



Department
for Education

School Organisation

Maintained Schools

Guidance for proposers and decision-makers

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Chapter 1: Summary

About this guidance

This guidance accompanies new School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013 and (Establishment and Discontinuance of Schools) Regulations 2013 that came into force on 28 January 2014. It provides information on the processes involved in making significant changes to maintained schools (e.g. expansion), establishing new provision and school closure. Three annexes give further information for proposers, guidance for decision-makers and, guidance on foundation and Trust proposals.

A governing body, local authority (LA) or the Schools Adjudicator must have regard to this guidance when exercising functions under the Prescribed Alterations Regulations and the Establishment and Discontinuance Regulations. There are also a number of provisions in the Education and Inspections Act 2006 requiring bodies to have regard to guidance. Where bodies are so required, this guidance sets out (either in the paragraph or footnote) the requirement.

The new School Organisation regulations support the government's aim of increasing school autonomy and reducing bureaucracy. They allow schools to have more control when making decisions about their size and composition and therefore enable them to be more responsive to the needs of parents and local communities.

This guidance is relevant to all categories of maintained schools unless explicitly stated. Separate advice is available on making significant changes to an academy at:

<https://www.gov.uk/government/publications/making-significant-changes-to-an-existing-academy>.

Review date

This guidance will be reviewed in January 2015.

Who is this guidance for?

This guidance is for those proposing to open, close or make changes to schools (e.g. governing bodies and LAs), decision-makers (LAs, the Schools Adjudicator and governing bodies), and for information purposes for those affected by a proposal (dioceses, trustees, parents etc.).

What legislation does this guidance refer to?

This guidance primarily relates to the 2013 School Organisation Regulations (which replace the 2007 Regulations of the same name):

- [The School Organisation \(Prescribed Alterations to Maintained Schools\) \(England\) Regulations 2013](#) (“Prescribed Alterations Regulations”); and
- [The School Organisation \(Establishment and Discontinuance of Schools\) Regulations 2013](#) (“Establishment and Discontinuance Regulations”).

It also relates to:

- [The Education and Inspections Act 2006](#), as amended by the [Education Act 2011](#) (“EIA 2006”) and (“Education Act 2011”);
- [The School Standards and Framework Act 1998](#), as amended by the [Education Act 2002](#) (“SSFA 1998”) and (“Education Act 2002”);
- [The School Organisation \(Removal of Foundation, Reduction in Number of Foundation Governors and Ability of Foundation to Pay Debts\) \(England\) Regulations 2007](#) (“Removal Regulations”);
- [The School Organisation \(Requirements as to Foundations\) \(England\) Regulations 2007](#) (“Requirements Regulations”);
- [School Governance \(Constitution\) \(England\) Regulations 2012](#) (“Constitution Regulations”);
- [School Governance \(Roles, Procedures and Allowances\) \(England\) Regulations 2013](#) (“Procedures Regulations”); and
- [School Premises \(England\) Regulations 2012](#) (“School Premises Regulations”).

What previous guidance does this replace?

This guidance replaces the following departmental documents:

- Making Changes to a Maintained Mainstream School;
- Closing a Maintained Mainstream School;
- Expanding a Maintained Mainstream School by Enlargement or Adding a Sixth Form;
- Changing School Category to Foundation;
- Removal of a school’s Trust and reduction in the number of governors appointed by the Trust;
- Trust School Proposals;

- Deciding Statutory Proposals for Maintained Schools;
- Changing to a Foundation School - Decision Makers Guidance; and
- Changing to a Trust School - Decision Makers Guidance.

Related guidance

The following advice relates to this guidance:

- [Making Significant Changes to an Existing Academy \(2014\)](#);
- [Academy/Free School Presumption – departmental advice \(2013\)](#); and
- [Establishing New Maintained Schools – departmental advice for local authorities and new school proposers \(2013\)](#).

Transitional arrangements

Proposals published after the 28 January 2014 should follow the requirements and process set out in the new 2013 Regulations. Proposers who have published proposals before 28 January 2014 will need to continue the process set out in the 2007 Prescribed Alterations Regulations and Establishment and Discontinuance Regulations until they have been implemented unless the proposal has been withdrawn or revoked (as the case may be).

Chapter 2: Significant changes: expansion, age range changes and adding boarding provision

Governing Bodies

1. As a consequence of the changes introduced by the 2013 Regulations, governing bodies of all categories of mainstream school can now make the following changes to their schools without following a formal statutory process:

- Expansion (enlargement of premises);
- Alteration of upper or lower age limit by up to two years (except for adding or removing a sixth-form); and
- Adding boarding provision¹.

2. Before making any changes governing bodies should ensure that:

- they have secured any necessary capital funding;
- they have identified suitable accommodation and sites;
- they have secured planning permission and/or agreement on the transfer of land where necessary²;
- they have the consent of the site trustees or, other land owner where the land is not owned by the governing body;
- they have the consent of the relevant religious authority (as required); and
- the admissions authority is content for the published admissions number (PAN) to be changed where this forms part of expansion plans, in accordance with the School Admissions Code.

