

department for
children, schools and families

Decision Makers' Guidance
(Local Authorities and Schools
Adjudicator) for:

Making Changes to a Maintained Mainstream School (Other than Expansion)

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This guidance is extracted, for ease of reference by decision makers, from the full version of the “Making Changes to a Maintained Mainstream School (Other than Expansion)” guide. The statutory guidance sections are indicated by shading.

Stage 4 – Decision

4.1. Decisions on school organisation proposals are taken by the LA or by the schools adjudicator. In this chapter both are covered by the form of words “Decision Maker”.

4.2 Section 21 of EIA 2006 provides for regulations to set out who should decide proposals for any prescribed alterations. The School Organisation (Prescribed Alterations to Maintained Schools)(England) Regulations 2007 (SI: 2007 No. 1289) make detailed provision for the consideration of prescribed alteration proposals (see in particular Schedules 3 and 5). Most decisions will be taken by the LA with some rights of appeal to the schools adjudicator.

4.3 The Department does not prescribe the process by which an LA carries out their decision-making function (e.g. full Cabinet or delegation to Cabinet member or officials). This is a matter for the LA to determine but the requirement to have regard to statutory guidance (see paragraph 4.15 below) applies equally to the body or individual that takes the decision.

4.4 If the LA fails to decide proposals within 2 months of the end of the representation period the LA **must** forward proposals, and any received representations (i.e. not withdrawn in writing), to the schools adjudicator for decision. They **must** forward the proposals within one week of the end of the 2 month period.

Who Can Appeal Against an LA Decision?

4.5 The following bodies may appeal against an LA decision on alteration proposals:

the local Church of England diocese;

the bishop of the local Roman Catholic diocese;

where the school provides education for pupils aged 14 and over - the Learning and Skills Council; and

the governors and trustees of the foundation or voluntary school.

4.6 Appeals **must** be submitted to the LA within 4 weeks of the LA’s decision. The LA **must** then send the proposals, and the comments and objections received, to the schools adjudicator within 1 week of the receipt of the appeal. The LA should also send a copy of the minutes of the LA’s meeting or other record of the decision and any relevant papers. Where the

proposals are “related” to other proposals, all the “related” proposals should be sent to the schools adjudicator.

Checks on Receipt of Statutory Proposals

4.7 There are 4 key issues which the Decision Maker should consider before judging the respective factors and merits of the statutory proposals:

- a. Is any information missing? If so, the Decision Maker should write immediately to the proposer/promoter specifying a date by which the information must be provided.
- b. Does the published notice comply with statutory requirements? (see paragraph 4.8 below).
- c. Has the statutory consultation been carried out prior to the publication of the notice? (see paragraph 4.9 below).
- d. Are the proposals linked or “related” to other published proposals? (see paragraphs 4.10 to 4.14 below).

Does the Published Notice Comply with Statutory Requirements?

4.8 The Decision Maker should consider whether the notice is valid as soon as a copy is received. Where a published notice does not comply with statutory requirements - as set out in The School Organisation (Prescribed Alterations)(England) Regulations 2007 (SI:2007 No.1289) (as amended) - it may be judged invalid and the Decision Maker should consider whether they can decide the proposals.

Has the Statutory Consultation Been Carried Out Prior to the Publication of the Notice?

4.9 Details of the consultation should be included in the proposals. The Decision Maker should be satisfied that the consultation meets statutory requirements (see Stage 1 paragraphs 1.2 – 1.5). If some parties submit objections on the basis that consultation was not adequate, the Decision Maker may wish to take legal advice on the points raised. If the requirements have not yet been met, the Decision Maker may judge the proposals to be invalid and should consider whether they can decide the proposals. Alternatively the Decision Maker may take into account the sufficiency and quality of the consultation as part of their overall judgement of the proposals as a whole.

Are the Proposals Related to Other Published Proposals?

4.10 Paragraph 35 of Schedule 3, and Paragraph 35 of Schedule 5, to The School Organisation (Prescribed Alterations to Maintained Schools)(England) Regulations 2007 (as amended) provides that any proposals that are “related” to particular proposals **must** be considered together. Paragraphs 4.11-4.14 provide statutory guidance on whether proposals should be regarded as

“related”.

4.11 Generally, proposals should be regarded as “related” if they are included on the same notice (unless the notice makes it clear that the proposals are not “related”). Proposals should be regarded as “related” if the notice makes a reference to a link to other proposals. If the statutory notices do not confirm a link, but it is clear that a decision on one of the proposals would be likely to directly affect the outcome or consideration of the other, the proposals should be regarded as “related”.

4.12 Where proposals are “related”, the decisions should be compatible e.g. if one set of proposals is for the removal of provision, and another is for the establishment or enlargement of provision for displaced pupils, both should be approved or rejected.

4.13 Where proposals for an expansion of a school are “related” to proposals published by the local LSC which are to be decided by the Secretary of State, the Decision Maker should defer taking a decision until the Secretary of State has taken a decision on the LSC proposals. This applies where proposals before the Decision Maker concern:

- a. the school that is the subject of the LSC proposals;
- b. any other secondary school, maintained by the same LA that maintains a school that is the subject of the LSC proposals; or
- c. any other secondary school in the same LA area as any FE college which is the subject of the LSC proposals.

