

Extract of

Decision Makers' Guidance for:

Establishing a  
New Maintained Mainstream  
School

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# ESTABLISHING A NEW MAINTAINED MAINSTREAM SCHOOL - A GUIDE FOR LOCAL AUTHORITIES

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## PART C - Decision Makers' Guidance on Establishing a New School

This guidance is extracted, for ease of reference by decision makers, from the full version of the "Establishing a New Maintained Mainstream School" guide - [www.dcsf.gov.uk/schoolorg/guidance.cfm?id=2](http://www.dcsf.gov.uk/schoolorg/guidance.cfm?id=2). The statutory guidance sections are indicated by shading and the word must in bold.

### PART C

#### **Decision Makers' Guidance on Establishing a New School** (Paragraphs 1-100)

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".

#### **Checks on Receipt of Statutory Proposals** (Paragraph 2)

2. There are 5 key issues which the Decision Maker must 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 specifying a date by which the information must be provided;
  - b. Does the published notice comply with statutory requirements? (see paragraph 3 below);
  - c. Has the statutory consultation been carried out prior to the publication of the notice? (see paragraph 4 below);
  - d. Are the proposals "related" to other published proposals? (see paragraphs 5-9 below); and
  - e. Are the proposals for a new foundation school with a foundation (Trust school) or federation to replace a closing National Challenge school as specified in the Statement of Intent agreed by Ministers. (see paragraph 10 below)

#### **Does the Published Notice Comply with Statutory Requirements?** (Paragraph 3)

3. 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 (Establishment and Discontinuance of Schools)(England) Regulations 2007 (SI:2007 - 1288) (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?** (Paragraph 4)

4. Details of the consultation should be included in the proposals. The Decision Maker must be satisfied that the consultation meets statutory requirements (see paragraphs 1.2-1.5 of Stage 1, [Part A](#) for school competitions and paragraphs 1.2-1.4 of Stage 1, [Part B](#) for other new school proposals). 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 been met, the Decision Maker may judge the proposals to be invalid and should consider

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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?** (Paragraphs 5-9)

5. Paragraph 9 of Schedule 2 to the EIA 2006 provides that any proposals that are “related” to particular proposals (e.g. for a new school, school closure, prescribed alterations to existing schools, or proposals by the LSC to deal with inadequate 16-19 provision proposals) must be considered together. Paragraphs 6 – 9 below provide statutory guidance on whether proposals should be regarded as “related”.

6. 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”. Proposals for a school competition should be considered together with proposals for any school closure or prescribed alterations to an existing school, where there is a clear link.

7. 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 of provision for displaced pupils, both should be approved or rejected.

8. Where proposals for a new 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 the proposals before the Decision Maker concern:

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

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

### **Proposals published for a National Challenge Trust school or National Challenge federation** (Paragraph 10)

10. A new National Challenge Trust school must be a foundation school with a foundation composed of Trust partners agreed with the local authority and the Department in the Statement of Intent, including a strong education partner; the foundation (Trust) must also appoint a majority of governors to the school's governing body. There should be a strong presumption to approve proposals for a National Challenge Trust school or National Challenge federation where a Statement of Intent has been agreed with the Department.

### **Statutory Guidance – Factors to be Considered by Decision Makers** (Paragraphs 11-12)

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11. Paragraphs 8(6) and 17 of Schedule 2 to the EIA 2006 provides that both the LA and schools adjudicator **must** have regard to guidance issued by the Secretary of State when they take a decision on proposals. Paragraphs 12 to 91 below contain the statutory guidance.

12. 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 (Paragraphs 13-14)

13. 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 Trusts for existing schools.

14. The EIA 2006 amends the Education Act 1996 to place 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.

#### School Competitions (Paragraphs 15-16)

15. When considering proposals submitted in response to a competition, the Decision Maker must consider all proposals. All proposals may have different strengths and weaknesses. Decision Makers will need to balance these and decide which proposal best meets the criteria for a new school overall. In addition, they will need to decide which proposals best meet the specific requirements for a new school for the area in question. Where two or more proposals are complementary, and together meet the requirements for the new school, the Decision Maker may approve all these proposals.