3. Although governing bodies are no longer required to follow a statutory process for the alterations set out in paragraph 1, they are nevertheless required to adhere to the usual principles of public law: they must act rationally; they must take into account all relevant considerations; and they must follow a fair procedure. The department expects that in making the changes set out in paragraph 1 governing bodies will:

- liaise with the LA and trustees/diocese (if any) to ensure that, where possible, a proposal is aligned with wider place planning/organisational arrangements, and that any necessary consents have been gained; and

¹ Governing bodies will need to ensure that boarding schools comply with other relevant legislation – see paragraph 10 of [Annex A.1](#).

² Including, where necessary, approval from the Secretary of State for change to the use of playing field land under Section 77(1) of the SSFA 1998.

- ensure effective consultation with parents and other interested parties to gauge demand for their proposed change(s) and to provide them with sufficient opportunity to give their views.

4. **Once proposed changes have been implemented, the governing body must³ inform the Secretary of State by ensuring that the department’s Register of Educational Establishments (EduBase) is updated. Guidance on how schools and LAs can update EduBase is available at:**

<http://www.education.gov.uk/edubase/faq.xhtml>

Local Authorities

5. Local authorities have a duty⁴ to ensure sufficiency of school places. They can also propose all of the changes outlined in paragraph 1 for community schools, and can propose expansion for foundation and voluntary schools. When doing so they must follow a streamlined statutory process as set out in the Prescribed Alterations Regulations (see chapter 3 for further information).

6. Expansions at a mainstream school that do not require a physical enlargement to the premises of the school are not covered by the Prescribed Alterations Regulations. An increase in pupil numbers may be achieved solely by increasing the PAN in line with the School Admissions Code.

Expanding onto an additional site (‘satellite schools’/split site schools)

7. Where proposers seek to expand onto an additional site they will need to ensure that the new provision is genuinely a change to an existing school and not a new school. Decisions will need to be taken on a case-by-case basis, but proposers will need to consider this non-exhaustive list of factors:

- The reasons for the expansion
 - What is the rationale for this approach and this particular site?
- Admission and curriculum arrangements
 - How will the new site be used (e.g. which age groups/pupils will it serve)?
 - What will the admission arrangements be?
 - Will there be movement of pupils between sites?

³ Section 538 of the Education Act 1996 imposes an obligation on governing bodies of maintained schools to provide information to the Secretary of State that he may require for the purpose of the exercise of his education functions. Section 29(5) of the Education Act 1996 requires LAs to publish information at such times and in such manner as may be required by regulations in respect of their arrangements relating to primary or secondary education.

⁴ Under section 14 of the Education Act 1996.

- Governance and administration
 - How will whole school activities be managed?
 - Will staff be employed on contracts to work on both sites? How frequently will they do so?
 - What governance, leadership and management arrangements will be put in place to oversee the new site (e.g. will the new site be governed by the same governing body and the same school leadership team)?
- Physical characteristics of the school
 - How will facilities across the two sites be used (e.g. sharing of the facilities and resources available at the two sites, such as playing fields)?
 - Is the new site in an area that is easily accessible to the community that the current school serves?

The purpose of considering these factors is to determine the level of integration between the two sites; the more integration, the more likely the change can be considered as an expansion. Where a LA considers there is a need for a new school to address a basic need for school places it must⁵ seek proposals to establish an academy/free school under the academy presumption (see chapter 4).

⁵ Under section 6A of the Education Act 2006.

Chapter 3: Significant changes: prescribed alterations

8. The other significant changes that governing bodies and LAs may propose by following a statutory process are the following prescribed alterations⁶:

- Alteration of upper or lower age limit by 3 years or more;
- Adding/removing a sixth-form;
- Removing boarding provision;
- Single sex school becoming co-educational or vice versa;
- Transferring to a new site;
- Closure of one site in a split site school;
- Removing selective admission arrangements at a grammar school;
- Changes of category (excluding changes of category to foundation⁷);
- Establishing/removing/altering SEN provision at a mainstream school;
- Alteration of upper or lower age limit at a special school;
- Increasing/decreasing pupil numbers at a special school; and
- Changing the types of needs catered for by a special school

Further information on these categories of changes can be found at [Annex A.1](#). The 'Who Can Do What?' table at [Annex A.5](#) shows exactly which changes can be proposed by LAs and governing bodies at each type of school.

⁶ Regulations 4 and 5 of the Prescribed Alterations Regulations set out which alterations can be made by governing bodies and LAs in respect of each type of school.

⁷ Changes of category to foundation follow a different process (see [Annex C](#)).