4.14 The proposals will be regarded as “related” if their implementation would prevent or undermine effective implementation of the LSC proposals.

Statutory Guidance – Factors to be Considered by Decision Makers

4.15 Regulation 8 of The School Organisation (Prescribed Alterations to Maintained Schools)(England) Regulations 2007 (as amended) provides that both the LA and schools adjudicator **are required** to have regard to guidance issued by the Secretary of State when they take a decision on proposals. Paragraphs 4.16 to 4.60 below contain the statutory guidance.

4.16 The following factors should not be taken to be exhaustive. Their importance will vary, depending on the type and circumstances of the proposals. All proposals should be considered on their individual merits.

EFFECT ON STANDARDS AND SCHOOL IMPROVEMENT

A System Shaped by Parents

4.17 The Government’s aim, as set out in the Five Year Strategy for Education and Learners and the Schools White Paper *Higher Standards, Better Schools For All*, is to create a schools system shaped by parents which

delivers excellence and equity. In particular, the Government wishes to see a dynamic system in which:

weak schools that need to be closed are closed quickly and replaced by new ones where necessary;

the best schools are able to expand and spread their ethos and success; and

new providers have the opportunity to share their energy and talents by establishing new schools – whether as voluntary schools, Trust schools or Academies – and forming Trust for existing schools.

4.18 The EIA 2006 amends the Education Act 1996 to place new duties on LAs to secure diversity in the provision of schools and to increase opportunities for parental choice when planning the provision of schools in their areas. In addition, LAs are under a specific duty to respond to representations from parents about the provision of schools, including requests to establish new schools or make changes to existing schools. The Government's aim is to secure a more diverse and dynamic schools system which is shaped by parents. The Decision Maker should take into account the extent to which the proposals are consistent with the new duties on LAs.

Standards

4.19 The Government wishes to encourage changes to local school provision where it will boost standards and opportunities for young people, whilst matching school place supply as closely as possible to pupils' and parents' needs and wishes.

4.20 Decision Makers should be satisfied that proposals for changes to a school's provision will contribute to raising local standards of provision, and will lead to improved attainment for children and young people. They should pay particular attention to the effects on groups that tend to under-perform including children from certain ethnic groups, children from deprived backgrounds and children in care, with the aim of narrowing attainment gaps.

4.21 Decision Makers should be satisfied that when proposals lead to children being displaced, any alternative provision will meet the statutory SEN improvement test (see paragraphs 4.53 - 4.59).

Diversity

4.22 The Government's aim is to transform our school system so that every child receives an excellent education – whatever their background and wherever they live. A vital part of the Government's vision is to create a more diverse school system offering excellence and choice, where each school has a strong ethos and sense of mission and acts as a centre of excellence or specialist provision.

4.23 Decision Makers should consider how proposals will contribute to local

diversity. They should consider the range of schools in the relevant area of the LA and whether the expansion of the school will meet the aspirations of parents, help raise local standards and narrow attainment gaps.

Every Child Matters

4.24. The Decision Maker should consider how proposals will help every child and young person achieve their potential in accordance with Every Child Matters' principles which are: to be healthy; stay safe; enjoy and achieve; make a positive contribution to the community and society; and achieve economic well-being. This should include considering how the school will provide a wide range of extended services, opportunities for personal development, access to academic and vocational training, measures to address barriers to participation and support for children and young people with particular needs, e.g. looked after children or children with special educational needs (SEN) and disabilities.

SCHOOL CHARACTERISTICS

Boarding Provision

4.25 In making a decision on proposals that make changes to boarding provision, the Decision Maker should consider whether or not there would be a detrimental effect on the sustainability of boarding at another state maintained boarding school within one hour's travelling distance of the proposed school.

4.26 In making a decision on proposals to introduce new boarding places the Decision Maker should consider:-

- a. the extent to which boarding places are over subscribed at any state maintained boarding school within an hour's travelling distance of the school;
- b. the extent to which the accommodation at the school can provide the new boarding places;
- c. the extent to which the expansion of boarding places will help placements of pupils with an identified boarding need; and
- d. the impact of the expansion on a state maintained boarding school within one hour's travelling distance from the school which may be undersubscribed.

4.27. In making a decision on proposals to remove boarding provision, the Decision Maker should consider whether there is a state maintained boarding school within one hour's travelling distance from the school. The Decision Maker should consider whether there are satisfactory alternative boarding arrangements for those currently in the school and those who may need boarding places in the foreseeable future, including the children of service families.

Equal Opportunity Issues

4.28 The Decision Maker should consider whether there are any sex, race or disability discrimination issues that arise from the changes being proposed, for example that there is equal access to single sex provision for the other sex to meet parental demand. Similarly there needs to be a commitment to provide access to a range of opportunities which reflect the ethnic and cultural mix of the area, while ensuring that such opportunities are open to all.

NEED FOR PLACES

Provision for Displaced Pupils

4.29 Where proposals will remove provision, the Decision Maker should be satisfied that there is sufficient capacity to accommodate displaced pupils in the area, taking into account the overall supply and likely future demand for places. The Decision Maker should consider the quality and popularity with parents of the schools in which spare capacity exists and evidence of parents' aspirations for those schools.