16. The specification for the new school is just the minimum requirement and proposals may go beyond this. Where a proposal is not in line with the specification, the Decision Maker should consider the potential impact of the difference. Where additional provision is proposed (e.g. early years or a sixth form) the Decision Maker should first judge the merits of the main proposal (i.e. that meets the original specification) against the other proposals. If the proposal is judged to be the superior proposal, the Decision Maker should consider the additional elements and whether they should be approved. If the Decision Maker considers the additional elements

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cannot be approved they may consider a modification to the proposals but will need first to consult the proposers, the LA and, if the proposals include provision for 14-19 year olds, the LSC.

### **Standards** (Paragraphs 18-19)

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

19. Decision Makers should be satisfied that proposals for a new school 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.

### **Diversity** (Paragraphs 20-26)

20. Decision Makers should be satisfied that new provision that would be recognised by the LA as reserved for children with Special Educational Needs (SEN) will meet the statutory SEN improvement test (see paragraphs 84 to 90).

21. 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.

22. 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 new school will meet the aspirations of parents, help raise local standards and narrow attainment gaps.

23. The Government wishes to enable local communities to benefit from the energy and talents of new providers and to increase parental choice. It is therefore encouraging a wide range of promoters, with a contribution to make to educational standards and diversity, to come forward. These might include parent and community groups, educational charities, voluntary groups including church and faith communities, those offering distinctive educational philosophies, existing schools or consortia of schools. All proposals, from whatever source, should be considered on the basis of their educational merits, the extent of parental demand for the places and what they have to offer the local community.

24. Decision Makers should consider the extent to which proposals for Trust (or foundation) schools, voluntary schools or Academies - both within and outside competitions – will add to the diversity of provision in the area, having regard to the needs and wishes of the local community.

25. The Decision Maker will need to make a judgement on the capability of the proposer based on available evidence. Decision Makers should take account of the track record of providers where they are already associated with schools, but the absence of a track record should not necessarily be grounds for regarding proposals less favourably.

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26. Where delivery of proposals is dependent on a specific arrangement, such as the new school entering into a contract with a particular body, the Decision Maker will need to take a view on the ability of the governing body to enter into a contract of the kind envisaged, and the steps that would need to be taken to do so. For instance, but not exclusively, the Decision Maker would need to be confident that the school was complying with relevant procurement regulations and that the school had considered how they would manage any implications that might arise from the possibility that, as a result of staff not being employed by the governing body or local authority, the majority of the workforce might not be “teachers” (i.e. as defined by section 122 of the Education Act 2002).

### **Fresh Start /Collaborative Restart (Paragraph 27)**

27. A new Fresh Start or Collaborative Restart school, [and National Challenge Trust schools or National Challenge federations], will have clear and specific plans for raising attainment which have been agreed by the Department. There should be a presumption to approve proposals where funding has been agreed by the Department, but the Decision Maker should be satisfied that the places the new school will provide are needed.

### **Every Child Matters (Paragraph 28)**

28. The Decision Maker should consider how the 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 applied learning 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.

## **TYPES OF SCHOOLS**

### **The Importance of Partnerships (Paragraphs 29-30)**

29. The Government wants schools to become self governing and to form relationships with external partners. Foundation schools, VA schools, Trust Schools and Academies are all self governing schools. Within these categories, Trust Schools, VA Schools and Academies all benefit from external partners who can bring energy, expertise and innovation to strengthen governance and help raise standards. In addition, the government believes Trust status can provide a structure to strengthen and sustain collaboration between schools.

30. In considering proposals for a new school the Decision Maker should take into account the Government's views of the benefits of external partnerships.

### **Trust Schools (Paragraphs 31-35)**

31. For Trust schools (foundation schools with a foundation), the Decision Maker should consider whether the necessary statutory requirements relating to Trusts are met or are in progress:

- a. That the necessary work is underway to establish the Trust as a charity and as a body corporate – either as a company limited by guarantee, a

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company limited by shares, by Royal Charter or, once the relevant provisions of the Charities Act 2006 are in place, as a Charitable Incorporated Organisation;