Statutory process

9. The statutory process for making significant changes to schools has four stages:

Stage 1	Publication	Statutory proposal published – 1 day.
Stage 2	Representation (formal consultation)	Must be 4 weeks, as prescribed in regulations.
Stage 3	Decision	The decision-maker (usually the LA) must decide proposals within 2 months of the end of the representation period or decision defaults to Schools Adjudicator (OSA) ⁸ . Any appeal to the adjudicator must be made within 4 weeks of the decision.
Stage 4	Implementation	No prescribed timescale, but must be as specified in the published statutory notice, subject to any modifications agreed by the decision-maker.

10. Although there is no longer a prescribed ‘pre-publication’ consultation period for prescribed alterations, there is a strong expectation on schools and LAs to consult interested parties in developing their proposal prior to publication as part of their duty under public law to act rationally and take into account all relevant considerations. Schools will also need to ensure that they have the consent of the site trustees and other relevant religious authorities⁹ (where necessary).

11. It is best practice to take timing into account when considering a significant change or prescribed alteration to a school. For example, by holding consultations and public meetings – either formal or informal – during term time, rather than school holidays. The location of any public and stakeholder meetings should also be planned to maximise response. The admissions cycle should also be taken into account, for changes that will impact on the school’s admission arrangements.

Publication

12. A statutory proposal must contain sufficient information for interested parties to make a decision on whether to support or challenge the proposed change. [Annex A.2](#) sets out the minimum that this should include. The proposal should be accessible to all interested parties and should therefore use ‘plain English’.

⁸ For further information on the Schools Adjudicator see: <http://www.education.gov.uk/schoolsadjudicator>

⁹ Including under the CofE Diocesan Board of Education (DBE) Measure 1991.

13. Where the proposal for one change is linked to another, this should be made clear in any notices published. Where a proposal by a LA is 'related' to a proposal by other proposers (e.g. where one school is to be enlarged because another is being closed) a single notice could be published.

14. The full proposal must be published on a website (e.g. the school or LA's website) along with a statement setting out:

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

15. A brief notice (including details on how the full proposal can be accessed e.g. the website address) must be published in a local newspaper and in a conspicuous place on the school premises and at all of the entrances to the school.

16. Within one week of the date of publication on the website, the proposer must send a copy of the proposal and the information set out at paragraph 14 to:

- the governing body/LA (as appropriate);
- the parents of every registered pupil at the school - where the school is a special school;
- if it involves or is likely to affect a school which has a religious character:
 - the local Church of England diocese;
 - the local Roman Catholic diocese; or
 - the relevant faith group in relation to the school; and
- any other body or person that the proposer thinks is appropriate.

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

17. There is no maximum limit on the time between the publication of a proposal and its proposed date of implementation. However, proposers will be expected to show good reason (for example an authority-wide reorganisation) if they propose a timescale longer than three years.

Representation (consultation)

18. The representation period starts on the date of the publication of the proposal and must last four weeks. During this period, any person or organisation can submit comments on the proposal to the LA to be taken into account by the decision-maker. It is

also good practice for representations to be forwarded to the proposer to ensure that they are aware of local opinion.

Decision

19. The LA will be the decision-maker for all proposals outlined in paragraph 8 except where a proposal is 'related' to another proposal that must be decided by the Schools Adjudicator¹⁰.

20. Decisions must be made within a period of two months of the end of the representation period or they must be referred to the Schools Adjudicator.

21. The department does not prescribe the exact process by which a decision-maker carries out their decision-making function. However, the body or individual that takes the decision must have regard to the statutory 'Decision-makers Guidance' (at [Annex B](#)).

22. When issuing a decision, the decision-maker can:

- reject the proposal;
- approve the proposal without modification;
- approve the proposal with modifications, having consulted the LA and/or governing body (as appropriate); or
- approve the proposal – with or without modification – subject to certain prescribed events¹¹ (such as the granting of planning permission) being met.

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

24. Within one week of making a determination the decision-maker must arrange (via the proposer as necessary) for their decision and the reasons for it to be published on the website where the original proposal was published. They must arrange for notification of the decision and reasons for it to be sent to:

- the LA (where the Schools Adjudicator is the decision-maker);
- the governing body/proposers (as appropriate);
- the trustees of the school (if any);
- the local Church of England diocese;
- the local Roman Catholic diocese;

¹⁰ For example where a change is conditional on the establishment of a new school under section 10 or 11 of the EIA 2006 (where the Schools Adjudicator may be the default decision maker).

¹¹ The prescribed events are those listed in paragraph 8 of Schedule 3 to the Prescribed Alterations Regulations.

- the parents of every registered pupil at the school – where the school is a special school; and
- any other body that they think is appropriate (e.g. other relevant faith organisation).

Rights of appeal against a decision

25. The following bodies may appeal to the Schools Adjudicator against a decision made by a LA decision-maker, within four weeks of the decision being made:

- the local Church of England diocese;
- the local Roman Catholic diocese; and
- the governors and trustees of a foundation, foundation special or voluntary school that is subject to the proposal.