Creating Additional Places

4.30 Where proposals will increase provision, the Decision Maker should consider the supporting evidence presented for the increase. The Decision Maker should take into account the existence of spare capacity in neighbouring schools, but also the quality and popularity with parents of the schools in which spare capacity exists and evidence of parents' aspirations for places in particular schools. The existence of surplus capacity in neighbouring less popular or successful schools should not in itself prevent the addition of new places.

4.31 Where the school has a religious character, or follow a particular philosophy, the Decision Maker should be satisfied that there is satisfactory evidence of sufficient demand for places for the school to be sustainable.

4.32 Where proposals will add to surplus capacity but there is a strong case for approval on parental preference and standards grounds, the presumption should be for approval. The LA in these cases will need to consider parallel action to remove the surplus capacity thereby created.

Travel and Accessibility for All

4.33 In considering proposals for the reorganisation of schools, Decision Makers should satisfy themselves that accessibility planning has been properly taken into account. Facilities are to be accessible by those concerned, by being located close to those who will use them, and the proposed changes should not adversely impact on disadvantaged groups.

4.34 In deciding statutory proposals, the Decision Maker should bear in mind that proposals should not have the effect of unreasonably extending

journey times or increasing transport costs, or result in too many children being prevented from travelling sustainably due to unsuitable routes e.g. for walking, cycling etc. The EIA 2006 provides extended free transport rights for low income groups – see Home to School Travel and Transport Guidance re 00373 – 2007BKT-EN at www.teachernet.gov.uk/publications . Proposals should also be considered on the basis of how they will support and contribute to the LA's duty to promote the use of sustainable travel and transport to school.

16-19 Provision

4.35 The pattern of 16-19 provision differs across the country. Many different configurations of school and college provision deliver effective 14-19 education and training. An effective 14-19 organisation has a number of key features:

- standards and quality: the provision available should be of a high standard – as demonstrated by high levels of achievement and good completion rates;
- progression: there should be good progression routes for all learners in the area, so that every young person has a choice of the full range of options within the 14-19 entitlement, with institutions collaborating as necessary to make this offer. All routes should make provision for the pastoral, management and learning needs of the 14-19 age group;
- participation: there are high levels of participation in the local area; and,
- learner satisfaction: young people consider that there is provision for their varied needs, aspirations and aptitudes in a range of settings across the area.

4.36 Where standards and participation rates are variable, or where there is little choice, meaning that opportunity at 16 relies on where a young person went to school, the case for reorganisation, or allowing high quality providers to expand, is strong.

4.37 Where standards and participation rates are consistently high, collaboration is strong and learners express satisfaction that they have sufficient choice, the case for a different pattern of provision is less strong. The Decision Maker therefore will need to take account of the pattern of 16-19 provision in the area and the implications of approving new provision.

Conflicting Sixth Form Reorganisation Proposals

4.38 Where the implementation of reorganisation proposals by the LSC conflict with other published proposals put to the Decision Maker for decision, the Decision Maker is prevented (by the School Organisation Proposals by the LSC for England Regulations 2003) from making a decision on the “related” proposals until the Secretary of State has decided the LSC proposals (see paragraphs 4.13 to 4.14 above).

LSC Proposals to Remove Inadequate School Sixth Forms

4.39 The Learning and Skills Act 2000 (as amended by the Education Act 2005) gives the LSC powers to propose the closure of a school sixth form which has been judged to require Significant Improvement in two consecutive Ofsted inspections. Where a school sixth form is proposed for closure in such circumstances there should be a presumption to approve the proposals, subject to evidence being provided that the development will have a positive impact on standards.

SCHOOL CATEGORY CHANGES

Change to VA category

4.40 If a school proposes to change category to voluntary aided, the Decision Maker must be satisfied that the governing body are able and willing to meet their financial responsibilities for building work. The Decision Maker may wish to consider whether the governing body has access to sufficient funds to enable it to meet 10% of its overall liabilities for at least 5 years from the date of implementation, taking into account anticipated building projects.

Foundation Bodies

4.41 Where a school proposes to change category to become a voluntary school and simultaneously join an existing foundation body, or to propose the establishment of a new foundation body (see paragraph 15 to 20 of the Introduction), any approval for change of category proposals must be subject to a condition that the Secretary of State approves the foundation body (see paragraph 4.62).

Change to Foundation

4.42 Proposals to change category and acquire a foundation (i.e. to become a Trust School) should be considered according to separate Decision Making guidance contained in the Guide to becoming a Trust School. Proposals to change category to foundation, but not acquire a trust, must be considered on their merits. The Government wants to see more schools become self governing and benefit from the freedom this offers e.g. to control their own assets, employ their own staff and set their own admission criteria.

FUNDING AND LAND

Capital

4.43 The Decision Maker should be satisfied that any capital required to implement the proposals will be available. Normally, this will be some form of written confirmation from the source of funding on which the promoters rely (e.g. the LA, DCSF, or LSC). In the case of an LA, this should be from an authorised person within the LA, and provide detailed information on the funding, provision of land and premises etc.