- b. That the objects or purposes of the Trust will be exclusively charitable; that the Trust's charitable objects will include the advancement of education of the pupils of the school; and also that the Trust meets the legal requirement to promote community cohesion in furthering the advancement of such education;
- c. Where LAs are proposed as members of a Trust, that they are to exercise no more than 20% of the total voting rights in accordance with section 23A of the School Standards and Framework Act 1998;
- d. Where LAs are entitled to appoint charity trustees, the number of such trustees and the voting rights exercisable by them do not exceed 20% of the total voting right;
- e. That none of the proposed trustees are disqualified from exercising this function by virtue of:
  - i. Disqualifications under company or charity law;
  - ii. Disqualifications from working with children or young people;
  - iii. Not having obtained a criminal records certificate under section 113A of the Police Act 1997;
  - iv. The Education (Requirement as to Foundations)(England) Regulations 2007 (SI 2007) or any subsequent regulations made by the Secretary of State under section 23A of the School Standards and Framework Act 1998, as inserted by section 33 of the EIA 2006 disqualifying certain persons from acting as charity trustees.
- f. If the proposal is for the Trust to hold a majority on the governing body of the school, a statement that the governing body will set up a Parent Council and the proposed constitution of the Parent Council.

32. The Decision Maker should consider whether the proposal for a Trust School is a good one by considering:

- a. to what extent the proposed partners already have a relationship with other schools; and how those schools perform (though the absence of a track record should not be grounds for regarding proposals less favourably);
- b. to what extent the proposed partners have knowledge of the local community and the specific needs of the area and to what extent the proposal addresses these; and
- c. how the partners propose to identify and appoint governors. What, if any, support would the Trust/foundation give to governors – e.g. training, encouraging exchanges of information on best practice?

This list is not exhaustive. Where proposals identify a particular contribution to be

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made by partners, the Decision Maker will wish to take these features into account on a case by case basis.

33. The Decision Maker should consider the nature of the proposed Trust and also the activities and reputation of the proposed trustees. In particular he should be satisfied that the trustees are not involved in activities that may be considered inappropriate for children and young people (e.g. tobacco, gambling, adult entertainment, alcohol). The reputation of Trust members and proposed trustees should also be in keeping with the charitable objects of a Trust. Trust members and proposed trustees should also not be involved in illegal activities and/or activities which could bring the school into disrepute, but would not otherwise be disqualified under regulations.

34. The following sources may provide information on the history of potential Trust partners:

a. The Health and Safety Executive maintains a public register of convictions, updated on a weekly basis (although with a 9 week lapse between a conviction and a case being added), and on which cases appear for a period of 5 years. Cases subject to appeal are however not published on the database. <http://www.hse-databases.co.uk/prosecutions/>

b. The Charity Commission's Register of Charities, contains a wide range of information about every registered charity, including its name, contact details, email address/website address, governing document, objects, area of benefit, area of operation, registration history: <http://www.charity-commission.gov.uk/registeredcharities/first.asp>

c. The Company House website, provides access to information about registered companies: <http://wck2.companieshouse.gov.uk/9269be9e958913c3412a4360e6158408/wcframe?name=accessCompanyInfo>

35. Decision Makers should consider the impact of the Trust on educational standards in the new school. In particular they should consider the particular expertise and background of Trust members in relation to the overall ethos proposed for the school, and in relation to the needs of an area. How would the Trust utilise relevant leadership and/or experience in order to contribute to raising standards?

### **Foundation Body** (Paragraph 36)

36. Foundation and Voluntary schools may establish foundation bodies to be responsible for the land and assets of a group of schools, in accordance with the provisions of section 21 of the School Standards and Framework Act 1998. A foundation body is a distinct type of statutory foundation and is not to be confused with a Trust. Proposals may therefore include a reference to plans to establish a new foundation body or join an existing body. Where the proposals include a reference to the need to establish a new foundation body, an approval should be conditional upon the Secretary of State approving the establishment of that body by a certain date.

### **Academies** (Paragraphs 37-38)

37. Statutory proposals are not required to establish a new Academy but proposals for a new Academy may be received in response to a school competition run by the LA. If one of the proposals is for an Academy, the LA should consult the

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Secretary of State within one week of receiving the proposals. The Secretary of State will then confirm whether or not he would be willing in principle to commence negotiations with a view to entering into an agreement for establishing an Academy. Following a response from the Secretary of State that he would be willing in principle to commence negotiations the Decision Maker can consider all the proposals submitted, including the Academy. If the Secretary of State is not willing in principle to commence negotiations the Academy proposals must be rejected.

38. The key focus of Government funding for the Academy programme is on deprived areas with a history of poor educational standards and on new schools to replace weak or failing schools. Therefore, Decision Makers may consider proposals for an Academy to be particularly appropriate where the new school would be situated in an area of low standards and/or where the Academy would replace one or more weak or failing schools. However, the Decision Maker should also give equal consideration to Academy proposals in all other circumstances, whether or not standards are low in the locality in question.