On receipt of an appeal, a LA decision-maker must then send the proposal, representations received and the reasons for its decision to the Schools Adjudicator within one week of receipt. There is no right of appeal on determinations made by the Schools Adjudicator.

Implementation

26. The proposer must implement a proposal in the form approved, taking into account any modifications made by the decision-maker.

27. **Once proposed changes have been implemented, the proposer must¹² inform the Secretary of State by ensuring that the department's Register of Educational Establishments (EduBase) is updated. Guidance on how schools and LAs can update EduBase is available at: www.education.gov.uk/edubase/faq.xhtml.**

Modification post determination

28. If it proves impossible to implement a proposal as approved, the proposer can seek modifications (e.g. to the implementation date) from the decision-maker before the approved implementation date. However, proposals cannot be modified to the extent that new proposals are substituted for those that have been published.

Revocation

29. If the proposer cannot implement an approved proposal because circumstances have changed so that implementation would be inappropriate or implementation of the proposal would be unreasonably difficult, the proposer must publish a revocation

¹² Under paragraph 13(2) of Schedule 3 to the Prescribed Alternations Regulations.

proposal, to be determined by the decision-maker, to be relieved of the duty to implement. A revocation proposal must contain:

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

The department does not prescribe any further details on the exact content of a revocation proposal.

30. The proposer must publish the revocation proposal on the website and a brief notice of the proposal in a local newspaper. Details of what must be included in this notice are the same as in paragraph 15.

31. Where the proposer is the governing body it must send the revocation proposal to the LA within one week of the date of publication on the website. Where the original proposal was decided by the Schools Adjudicator the LA must refer the revocation proposal together with any comments or objections within two weeks of the end of the representation period to the Schools Adjudicator.

32. The LA decision-maker must determine the revocation proposal within two months of the end of the representation period. It must then arrange for the revocation determination to be published on the website where the original proposal and revocation proposal were published. The LA decision-maker must also arrange for the following persons to be notified of the revocation decision together with reasons:

- the local Church of England diocese;
- the local Roman Catholic diocese; and
- the governors and trustees of a foundation, foundation special or voluntary school that is subject to the proposal.

The same persons also have the right of appeal to the Schools Adjudicator (within four weeks of determination of the revocation proposal) if they disagree with the decision to revoke the original proposal.

Chapter 4: Establishment of new provision

Academy presumption

33. Where a LA considers there is a need for a new school¹³ in its area it must¹⁴ seek proposals to establish an academy/free school (or act in accordance with paragraph 36 below). The LA is responsible for providing the site for the new school and meeting all associated capital and pre-/post-opening costs. All new academy/free school proposals require the Secretary of State's approval and it is the Secretary of State who will enter into a funding agreement with the academy trust/sponsor.

34. In deciding the proposer with whom he will enter into a funding agreement, the Secretary of State will consider the assessments and preferences of the LA carefully. However, he reserves the right to put in place a sponsor of his own choice. The intention is to ensure that the school is always established by the best proposer possible. This is intended as a summary only – full guidance on the academy presumption process can be found in: '[Academy/Free School Presumption – Departmental Advice \(2013\)](#)'.

New maintained schools

35. If the academy presumption does not result in a suitable academy/free school proposal, a statutory competition can be held with the consent of the Secretary of State (known as a section 7 case¹⁵). This will not require a separate application for consent, since the Secretary of State will indicate to the LA that a competition can be held. Academy/free school proposals and proposals for foundation, voluntary-controlled, voluntary-aided and foundation special schools can be submitted into the competition. Where an academy/free school proposal is entered into a competition by the specified deadline, the Secretary of State must consider these proposals first. If an academy/free school proposal is deemed suitable, the competition ends and the proposer works with the department and local authority to progress its proposal. If an academy/free school proposal is not considered suitable, or no academy/free school proposal is received, the competition continues and it is for the local authority to decide which maintained school proposal wins (unless they are involved in the Trust of a proposed foundation school). For competitions there is no right of appeal.

36. It is also possible to publish a proposal for new schools outside of academy presumption and competitions in a limited number of circumstances¹⁶. The Secretary of

13 In considering the need for a new school LAs should factor in any free school projects that are due to open.

14 Under section 6A of the EIA 2006.

15 Under section 7(1) of the EIA 2006.

16 This will require a five-stage statutory process as set out in the Establishment and Discontinuance Regulations and the EIA 2006.

State's consent is required for this to happen (section 10 cases)¹⁷, except in a very limited number of special cases (known as section 11 cases)¹⁸. The special cases are:

- a new community or foundation primary school to replace a maintained infant and a maintained junior school;
- a new voluntary-aided school;
- a new foundation or voluntary school resulting from the reorganisation of existing faith schools in an area, including an existing faith school losing or changing its religious designation;
- a new foundation or community school, where suitable academy/free school proposals have not been identified and a competition has been held but did not identify a suitable provider;
- a former independent school wishing to join the maintained sector; and
- a new LA maintained nursery school.