4.44 There can be no assumption that the approval of proposals will trigger the release of capital funds from the Department, unless the Department has previously confirmed in writing that such resources will be available; not can any allocation 'in principle' be increased. In such circumstances the proposals should be rejected, or consideration of them deferred until it is clear that the capital necessary to implement the proposals will be provided.

4.45 Proposals should not be approved conditionally upon funding being made available, subject to the following specific exceptions. For proposals being funded under the Private Finance Initiative (PFI) or through the Building Schools for the Future (BSF) programme, the Decision Maker should be satisfied that funding has been agreed 'in principle', but the proposals should be approved conditionally on the entering into of the necessary agreements and the release of funding. A conditional approval will protect proposers so that they are not under a statutory duty to implement the proposals until the relevant contracts have been signed and/or funding is finally released

Capital Receipts

4.46 Where the implementation of proposals may depend on capital receipts from the disposal of land used for the purposes of a school (i.e. including one proposed for closure in "related" proposals) the Decision Maker should confirm whether consent to the disposal of land is required, or an agreement is needed, for disposal of the land. Current requirements are:

a. Community Schools – the Secretary of State's consent is required under paragraph 2 of Schedule 35A to the Education Act 1996 and, in the case of playing field land, under section 77 of the Schools Standards and Framework Act 1998 (SSFA 1998). (Details are given in DfES Guidance 1017-2004 *The Protection of School Playing Fields and Land for Academies* published in November 2004).

b. Foundation and Voluntary Schools:

(i) playing field land – the governing body, foundation body or trustees will require the Secretary of State's consent, under section 77 of the SSFA 1998, to dispose, or change the use of any playing field land that has been acquired and/or enhanced at public expense.

(ii) non-playing field land or school buildings – the governing body, foundation body or trustees will no longer require the Secretary of State's consent to dispose of surplus non-playing field land or school buildings which have been acquired or enhanced in value by public funding. They will be required to notify the LA and seek local agreement of their proposals. Where there is no local agreement, the matter should be referred to the School Adjudicator to determine. (*Details of the new arrangements can be found in the Department's guidance ['The Transfer and Disposal of School Land](#)*)

[in England: A General Guide for Schools, Local Authorities and the Adjudicator](http://publications.teachernet.gov.uk/default.aspx?PageFunction=productdetails&PageMode=spectrum&ProductId=DfE-1017-2004&)).
<http://publications.teachernet.gov.uk/default.aspx?PageFunction=productdetails&PageMode=spectrum&ProductId=DfE-1017-2004&>

4.47 Where proposals are dependent upon capital receipts of a discontinuing foundation or voluntary school the governing body is required to apply to the Secretary of State to exercise his various powers in respect of land held by them for the purposes of the school. Normally he would direct that the land be returned to the LA but he could direct that the land be transferred to the governing body of another maintained school (or the temporary governing body of a new school). Where the governing body fails to make such an application to the Secretary of State, and the school subsequently closes, all land held by them for the purposes of the discontinued school will, on dissolution of the governing body, transfer to the LA unless the Secretary of State has directed otherwise before the date of dissolution.

4.48 Where consent to the disposal of land is required, but has not been obtained, the Decision Maker should consider issuing a conditional approval for the statutory proposals so that the proposals gain full approval automatically when consent to the disposal is obtained.

New Site or Playing Fields

4.49 Proposals dependent on the acquisition of an additional site or playing field may not receive full approval but should be approved conditionally upon the acquisition of a site or playing field.

Land Tenure Arrangements

4.50 For the expansion of voluntary or foundation schools it is desirable that a trust holds the freehold interest in any additional site that is required for the expansion. Where the trustees of the voluntary or foundation school hold, or will hold, a leasehold interest in the additional site, the Decision Maker will need to be assured that the arrangements provide sufficient security for the school. In particular the leasehold interest should be for a substantial period – normally at least 50 years – and avoid clauses which would allow the leaseholder to evict the school before the termination of the lease. The Decision Maker should also be satisfied that a lease does not contain provisions which would obstruct the governing body or the headteacher in the exercise of their functions under the Education Acts, or place indirect pressures upon the funding bodies.

School Playing Fields

4.51 The Education (School Premises) Regulations 1999 set out the standards for school premises, including minimum areas of team game playing fields to which schools should have access. The Decision Maker will need to be satisfied that either:

- a. the premises will meet minimum requirements of The Education (School Premises) Regulations 1999; or
- b. if the premises do not meet those requirements, the proposers have secured the Secretary of State's agreement in principle to grant a relaxation.

4.52 Where the Secretary of State has given 'in principle' agreement as at paragraph 4.46(b) above, the Decision Maker should consider issuing conditional approval so that when the Secretary of State gives his agreement, the proposals will automatically gain full approval.