### **Independent Schools** (Paragraphs 39-41)

39. If the proposal for the new school is from an existing independent school the Decision Maker will need to consider whether the school has, or would have, a range of suitable staff to meet the school's needs, including sufficient teachers with qualified teacher status.

40. The Decision Maker will also need to consider the suitability of the premises of an independent school to join the maintained sector. They will need to be satisfied that either:

- a. the premises will meet the 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.

41. Where the Secretary of State has given 'in principle' agreement as at paragraph 37 above, the Decision Maker should give conditional approval so that only once the Secretary of State gives his agreement, the proposals will automatically gain full approval and the proposer will be under a statutory duty to implement the proposals as approved. If the condition is not met or modified, the proposals cannot be implemented.

## **SCHOOL CHARACTERISTICS**

### **Boarding Provision** (Paragraph 42)

42. In making a decision on proposals for a new school that includes 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 new school.

### **Grammar Schools** (Paragraph 43)

43. In line with Government policy, that there should be no increase in selection on the basis of academic ability, a new school can only be designated as a grammar school by the Secretary of State where it is being established in place of one or more

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closing grammar schools (section 104 of the Schools Standards and Framework Act refers). Decision Makers should therefore satisfy themselves that if a new school is proposed as a grammar school it is eligible for designation.

### **School Size** (Paragraph 44)

44. Decision Makers should not make blanket assumptions that schools need to be of a certain size before they can be good schools (although the viability and cost-effectiveness of proposals should continue to be one of the factors taken into account). The Decision Maker should also consider the impact on the LA's Schools Budget of the need to provide additional funding to a small school to compensate for its size.

### **Proposed Admission Arrangements** (Paragraph 45)

45. The Decision Maker should confirm that the proposed admission arrangements comply with the law and the mandatory provisions of the School Admissions Code. Where the admissions arrangements are unsatisfactory the proposals should normally be rejected. However, where the Decision Maker would otherwise have been minded to approve the proposals, the Decision Maker should consult the proposer on a proposed modification to the proposals in order that the proposed admission arrangements comply with the Code.

### **National Curriculum** (Paragraphs 46-47)

46. All maintained schools must follow the National Curriculum unless they have secured an exemption for groups of pupils or the school community under section 90 or section 91 of the Education Act 2002, or for individual pupils under section 92 or section 93 of the Education Act 2002. The Decision Maker should be satisfied that the proposed school will provide:

- a. a balanced and broadly based curriculum as required in section 78 of the Education Act 2002;
- b. the National Curriculum, Religious Education, and in the case of a secondary school and those pupils in secondary education in a special school, sex education (as required by section 80 of the Education Act 2002).

47. Academies do not by statute have to follow the National Curriculum. However, when considering proposals for a new Academy, in response to a school competition, the Decision Maker should be satisfied that the proposed Academy would provide a broad and balanced curriculum. This should include English, Mathematics, Science and Information and Communication Technology; the Decision Maker should be satisfied that the Academy will make provision for the teaching of Religious Education and for a daily act of collective worship.

### **Specialist Schools** (Paragraphs 48-50)

48. When a proposal for a new school states that it will have a specialism it is important to take the nature of the proposed specialism into account. Any application from a school for entry into the specialist schools programme will need to be submitted to the Department for Children, Schools and Families (DCSF). However, when considering the proposal for a new school that intends to acquire specialist status the Decision Maker may wish to consider several factors that apply to the

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opening of a specialist school. The Decision Maker should consider whether the proposal demonstrates that the particular specialism is appropriate given all the circumstances.

49. The Decision Maker should consider the location of the new school and the current provision in the area for the proposed specialist subject. For example, if a proposed school wanted to open with a sports specialism in an area where there was already a specialist sports college in close proximity it may be necessary for the proposers to look at a different specialism to ensure that there is a range of options for pupils and parents in the area.

50. It is part of the specialist schools ethos that strong links are made with other local secondary schools, the feeder primary schools and the local community. The Decision Maker should take into account how the proposers intend the school will work with these partners.

