this should be set out in the statement,

however local authorities are encouraged to consider a wide range of proposals and this statement should not be used to rule out proposals for a school with a religious character or a particular philosophy, nor should it be used to express a desire for a school without a religious character.

Pupil admissions

The age range and sex of pupils for whom provision should be made at the school, including whether the school should include provision for pupils below compulsory school age or whether the school should provide sixth form education.

The maximum number of pupils for whom provision should be made at the school.

The admission number(s) for the school year in which the school is to open.

The expected annual increase in the number of pupils for whom provision is to be made at the school.

Travel

The expected arrangements for travel of pupils to the school.

Opening date

The expected opening date of the school.

Facilities

Whether the local authority desires that the school's facilities be made available for community use (noting that this will be dependent upon land ownership arrangements).

Special educational needs provision: mainstream schools

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

Details to be included in specifications for special schools

In addition to the above, the following details must be included in the specifications for special schools.

The types of special educational needs or disabilities for which the school should make provision.

The number of places for pupils with special educational needs which are to be commissioned by local authorities and the local authorities by whom places are to be commissioned.

Details to be included in specifications for alternative provision

In addition to the above details for all schools, the following details must be included in the specifications for alternative provision.

The arrangements which the alternative provision school should have for:

- The referral of pupils to the school; and
- The transition of pupils from the school to a mainstream school or, in the case of pupils who have reached the end of Key Stage 4, to education destinations, apprenticeships, employment or other destinations.

The type or types of placements which the alternative provision school should offer, including whether the placements should be full time or part time and whether they should be long term or short term.

The support which the alternative provision school should provide to pupils in mainstream schools.

Annex C: Statutory information for proposals made under Section 10

As set out in Schedule 1 to the Establishment and Discontinuance Regulations, the information below must be included in section 10 proposals to establish a new school:

Contact details

The name and contact address of the local authority or the proposers (if not the local authority).

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 statement as to the extent that they are to be implemented by each body; and
- 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. This should include information and supporting evidence on how the school will contribute to enhancing the diversity and quality of education in the area.

Category

The category of school that it is proposed be established (a foundation or foundation special school and, if so, whether it is to have a foundation, a voluntary school, a community or community special school, or a maintained nursery school).

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, this should include 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, including confirmation that they have approval from the relevant religious authority to do so.

- Where it is proposed that the school has a religious character, evidence of the demand in the area for education in accordance with the tenets of the religion.
- Where it is proposed that the school 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 or alternative provision settings, the proposed admission arrangements and over-subscription criteria for the new school. Where the school is proposed to be a foundation or voluntary school which is to have a religious character:

- the extent to which priority for places is proposed to be given to children of the school's religion or religious denomination; and
- 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 children or pupils below compulsory school age:

- 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;
- how the school will integrate the early years provision with wider childcare services, and how the proposals for the establishment of the school are consistent with the integration of early years provision with childcare;
- evidence of parental demand for additional early years provision;
- 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 3 miles of the school; and
- the reasons why schools and settings outside the maintained school sector which deliver the Early Years Foundation Stage within 3 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

Whether the proposed school is to include a sixth form.

Where it is proposed that the school will provide sixth form education, for 16- to 19-year-olds in the area, the proposals should support the relevant local authority to secure enough suitable education and training provision to meet the needs of young people in their area by:

- meeting a need for additional sixth form places locally and detailing how this may impact on other local post-16 providers
- improving post-16 educational outcomes and meeting local, regional or national skills needs
- increasing participation in education or training.

Special educational needs provision

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

Details of how the school will be inclusive of pupils with special educational needs.

Where the school will replace existing educational provision for children with special educational needs:

- 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;
- details of the improvements that the proposals will bring in respect of:
 - access to education and associated services including the curriculum, wider school activities, facilities and equipment with reference to the local authority's Accessibility Strategy;
 - access to specialist staff, both education and other professionals, including any external support or outreach services;
 - access to suitable accommodation; and
 - supply of suitable places.

Single sex school

Where the school is to admit pupils of a single sex:

- evidence of local demand for single sex education and how this will be met if the proposals are approved; and
- 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 the Education Act 2002 (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.

Location and costs

A statement about:

- the area or particular community or communities which the new school is expected to serve;
- the location of the site or sites including, where appropriate, the postal address or addresses;
- 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;
- 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;
- 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);
- whether planning permission is needed under the Town and Country Planning Act 1990, and when it is anticipated that it will be obtained; and
- confirmation from the local authority (or Secretary of State, as the case may be) that funds will be made available (including costs to cover any necessary site purchase).

Travel

Details regarding 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:

- details of the trusts on which the site is to be held; and
- 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:

- whether it will have a foundation and if so, the name or proposed name of the foundation;
- the rationale for the foundation and the particular ethos that it will bring to the school;
- the details of membership of the foundation, including the names of the members;
- the proposed constitution of the governing body; and
- details of the foundation's charitable objects.

Independent schools entering the maintained sector

Where a school is an independent school entering the maintained sector:

- a statement as to whether the premises will meet the requirements of the School Premises (England) Regulations 2012 and, if not:
 - details of how the premises are deficient; and
 - details of how it is intended to remedy the deficiency.

It would also be helpful for the proposer to confirm a statement that the following requirements are met:

- it is proposed that the independent school should continue in existence but should then close as an independent school immediately before the proposals are implemented.



Department
for Education

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