37. For section 10 and 11 cases the Schools Adjudicator will decide LA proposals (and cases where the LA are involved in the Trust of a proposed foundation school). The LA will decide proposals from other proposers.

38. Further information on section 7, 10 and 11 proposals can be found in the Decision-makers Guidance (at [Annex B](#)) and '[Establishing New Maintained Schools - departmental advice for LAs and new school proposers \(2013\)](#)'.

¹⁷ Under section 10 of the EIA 2006.

¹⁸ Under section 11 of EIA the 2006.

Chapter 5: School closure

39. Local authorities are under a statutory duty to ensure that there are sufficient school places in their area, promote high educational standards, ensure fair access to educational opportunity and promote the fulfilment of every child's educational potential. To help them meet these duties and restructure local provision they have the power to close all categories of maintained schools.

40. Where a LA publishes proposals to close a school the department has no direct role in the decision-making process. All decisions related to school closures are taken locally following a statutory process to allow those directly affected by the proposals to feed in their comments.

41. The department recognises that school closure is a sensitive issue and the School Organisation (Establishment and Discontinuance of Schools) (England) Regulations 2013 therefore retain the established five-stage statutory process for closing a school.

42. All determinations on school closure proposals must be based on the factors outlined in the Decision-makers Guidance (at [Annex B](#)).

Who can close a school?

43. A LA can propose the closure of any category of maintained school, including community, community special, foundation, foundation special, voluntary-aided, voluntary-controlled and nursery schools, following a five-stage statutory process.

44. The governing body of a voluntary, foundation, or foundation special school may also publish proposals to close its own school following a statutory process. Alternatively, it may¹⁹ give at least two years' notice of its intention to close the school to the Secretary of State and the LA (see paragraph 68 and 69).

45. The Secretary of State may direct a LA to close a maintained school requiring special measures (under section 68 of EIA 2006). This will usually be done only where there is no prospect of the school making sufficient improvements and where there is a sufficient supply of alternative school places in the area. Prior to making the direction, the Secretary of State must consult with the LA, the governing body, and – in the case of a voluntary or foundation school – the diocese or other appointing authority. Such a direction will not require the publication of a statutory proposal for the school's closure but a proposal may be required for the opening of a new school²⁰ or for alterations to an existing school as a consequence of the directed closure.

46. Reasons for closing a maintained mainstream school include where:

¹⁹ Under section 30 of the SSFA 1998.

²⁰ See guidance on the academy/free school presumption in chapter 4.

- it is surplus to requirements (e.g. as a result of an area-wide reorganisation and/or there are sufficient places in neighbouring schools to accommodate displaced pupils);
- it is to be ‘amalgamated’/‘merged’ with another school (see paragraph 66);
- it is failing and there is no viable sponsored academy solution;
- it is to acquire, lose or change religious character (see paragraph 67); or
- it is being replaced by a new school.

47. Where a school will temporarily cease operations on a site due to a rebuild a proposal to close the school is not required. Where a school operating over multiple split sites seeks to cease operations on one (or more) of its sites the proposal will be for a prescribed alteration and not a school closure (see paragraph 21 of [Annex A.1](#)).

Statutory process

48. The statutory process for closing a school has five stages:

Stage 1	Consultation	No prescribed timescale (minimum of 6 weeks recommended; school holidays should be taken into consideration and avoided where possible). Likely to be no longer than 12 months.
Stage 2	Publication	1 day
Stage 3	Representation	Must be 4 weeks (this is prescribed in legislation and cannot be shortened or lengthened).
Stage 4	Decision	LA should decide a proposal within 2 months otherwise it will fall to the Schools Adjudicator. Where permitted appeals must be made within 4 weeks of the decision.
Stage 5	Implementation	No prescribed timescale – but must be as specified in the published notice, subject to any modifications agreed by the decision-maker.

Consultation

49. Except where the school is a rural school or a special school where there are prescribed consultees (as set out at [Annex A.3](#)), proposers of a school closure must²¹ consult bodies they feel to be appropriate. In doing so they must have regard to the Secretary of State's statutory guidance on school closure consultations which is contained at [Annex A.3](#) and [A.4](#) to this guidance. The information that must be included in a closure proposal is set out at [Annex A.4](#).

50. Where a LA or governing body carries out preliminary (informal) consultation to consider a range of options for a possible reorganisation, this would not be regarded as a statutory consultation as set out in legislation²². The statutory consultation would need to cover the specific closure proposal of the school in question.

51. How statutory consultation is carried out is not prescribed in regulations and it is for the proposer to determine the nature of the consultation and its length (although a minimum of six weeks is recommended). It is best practice for consultations to be carried out in term time to allow the maximum amount of people to respond.