### **Extended Schools (Paragraph 51)**

51. As part of the Every Child Matters agenda to improve outcomes for all children the Government wants all schools to provide access to a core offer of extended services by 2010, with half of all primary schools and a third of all secondary schools doing so by 2008. The Government's vision for extended schools is set out clearly in the Extended Schools Prospectus available at [www.teachernet.gov.uk/extendedschools](http://www.teachernet.gov.uk/extendedschools). The core offer will include: a varied menu of interesting activities all year round; parenting support including family learning; 8am-6pm childcare (primary schools only) all year round; swift and easy referral to a range of specialist support services; and community access to the school's sports, arts and ICT facilities including adult learning. Where the provision of a range of extended services is a feature of proposals this should strengthen the case for their approval, provided that the Decision Maker is satisfied that funding will be available.

### **Federations (Paragraph 52)**

52. The Government encourages schools to work together and collaborate or federate in a number of ways where this will improve school standards. This can include a statutory federation where maintained schools federate under a single governing body. Where the proposed new school is to be federated with another school(s) the Decision Maker should consider whether the proposed federation will help to raise standards. Approval of the proposals should be conditional upon the formation of the federation by a specified date.

### **Equal Opportunity Issues (Paragraph 53)**

53. 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 where there is a proposed change to single sex provision in an area, there is equal access to single sex provision for the other sex to meet parental demand. In considering proposals for an existing independent school to become maintained the Decision Maker should be satisfied that if the school is co-educational it will provide equal opportunities for boys and girls. 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**

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### **Creating Additional Places** (Paragraphs 54-56)

54. The Decision Maker should consider whether there is a need for the new school. The Decision Maker should consider the evidence presented for any projected increase in pupil population such as planned housing development. The Decision Maker should take into account not only 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 a new school. The existence of surplus capacity in neighbouring less popular or successful schools should not in itself prevent the addition of new places. Assessment of demand should include all potential admissions, not only those from the area of the authority in which the school will be situated.

55. Where the new school will have 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.

56. Where proposals 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.

### **IMPACT ON THE COMMUNITY & TRAVEL**

#### **Community Cohesion and Race Equality** (Paragraphs 57-59)

57. Promoters of new schools should include in their proposals information about how the school will tackle religious, social, racial and cultural division and meet the statutory duties to promote community cohesion and well-being. When considering proposals for new schools, the Decision Maker should be satisfied that the proposals will meet the statutory duty on schools to promote community cohesion and consider the potential impact on other schools in the area. In particular, consideration should be given to how the school will:

- a. promote and contribute to community cohesion;
- b. increase inclusion and equality of access for all social groups; and
- c. establish and maintain partnerships and collaborations with other schools, colleges and training providers.

58. This will need to be considered on a case by case basis, taking account of the community that the new school will serve and the views of different sections within the community. There is no single model of school inclusiveness which can be applied to all circumstances - prime consideration should be the needs of the particular local community. The Government's guidance on the duty to promote community cohesion provides further information on the duty and case studies demonstrating a range of best practice from schools in different circumstances.

59. The Decision Maker will need to consider the views of the local community, the commitment of the new school proposers and their own assessment of the robustness of the proposed means for achieving inclusiveness. Proposals for new faith schools should be judged on the same basis as proposals for other schools. Further DCSF guidance on community cohesion can be found at:

<http://www.teachernet.gov.uk/wholeschool/Communitycohesion/> .

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### Travel and Accessibility for All (Paragraphs 60-61)

60. 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.

61. 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” ref 00373 – 2007BKT-EN at [www.teachernet.gov.uk/publications](http://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.

### SPECIFIC AGE PROVISION ISSUES

#### Early Years Provision (Paragraph 62)

62. In considering any proposals for a new primary school which includes early years provision, or a new nursery school, the Decision Maker should consider whether the proposals will integrate pre-school education with childcare services, and with other services for young children and their families, and lead to the development of sustainable partnerships that allow flexible, responsive provision in accordance with the needs of parents and families.

#### 14-19 Curriculum and Collaboration (Paragraphs 63-64)

63. The Government wants young people to be able to choose from a broad range of general and applied learning options from the age of 14 and to be able to progress through learning at a pace that is right for them. Where necessary, it expects that this should be achieved through increased collaborative working between local providers, including schools, colleges, training providers and employers. Where a new school includes provision for 14-16 year-olds, the Decision Maker should consider the extent to which it will extend the range of options available to students in this age group and enhance the opportunities for collaboration between relevant local providers.