SPECIAL EDUCATIONAL NEEDS (SEN) PROVISION

Initial Considerations

4.53 When reviewing SEN provision, planning or commissioning alternative types of SEN provision or considering proposals for change LAs should aim for a flexible range of provision and support that can respond to the special educational needs of individual pupils and parental preferences, rather than necessarily establishing broad categories of provision according to special educational need or disability. There are a number of initial considerations for LAs to take account of in relation to proposals for change. They should ensure that local proposals:

- i. take account of parental preferences for particular styles of provision or education settings;
- ii. offer a range of provision to respond to the needs of individual children and young people, taking account of collaborative arrangements (including between special and mainstream), extended school and Children's Centre provision; regional centres (of expertise) and regional and sub-regional provision; out of LA day and residential special provision;
- iii. are consistent with the LA's Children and Young People's Plan;
- iv. take full account of educational considerations, in particular the need to ensure a broad and balanced curriculum, including the National Curriculum, within a learning environment in which children can be healthy and stay safe;
- v. support the LA's strategy for making schools and settings more accessible to disabled children and young people and their scheme for promoting equality of opportunity for disabled people;
- vi. provide access to appropriately trained staff and access to specialist support and advice, so that individual pupils can have the fullest possible opportunities to make progress in their learning and participate in their school and community;

- vii. ensure appropriate provision for 14-19 year-olds, taking account of the role of local LSC funded institutions and their admissions policies; and
- viii. ensure that appropriate full-time education will be available to all displaced pupils. Their statements of special educational needs will require amendment and all parental rights must be ensured. Other interested partners, such as the Health Authority should be involved

4.54 Taking account of the considerations, as set out above, will provide assurance to local communities, children and parents that any reorganisation of SEN provision in their area is designed to improve on existing arrangements and enable all children to achieve the five Every Child Matters outcomes.

The Special Educational Needs Improvement Test

4.55 When considering any reorganisation of SEN provision, including that which might lead to some children being displaced through closures or alterations, LAs, and all other proposers for new schools or new provision, will need to demonstrate to parents, the local community and Decision Makers how the proposed alternative arrangements are likely to lead to improvements in the standard, quality and/or range of educational provision for children with special educational needs. All consultation documents and reorganisation plans that LAs publish and all relevant documentation LAs and other proposers submit to Decision Makers should show how the key factors set out in paragraphs 4.56 to 4.59 below have been taken into account. Proposals which do not credibly meet these requirements should not be approved and Decision Makers should take proper account of parental or independent representations which question the LA's own assessment in this regard.

Key Factors

4.56 When LAs are planning changes to their existing SEN provision, and in order to meet the requirement to demonstrate likely improvements in provision, they should:

- identify the details of the specific educational benefits that will flow from the proposals in terms of:
 - a) improved access to education and associated services including the curriculum, wider school activities, facilities and equipment, with reference to the LA's Accessibility Strategy;
 - b) improved access to specialist staff, both education and other professionals, including any external support and/or outreach services;
 - c) improved access to suitable accommodation; and
 - d) improved supply of suitable places.
- LAs should also:

- i. obtain a written statement that offers the opportunity for all providers of existing and proposed provision to set out their views on the changing pattern of provision seeking agreement where possible;
- ii. clearly state arrangements for alternative provision. A 'hope' or 'intention' to find places elsewhere is not acceptable. Wherever possible, the host or alternative schools should confirm in writing that they are willing to receive pupils, and have or will have all the facilities necessary to provide an appropriate curriculum;
- iii. specify the transport arrangements that will support appropriate access to the premises by reference to the LA's transport policy for SEN and disabled children; and
- iv. specify how the proposals will be funded and the planned staffing arrangements that will be put in place.

4.57 It is to be noted that any pupils displaced as a result of the closure of a BESD school (difficulties with behavioural, emotional and social development) should not be placed long-term or permanently in a Pupil Referral Unit (PRU) if a special school place is what they need. PRUs are intended primarily for pupils who have been excluded, although LAs can and do use PRU provision for pupils out of school for other reasons such as illness and teenage pregnancies. There may of course be pupils who have statements identifying that they have BESD who have been placed appropriately in a PRU because they have been excluded; in such cases the statement **must** be amended to name the PRU, but PRUs should not be seen as an alternative long-term provision to special schools.

4.58 The requirement to demonstrate improvements and identify the specific educational benefits that flow from proposals for new or altered provision as set out in the key factors are for all those who bring forward proposals for new special schools or for special provision in mainstream schools including governors of foundation schools and foundation special schools. The proposer needs to consider all the factors listed above.

4.59 Decision Makers will need to be satisfied that the evidence with which they are provided shows that LAs and/or other proposers have taken account of the initial considerations and all the key factors in their planning and commissioning in order to meet the requirement to demonstrate that the reorganisation or new provision is likely to result in improvements to SEN provision.

OTHER ISSUES

Views of Interested Parties

4.60 The Decision Maker should consider the views of all those affected by the proposals or who have an interest in them including: pupils; families of pupils; staff; other schools and colleges; local residents; diocesan bodies and other providers; LAs; the LSC (where proposals affect 14-19 provision) and the Early Years Development and Childcare Partnership if one exists, or any local partnership or group that exists in place of an EYDCP (where proposals

affect early years and/or childcare provision). This includes statutory objections and comments submitted during the representation period. The Decision Maker should not simply take account of the numbers of people expressing a particular view when considering representations made on proposals. Instead the Decision Maker should give the greatest weight to representations from those stakeholders likely to be most directly affected by the proposals.