52. If the need for the closure arises from an area-wide reorganisation (e.g. as a result of long-term LA planning), any related proposal should be consulted on at the same time. Notices for related proposals should be published at the same time and specified as 'related' so that they are decided together.

Publication

53. A proposal should be published within 12 months of consultation being concluded so that it can be informed by up-to-date feedback. A proposal must contain the information specified in Schedule 2 of the Establishment and Discontinuance Regulations (see [Annex A.4](#) for further details).

54. The full proposal must be published on a website (e.g. the school or LA's website) along with a statement setting out:

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

55. On the day of publication the proposer must send a copy of the proposal to the governing body/LA (as appropriate), and a brief notice (including details on how the full proposal can be accessed e.g. a website address) must be published in a local newspaper.

²¹ Under section 16(2) of the EIA 2006.

²² Under section 16(2) of the EIA 2006.

56. Within one week of the date of publication on the website, the proposer must send a copy of the proposal and the information set out at paragraph 54 to:

- the Secretary of State (via: schoolorganisation.notifications@education.gsi.gov.uk);
- the parents of every registered pupil at the school - where the school is a special school;
- the local Church of England diocese;
- the local Roman Catholic diocese; and
- any other body or person that the proposer thinks is appropriate (e.g. relevant faith group).

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

Representation

57. The representation period is identical to that for making significant changes as outlined in paragraph 18. The representation period is set at four weeks.

Decision

58. The LA will be the decision-maker on a school closure proposal, unless the closure proposal is 'related' to another proposal that is to be decided by the Schools Adjudicator²³.

59. The decision-making process for school closure is the same as that for making significant changes (as outlined in paragraphs 20 to 24) with two exceptions:

- the prescribed events upon which the decision-maker can grant a conditional approval for school closures are different from the events for conditional approvals for other types of changes²⁴; and
- the Secretary of State must be notified of decisions in addition to the persons listed in paragraph 24(via: schoolorganisation.notifications@education.gsi.gov.uk).

Rights of appeal against a decision

60. The process for appealing a decision is the same as that outlined in paragraph 25 for significant changes.

²³ For example the establishment of a new school under section 10 or 11 of the EIA 2006.

²⁴ The events relevant to closure proposals are listed in regulation 16 of the Establishment and Discontinuance Regulations.

Implementation

61. The implementation (including modification and revocation) process for school closure is the same as that for making significant changes (as outlined in paragraphs 26 to 32) except that, in addition to the bodies listed in paragraphs 32, revocation proposals and decisions on them must also be sent to the Secretary of State (via: schoolorganisation.notifications@education.gsi.gov.uk).

Closure of rural schools

62. There is a presumption against the closure of rural schools. This does not mean that a rural school will never close, but the case for closure should be strong and a proposal clearly in the best interests of educational provision in the area.

63. When formulating a proposal, the proposer must carefully consider²⁵:

- the likely effect of the closure of the school on the local community;
- educational standards at the school and the likely effect on standards at neighbouring schools;
- the availability, and likely cost to the LA, of transport to other schools;
- any increase in the use of motor vehicles which is likely to result from the closure of the school, and the likely effects of any such increase; and
- any alternatives to the closure of the school.

64. When deciding a proposal for the closure of a rural primary school, the decision-maker must refer to the [Designation of Rural Primary Schools \(England\) Order](#) to confirm that the school is a rural school. It is for the decision-maker to determine whether or not a *secondary school* should be considered as rural. The academy presumption (as outlined in Chapter 4) will not apply in cases where a rural infant and junior school on the same site are being closed to establish a new primary school²⁶.

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

- alternatives to closure including the potential for federation with another local school or conversion to academy status and joining a multi-academy trust or umbrella trust to increase the school's viability; the scope for an extended school to provide local community services; and facilities e.g. child care facilities, family and adult learning, healthcare, community internet access etc.;
- transport implications; and
- the overall and long term impact on local people and the community of closure of the village school and of the loss of the building as a community facility.

²⁵ Under section 15(4) of the EIA 2006.

²⁶ This is a section 11 special case under the EIA 2006.

‘Amalgamations/mergers’

66. There are two ways to 'merge' or 'amalgamate' two or more existing maintained schools²⁷:

- The LA or governing body (depending on school category) can publish a proposal to close two (or more) schools and the LA or a proposer other than the LA (e.g. diocese, faith or parent group, Trust) depending on category, can publish a proposal to open a new school or academy (see chapter 4 - Establishment of new provision). This results in a new school number being issued.
- The LA and/or governing body (depending on school category) can publish a proposal to close one school (or more) and enlarge/change the age range/transfer site (following a statutory process as/when necessary) of an existing school, to accommodate the displaced pupils. The remaining school would retain its original school number, as it is not a new school, even if its phase has changed.

Schools wishing to acquire, change or lose a Religious Character

67. It is not possible²⁸ to make any change in the religious character of a school. To make such a change the LA or governing body would need to publish a proposal to close the school, and a faith organisation (as proposers) would need to bring forward a 'related' proposal to establish a new voluntary school with a religious character – either after gaining the Secretary of State's approval under section 10 or as a special case under section 11 of EIA 2006.