64. Where the age range includes 14-19, the Decision Maker should also be satisfied that the proposed school will work towards offering the 14-19 curriculum entitlement, in collaboration with other local providers.

#### 16-19 Provision (Paragraphs 65-67)

65. 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;

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- 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.

66. 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.

67. 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 (Paragraph 68)**

68. 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 8-9 above).

## **FUNDING & LAND**

### **Capital (Paragraphs 69-72)**

69. The Decision Maker should be satisfied that any land, premises or 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.

70. Where proposers are relying on DCSF as the source of capital funding, 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; nor 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.

71. For competitions the LA will be expected to provide premises and meet the capital costs of implementing the winning proposals, and must include a statement to this effect in the notice inviting proposals. Where the estimated premises requirements and/or capital costs of proposals submitted in response to a competition exceed the initial cost estimate made by the LA, the Decision Maker

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should consider the reasons for the additional requirements and/or costs, as set out in the proposal and whether there is agreement to their provision.

72. Proposals should not be approved conditionally upon funding being made available, subject to the following specific exceptions. For schools 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. Similarly, for Academy proposals in response to a competition, proposals should be approved conditionally on the Secretary of State entering into a funding agreement with the sponsors (see paragraph 94 below).

### Capital Receipts (Paragraphs 73-75)

73. 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 School 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)  
<http://publications.teachernet.gov.uk/default.aspx?PageFunction=productdetails&PageMode=spectrum&ProductId=DfE-1017-2004&>

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 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, LAs and the Adjudicator" - <http://publications.teachernet.gov.uk/default.aspx?PageFunction=productdetails&PageMode=spectrum&ProductId=DfE-1017-2004&>).

74. Where proposals for a new school 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

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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.

75. 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 (see paragraph 96 p.) below).

### **New Voluntary Aided School Funding** (Paragraph 76)

76. For proposals for a new voluntary aided school the Decision Maker should have a statement (Form 18 – available from the Members' Area of the School Organisation website - [www.dcsf.gov.uk/schoolorg](http://www.dcsf.gov.uk/schoolorg)), signed by the promoters that provides evidence that the new school's Governing Body would be able to meet their financial responsibilities for any future building work.

### **New Site or Playing Fields** (Paragraph 77)

77. Proposals dependent on the acquisition of a new 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** (Paragraphs 78-81)

78. For new voluntary or foundation schools it is desirable that a Trust holds the freehold interest in the site. Where the trustees of the proposed voluntary or foundation school hold, or will hold, a leasehold interest in the 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.

79. Responsibility for the provision of the site for a new school is as follows:

- a. school competitions - the LA, except where the proposers wish to provide the school on a different site to that specified in the original notice which invited proposals;
- b. foundation or voluntary controlled school (other than in a competition) - the relevant LA and the proposer to such extent as the approved proposals provide for each of them to do so; and
- c. voluntary aided school (other than in a competition) – responsibility lies with the proposer.

80. Where the site of a new foundation or voluntary controlled school is being

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provided by the proposers, they should discuss the land tenure arrangements with the LA as the LA will be responsible for meeting future capital building costs. The LA should provide assurance to the Decision Maker that land tenure arrangements will be satisfactory.

81. Where the site of a new VA school is being provided by proposers the Secretary of State will want to consider land tenure arrangements when making grants available for any capital building work. He is likely to set a condition of grant that if the school closes or ceases to use the premises (i.e. that have been provided or enhanced by grant) he will be able to recover grant. Nonetheless the Decision Maker should ensure that the land tenure arrangements will be satisfactory taking into account the factors in paragraph 78 above.

### **School Playing Fields** (Paragraphs 82-83)

82. 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 the 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.

83. Where the Secretary of State has given 'in principle' agreement as at paragraph 82(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** (Paragraphs 84-85)

84. When reviewing SEN provision, in the context of School Organisation legislation and this guidance, is provision recognised by the LA as specifically reserved for pupils with special educational needs. 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 local authority day and residential special provision;

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- 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.

85. 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 (Paragraph 86)**

86. When considering any reorganisation of provision that would be recognised by the LA as reserved for pupils with special educational needs, 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 the paragraphs below (87 to 89) have been taken into account by applying the SEN improvement test. 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 (Paragraphs 87-90)**

87. 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

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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:

- a) 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;
- b) 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;
- c) 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
- d) specify how the proposals will be funded and the planned staffing arrangements that will be put in place.