Types of Decision

4.61 In considering proposals, the Decision Maker can decide to:

reject the proposals;

approve the proposals;

approve the proposals with a modification (e.g. the proposal implementation date); or

approve the proposals subject to them meeting a specific condition (see paragraph 4.62 below).

Conditional Approval

4.62 The regulations provide for a conditional approval to be given where the Decision Maker is otherwise satisfied that the proposals can be approved, and approval can automatically follow an outstanding event. Conditional approval can only be granted in the limited circumstances specified in the regulations i.e. as follows:

- a. the grant of planning permission under Part 3 of the Town and Country Planning Act 1990;
- b. the acquisition of the site required for the implementation of the proposals;
- c. the acquisition of playing fields required for the implementation of the proposals;
- d. the securing of any necessary access to a site referred to in sub-paragraph (b) or playing fields referred to in sub-paragraph (c);
- e. the private finance credit approval given by the Department for Children, Schools and Families following the entering into a private finance contract by an LA;
- f. the entering into an agreement for any necessary building project supported by the Department for Children, Schools and Families in connection with the programme known as “Building Schools for the Future”;

- g. in the case of mainstream schools, the agreement to any change to the admission arrangements of any other school or schools, as specified in the approval;
- h. the making of any scheme relating to any charity connected with the school;
- i. the formation of any federation (within the meaning of section 24(2) of the 2002 Act) of which it is intended that the school should form part, or the fulfilling of any other condition relating to the proposed school forming part of a federation;
- j. the Secretary of State giving approval under regulation 5(4) of the Education (Foundation Body) (England) Regulations 2000 that the school should form part of a group for which a foundation body act;
- k. the Secretary of State making a declaration under regulation 22(3) of the Education (Foundation Body) (England) Regulations 2000 that the school should form part of a group for which a foundation body acts;
- l. where the proposals depend upon any of the events specified in paragraphs (a) to (k) occurring by a specified date for any other school or proposed school, the occurrence of such an event; and
- m. where proposals are related to proposals for the establishment of new schools or discontinuance of schools, and those proposals depend on the occurrence of events specified in regulation 20 of the School Organisation (Establishment and Discontinuance of Schools) (England) Regulations 2007(1) the occurrence of such an event.

4.63 The Decision Maker **must** set a date by which the condition should be met but will be able to modify the date if the proposers confirm, before the date expires, that the condition will be met later than originally thought. The proposer should inform the Decision Maker and the Department (SOU Unit, Mowden Hall, Darlington DL3 9BG or by e-mail to school.organisation@dfes.gsi.gov.uk) when a condition is met. If a condition is not met by the date specified, the proposals should be referred back to the Decision Maker for fresh consideration.

Decisions

4.64 All decisions **must** give reasons for the decision, irrespective of whether the proposals were rejected or approved, indicating the main factors/criteria for the decision.

4.65 A copy of all decisions **must** be forwarded to:

(1) S.I. 2007/1288.

the LA or governing body who published the proposals;

the trustees of the school (if any);

the Secretary of State (via the School Organisation Unit, DCSF, Mowden Hall, Darlington DL3 9BG or by e-mail to school.organisation@dfes.gsi.gov.uk);

where the school includes provision for 14-16 education or sixth form education, the LSC;

the local CofE diocese;

the bishop of the RC diocese;

each objector except where a petition has been received. Where a petition is received a decision letter should be sent to the person who submitted the petition, or where this is unknown, the signatory whose name appears first on the petition; and

where the school is a special school, the relevant primary care trust and NHS trust or NHS foundation trust.

4.66 In addition, where proposals are decided by the LA, a copy of the decision **must** be sent to the Office of the Schools Adjudicator, Mowden Hall, Darlington DL3 9BG. Where proposals are decided by the schools adjudicator, a copy of the decision **must** be sent to the LA that it is proposed should maintain the school.

Can proposals be withdrawn?

4.67 Proposals can be withdrawn at any point before a decision is taken. Written notice must be given to the LA, or governing body, if the proposals were published by the LA. Written notice must also be sent to the schools adjudicator (if proposals have been sent to him) and the Secretary of State – i.e. via the School Organisation Unit, DCSF, Mowden Hall, Darlington DL3 9BG or by e-mail to school.organisation@dfes.gsi.gov.uk Written notice must also be placed at the main entrance to the school, or all the entrances if there are more than one.

Transitional Exemption Order – Role of Decision Maker

4.68 Single sex schools are not required to comply with certain provisions of the Sex Discrimination Act (SDA) 1975. When a single sex school becomes mixed it will automatically become subject to those requirements. Since the change from single sex to co-educational would normally be phased over a period of years by changing the admission arrangements to allow the admission of both sexes, the school would not be able to comply fully with the SDA requirements for some years. Transitional Exemption Orders relax the requirement to comply during the period before the school becomes wholly co-educational.

4.69 Where the Decision Maker receives statutory proposals to alter a single sex school to become co-educational, they should treat the proposals as an application for a Transitional Exemption Order and make the order if they approve the proposals.