Two years notice of closure – voluntary and foundation schools

68. Instead of following the statutory process for closure as outlined above, the governing body of a voluntary or foundation school may (subject to specified provisions²⁹ give at least two years' notice of their intention to close the school, to the Secretary of State (via: schoolorganisation.notifications@education.gsi.gov.uk) and the LA.

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

²⁷ Federation cannot be used to merge/amalgamate schools.

²⁸ Under section 18(4) of the EIA 2006.

²⁹ As outlined in section 30 of the SSFA 1998, and including those in the DBE Measure 1991.



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Department
for Education

School Organisation

Maintained Schools

**Annex A: Further information for
proposers**

January 2014

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Annex A.1: Prescribed Alterations

1. Regulations 4 and 5 of the Prescribed Alterations Regulations 2013 set out the prescribed alterations that can be made by governing bodies and LAs in respect of each type of school. The alterations are:

Expansion (enlargement to premises)

2. Governing bodies seeking to expand a school do not have to follow a statutory process.

3. LAs must follow a statutory process if:

- the proposed enlargement to the premises of the school is permanent (longer than three years) and would increase the capacity of the school by:
 - more than 30 pupils; and
 - 25% or 200 pupils (whichever is the lesser)¹;
- the proposal involves the making permanent of any temporary enlargement (that meets the above threshold).

4. An expansion without a physical enlargement to the premises of the school does not require a statutory proposal. Increases in pupil numbers may be achieved through an increase in the Published Admission Number under the School Admissions Code.

5. Changes in the size of special schools are dependent on the number of pupils (see prescribed alteration: '[Changes in number of pupils at a special school](#)').

Changes to age range

6. Governing bodies seeking to alter the upper or lower age range of a school by up to two years do not have to follow a statutory process (except when adding or removing a sixth-form). Alterations of three years or more will require a statutory process when proposed by governing bodies of foundation and voluntary schools.

7. LAs must follow a statutory process to make a change to age range if:

- the proposed age range change is permanent (longer than two years); or
- the proposal involves the making permanent of any temporary change.

8. The 'Who Can do What?' table ([Annex A.5](#)) gives further information on the different types of prescribed age range changes and who can propose which changes.

¹ As an example: if the proposal is to increase a five-form of entry school with a net capacity of 750 to a six-form of entry school with a capacity of 900 pupils then no proposal is required as although the increase is by more than 30 pupils, it is less than 25% of the current capacity.

9. For special schools, any proposer seeking to alter the upper or lower age limit by a year or more must follow a statutory process (except where it is a temporary change for less than two years).

Boarding provision

10. Governing bodies may seek to add boarding provision to all categories of mainstream school – they do not have to follow a statutory process to do so. Governing bodies will, however, need to ensure that schools comply with other legislation covering health and safety, fire or planning regulations, as well as meeting the National Minimum Standards for Boarding Schools².

11. Governing bodies of foundation and voluntary schools may also seek to remove or decrease boarding provision at their schools. When removing, or decreasing by more than 50% or 50 pupils (whichever is greater) they must follow a statutory process.

12. LAs must follow a statutory process when seeking to add, remove or decrease (by more than 50% or 50 pupils – whichever is greater) boarding provision at community schools.

13. For special schools, the LA must follow a statutory process when seeking to add, remove or decrease (by five pupils or more) boarding provision at a community special school. Governing bodies must do the same for community special and foundation special schools.

Changes in the number of pupils or types of need at a special school

14. Governing bodies of all categories of special school may seek to decrease the number of pupils and change the types of needs provided for by their school. LAs may seek to decrease the number of pupils at a community special school and to change the types of need provided for at all categories of special school. All such changes require a statutory process.

15. Governing bodies and LAs may seek to increase the number of places at any category of special school however, they must follow a statutory process if the increase is by:

- 10%; or
- 20 pupils (5 for all boarding special schools) (whichever is the lesser).

² Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/180948/DFE-00126-2012.pdf

Changes to special educational need provision at mainstream schools

16. For special education need (SEN) provision in a mainstream school, proposers must follow a statutory process when:

- establishing new provision;
- changing the type(s) of special educational provision; or
- ending provision.

17. Governing bodies may seek to make all three of these changes at voluntary and foundation schools. LAs may seek to make all three of these changes at community schools and to establish or end such provision at voluntary and foundation schools.

Grammar school admission arrangements

18. The governing body of a designated grammar school must³ follow a statutory process if seeking to remove selective criteria from their admission arrangements⁴.

Change of co-educational to single sex provision and vice-versa

19. Governing bodies of voluntary, foundation and community special schools and LAs (for community and community special schools) may seek to change single sex schools⁵ to co-educational and vice versa. They must follow a statutory process to do so.