88. 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.

89. 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.

90. 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

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### Views of Interested Parties (Paragraph 91)

91. 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, for example the parents of children who might be eligible to attend the new school.

### Types of Decision (Paragraphs 92-95)

92. In considering a school competition the Decision Maker can decide to:

- reject all of the proposals;
- approve any of the proposals (e.g. they may decide to approve complementary proposals which together meet the need for the new school);
- approve any of the proposals with a modification (e.g. the school opening date); or
- approve any of the proposals subject to them meeting a specific condition (see paragraph 96 below).

93. The Decision Maker should consider whether the provision of a new school is a reasonable way in which the LA may discharge its duty to provide sufficient school places. The Decision Maker may reject all the proposals if he considers there is no need for a new school or if he considers that none of the proposals are appropriate.

94. Where the Decision Maker decides to approve proposals for an Academy in response to a competition, the approval will be subject to the Secretary of State signing the necessary funding agreement.

95. In considering other proposals for a new school that have not been subject to a competition the Decision Maker can decide to:

- reject the proposals;
- approve the proposals;
- approve the proposals with a modification (e.g. the school opening date); or
- approve the proposals subject to them meeting a specific condition (see paragraph 96 below).

### Conditional Approval (Paragraphs 96-97)

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96. 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 on which a new school is to be constructed;
- c. the acquisition of playing fields to be provided for the school;
- 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 DCSF following the entering into of a private finance contract by an LA or the approval by the DCSF of capital grant in an equivalent arrangement for voluntary aided schools;
- f. the entering into an agreement for any necessary building project supported by the DCSF in connection with BSF programme;
- g. the making of any scheme relating to any charity connected with the school;
- h. the formation of any federation (within the meaning of section 24(2) of the 2002 Act) 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;
- i. the Secretary of State giving approval under regulation 5(4) of the Education (Foundation Body) (England) Regulations 2000 to an application that a foundation body shall be established and that the school shall form part of a group for which a foundation body shall act;
- j. 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;
- k. the agreement to any change to admission arrangements specified in the approval, relating to another school;
- l. the establishment of any foundation meeting the requirements of section 23A of SSFA 1998;
- m. the making of any agreement under section 482(1) of the 1996 Act for the establishment of an Academy;
- ma. in the case of closure proposals, the agreement of the Secretary of State to extend or enlarge an existing Academy;

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- n. in the case of proposals to establish a maintained school in place of an existing independent school, the securing of approval by the Secretary of State to relax the requirements of the Education (School Premises) Regulations 1999 as provided for by section 543 (1) of EA 1996;
- o. 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 Education (School Premises) Regulations 1999 in respect of school playing fields as provided for by section 543 (1) of EA 1996;
- p. 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 paragraph 2 of Schedule 35A to EA 1996 or section 77 of SSFA 1998, or determination in accordance with Schedule 22 to the SSFA 1998 as applicable;
- q. in the case of proposals to establish a maintained school, the Secretary of State making a direction under section 90 of EA 2002 that the National Curriculum for England shall not apply or shall apply with modifications;
- qa. in the case of closure proposals, the decision of the Secretary of State to establish a new further education college under section 16 of the Further and Higher Education Act 1992;and
- r. where the proposals in question depend upon any of the events specified in paragraphs (a) to (qa) occurring by a specified date in relation to proposals relating to any other school or proposed school, the occurrence of such an event.

97. 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 (School Organisation & Competitions Unit, DCSF, Mowden Hall, Darlington, DL3 9BG) or by email to [school.organisation@dcf.gsi.gov.uk](mailto:school.organisation@dcf.gsi.gov.uk) when a condition is modified or 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 (Paragraphs 98-100)

98. 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.

99. A copy of all decisions **must** be forwarded to:

- the person or body who published the proposals or, in the case of school competitions, the person or body who submitted the proposals;
- 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;

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- the Secretary of State (via the School Organisation & Competitions Unit, DCSF, Mowden Hall, Darlington DL3 9BG or by email to [school.organisation@dcsf.gsi.gov.uk](mailto:school.organisation@dcsf.gsi.gov.uk));
- where the school includes provision for 14-16 education or sixth form education, the LSC;
- the local C of E diocese; and
- the local bishop of the RC diocese.

100. 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 which it is proposed should maintain the school.