Stage 5 – Implementation

5.1 The proposers are under a statutory duty to implement any proposals which an LA or schools adjudicator has approved. The proposals **must** be implemented as published, taking into account any modifications made by the Decision Maker. The following bodies are responsible for the implementation of proposals:

Type of School	Body that published proposals	Duty to implement
Community	LA	LA
Foundation	Proposers	LA and the proposers as set out in published proposals
	LA	LA
Voluntary Controlled	Proposers	LA and the proposers as set out in published proposals
Voluntary Aided	Proposers	Proposers but LA to provide playing fields

5.2 The LA **must** provide any additional school site that is required where proposals are approved for a foundation, Trust or voluntary controlled school and **must** convey their interest to the governing body or the trustees as appropriate, except where proposals state that the site will be provided by the proposers. Where proposals are approved for a voluntary aided school, the proposers **must** provide the any additional school site that is required, although the LA may use its power to assist proposers by providing and conveying its interest in a site.

5.3 If the approval was subject to a condition being met by a specified date – proposers **must** ensure that they meet this. If it looks as though it might not be possible to meet the condition by the specified date, the proposer may seek a modification to the condition from the original Decision Maker that decided the proposals.

Can Proposals Be Modified?

5.4 If it proves impossible to implement the proposals as approved, the proposers can seek a modification and must apply to the Decision Maker who decided the proposals. A modification may be made at any time before the implementation date for the proposals.

5.5 The most common modification is to the implementation date. However, proposals cannot be modified to the extent new proposals are substituted for those that have been consulted upon and published. If proposers wish to make a significant change to proposals after they have been approved, they must publish “revocation” proposals to be relieved of the duty to implement the proposals (see paragraphs 5.5-5.9 below) and publish fresh proposals.

5.6 Before modifying proposals the Decision Maker, **must** consult the proposers and the LA, if the LA did not publish the proposals. The proposals must not be modified in a way that would in effect substitute new proposals – this would run the risk of successful legal challenge in the courts. The Secretary of State (via the School Organisation Unit, DCSF, Mowden Hall, Darlington DL3 9BG or by e-mail to school.organisation@dcsf.gsi.gov.uk) must be notified of any modification within one week of the proposal being modified.

Revocation

5.7 If proposers cannot implement approved proposals they **must** publish fresh proposals to be relieved of the duty to implement. The School Organisation (Prescribed Alterations to Maintained Schools)(England) Regulations 2007 (as amended) provide that revocation proposals **must** contain the following information:

a description of the original proposals as published;

the date of the publication of the original proposals;

details of how copies of the original proposals can be obtained; and

a statement as to why it is proposed that the duty to implement proposals should not apply in relation to the original proposals.

5.8 The proposals **must** be published in a local newspaper, and also posted at the main entrance to the school (and all the entrances if there are more than one) and at some other conspicuous place in the area served by the school. The proposals **must** provide for anyone to submit comments and objections on the proposals to the LA within 6 weeks of the proposals being published. The proposers **must** forward a copy of the proposals to the LA within 1 week of publication. Proposers are advised to consult interested parties on the planned revocation proposals before publication although there is no statutory requirement to do so.

5.9 Revocation proposals are decided by the LA, except where the original proposals were decided by the schools adjudicator. Where the proposals were originally decided by the schools adjudicator the LA **must** forward the proposals, and any comments and objections received, to the schools adjudicator within 2 weeks from the end of the representation period. If the LA is to decide proposals they **must** do so within 2 months from the end of the representation period and if not, **must** pass the proposals to the schools adjudicator within 1 week from the end of the 2 month period.

5.10 To approve the proposals the Decision Maker **must** be satisfied that implementation of the original proposals would be unreasonably difficult, or that circumstances have so altered since the original proposals were approved that their implementation would be inappropriate.

5.11 copy of the decision **must** be forwarded to:

the LA or governing body who published the proposals;

the trustees of the school (if any);

the Secretary of State (via the School Organisation Unit, DCSF, Mowden Hall, Darlington DL3 9BG or by e-mail to school.organisation@dfes.gsi.gov.uk);

where the school includes provision for 14-16 education or sixth form education, the LSC;

the local CofE diocese;

the bishop of the RC diocese.

CHANGE OF CATEGORY ISSUES

Responsibility for implementation of other unimplemented proposals

5.12 Where, as a result of VA school changing category, the LA becomes responsible for the implementation of any other previously approved proposals, the Department would continue its support of any agreed capital costs for those proposals, and would be prepared to consider applications from an LA to meet its share of any capital costs which previously fell to the governing body. LAs would also be able to publish statutory proposals to be relieved of the duty to implement approved proposals in respect of the school in its previous category.

Admissions - transitional measures

5.13 The admission authority for a community or voluntary controlled school is the LA, while the admission authority for a voluntary aided or foundation school is the school's governing body. When a school changes category, and the admission authority changes too, any action taken or decisions made by the former authority in its role as the admission authority will, from the implementation date, have effect as if they had been taken by the new admission authority. This means that, for example, where a community school becomes a voluntary aided school, the governing body of the voluntary aided school must honour any admission decisions already taken by the LA about the admission arrangements of the school and any offers of places that have been made or applications that have been refused. Further information about admission arrangements can be found in the School Admissions Code at www.dfes.gov.uk/sacode.

Reconstitution of the governing body

5.14 In changing category the governing body must be reconstituted in a form appropriate to the school's new category and also in accordance with the appropriate instrument of government taking into account the *School Governance (Constitution) (England) Regulations 2007*. A period called the "implementation period" begins when the proposals are decided and ends on the date the proposals are implemented. During this period the LEA and

governing body are required to make a new instrument of government for the school.

5.15 As soon as reasonably practicable after the beginning of the implementation period, and in any case within a period of 3 months after the implementation date, the governing body and LEA are required to reconstitute the governing body. Until the governing body is reconstituted the current governing body continues to exercise its functions in respect of the school.

5.16 In reconstituting the governing body, if a school has surplus governors in one or more of the categories appropriate to the school's new category, unless those surplus governors voluntarily agree to cease to hold office, they shall be removed as follows:

seniority - the governor with the shortest period of service being the first to cease to hold office, the governor with the next shortest period of service being the next to cease to hold office, and so on;

drawing of lots - where governors are of equal seniority, determination of who shall cease to hold office shall be done by drawing lots.

5.17 Where it is proposed that a school should change category and join an existing foundation body, the governing body must also request the LA, when making the school's instrument of government, to name the foundation body as the appointing body for foundation governors. The LA should make the instrument so that the appointment of foundation governors can take effect from the date that the school joins the group. This would be the implementation date of the proposals. In such cases the instrument must be made during the implementation period.

5.18 Where it is proposed that a school should change category and, along with at least two other schools, establish a new foundation body the governing body must also request the LA, when making the school's instrument of government, to name the foundation body as the appointing body for foundation governors. The LA should make the instrument so that the appointment of foundation governors can take effect from the date that the group is established. This could be any period up to 3 months after the implementation date. However the making of the instrument and the establishment of the foundation body must be on the same day, and in accordance with the date specified by the Secretary of State for the establishment of the foundation body.

Staffing

5.19 A change of school category from community or voluntary controlled to voluntary aided will result in a change of employer for the school's staff. Paragraphs 49 to 55 of Schedule 3 to The School Organisation (Prescribed Alterations to Maintained Schools)(England) Regulations 2007 (as amended) provide for all rights, powers, duties and liabilities to transfer from the LA to the governing body. Another consequence of changing category is that anything done by the LA in respect of the employee is considered, from the

implementation date, to have been done by the governing body.

5.20 The effect of these provisions is to protect an individual's employment rights on transfer. Any agreements entered into by the LA or governing body before this date, in respect of an individual's terms and contract of employment must therefore be honoured by the new employer. Equally, if any action is being taken by an employee against the former employer in respect of a liability, duty etc of that employer before a school changes category, the liability transfers to the new employer.

5.21 The governing body should also take account of the "Staff Transfers in the Public Sector" statement of practice which can be accessed at

http://www.civilservice.gov.uk/publications/staff_transfer.asp

Variation of voluntary or foundation school trusts

5.22 The trust of a voluntary or foundation school often makes very specific provisions regarding the conduct of the school and the use of any fund held by the trust for the use of the school and premises. In bringing forward proposals to change category, proposers will need to consider whether the school's current trust allows for the change in category proposed. If in doubt, or if a variation in the trust is clearly necessary, promoters are advised to make early contact with the Charity Commission to apply for the trust to be varied under the relevant trust law.

Land Transfer

5.23 Schedule 3 to The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 (SI: 2007 No. 1289) (as amended) have effect in relation to the transfer of land. Any land transfers will follow the existing patterns of ownership for maintained schools so far as possible and will take place on the implementation date.

5.24 Where a community or a voluntary school becomes a foundation school any land held by an LA for the school transfers automatically to the school's trustees or, if it has no trustees, to the governing body.

Rights to use land

5.25 Where land held by another body was used by a school prior to its change of category (for instance a private playing field, church hall or swimming pool) the rights and liabilities connected with the use of that facility enjoyed by the school prior to the change of category will continue to apply. Therefore, where a community school has, by agreement, been allowed to use a playing field owned by a sports club prior to changing category, the school cannot be disqualified from using the facility merely because of the change in category.

Restrictions on disposing of property

5.26 Once a governing body has given notice to the LA that a motion to

consult on change of category proposals is to be discussed by the governing body, an embargo is placed on an LA, in whom property which is used for the purposes of the school is vested, disposing of that property or ceasing to hold or use it for the school. This embargo lasts until the proposals are decided or withdrawn.

Land excluded from transfer

5.27 Land may be excluded from transfer with the prior written approval of the schools adjudicator. Applications to the adjudicator to exclude land from transfer can be made jointly (where there is agreement) or individually from either party. Applications to exclude land from transfer can only be made during the period between the change of category proposals being approved and the implementation date.

Land Transfer when schools join or form a foundation body

5.28 The Education (Foundation Body) (England) Regulations 2000 provide for the transfer of land and user rights in the case of a school which changes category and forms or joins a foundation body. These regulations provide that land held by the LA or governing body will transfer to and vest in the foundation body.