Transfer to a new site

20. Governing bodies of voluntary and foundation schools (including special schools) and community special schools, and LAs (for community and community special schools) may seek to transfer a school to a new site. A statutory proposal is required if:

- the new site is further than two miles⁶ from the existing site; or
- the transfer is to a location within a different LA (regardless of distance).

³ Under section 109(1) of the SSFA 1998.

⁴ Proposals to remove selection will fall if the LA is notified that a petition, which will trigger a ballot, has been received before the proposals are due to be implemented.

⁵ Schools that let a comparatively small number of pupils of the other sex into a sixth-form may still be designated as single sex.

⁶ Distance should be measured in a straight line between the main entrances of the existing and proposed sites.

Closure of one of multiple sites

21. Governing bodies of voluntary and foundation schools and LAs (for community schools) seeking to close one site (where a school occupies more than one site) must follow a statutory process unless the straight line distance between the main entrances of the sites is less than one mile.

Changes of category

22. Governing bodies must follow a statutory process for a proposal to make a change of category⁷ from a:

- voluntary-controlled school to a voluntary-aided school;
- voluntary-aided school to a voluntary-controlled school;
- foundation school to a voluntary-controlled school;
- foundation school to a voluntary-aided school;
- community school to a voluntary-controlled school; or
- community school to a voluntary-aided school.

⁷ It is not possible for any school to gain, lose or change religious character through a change of category. Changes of category to foundation follow a different process and are covered in [Annex C](#) of this guidance.

Annex A.2: Statutory proposals for prescribed alterations

23. A statutory proposal for making significant changes to schools must contain sufficient information for interested parties to make a decision on whether to support the proposed change. A proposal should be accessible to all interested parties and therefore use 'plain English'.

24. Proposers will need to be mindful of the factors that will inform the decision-maker's assessment when determining the proposal (see: Decision-makers Guidance at [Annex B](#)).

25. As a minimum, the department would expect a proposal to include:

- School and LA details;
- Description of alteration and evidence of demand;
- Objectives (including how the proposal would increase educational standards and parental choice);
- The effect on other schools, academies and educational institutions within the area;
- Project costs and indication of how these will be met, including how long term value for money will be achieved;
- Implementation and any proposed stages for implementation; and
- A statement explaining the procedure for responses: support; objections and comments.

Annex A.3: School closure consultations

26. Under section 16(3) of the EIA 2006 a proposer of a school closure must have regard to any guidance issued by the Secretary of State.

27. In the case of the closure of a rural primary school or a community or foundation special school proposers must⁸ consult:

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

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

- the governing body (as appropriate);
- pupils at the school⁹;
- (if a proposal involves, or is likely to affect a school which has a particular religious character) the appropriate diocese or relevant faith group¹⁰;
- the trustees of the school (if any);
- teachers and other staff at the school;
- any LA likely to be affected by the proposal, in particular neighbouring authorities where there may be significant cross-border movement of pupils;
- the governing bodies, teachers and other staff of any other school that may be affected;
- parents of any pupils at other schools who may be affected by the proposal including where appropriate families of pupils at feeder primary schools;
- any trade unions who represent staff at the school; and representatives of any trade union of staff at other schools who may be affected by the proposal;
- MPs whose constituencies include the school that is the subject of the proposal or whose constituents are likely to be affected by the proposal; and
- any other interested body/person that the proposer thinks is appropriate.

⁸ Under section 16(1) of EIA 2006.

⁹ Under section 176 of the Education Act 2002.

¹⁰ Under the DBE Measure 1991 Church of England schools must consult with their diocese before making closure proposals.

Annex A.4: Statutory proposals for school closures

29. The information below must¹¹ be included in a proposal to close a school:

Contact details

30. The name and contact details of the LA or governing body publishing the proposal and the name, address and category of the school proposed for closure.

Implementation

31. The proposed closure date or, where it is proposed that the closure be implemented in stages, the dates of, and information about, each stage.

Objectives and reason for closure

32. The objectives of the proposal and the reason why closure of the school is considered necessary.

33. Decision-makers will look to proposals to set out how the proposal will impact on the educational standards and parental choice in the community. Where the proposal is related to another proposal this should be made clear, for example in the case of an area wide reorganisation.

Pupil numbers and admissions

34. Information on the numbers, age range, sex and special educational needs of pupils (distinguishing between boarding and day pupils) for whom provision is currently made at the school.

Displaced pupils

35. Details of the schools at which displaced pupils will be offered places, including:

- any interim arrangements;
- the alternative provision for children recognised by the LA as reserved for children with special educational needs; and
- in the case of special schools, the alternative provision made by LAs other than the LA which maintains the school.

Impact on the community

36. A statement and supporting evidence about the impact on the community and any measures proposed to mitigate any adverse impact, including details of the extended

¹¹ Under Schedule 2 to the Establishment and Discontinuance Regulations.

services the school offered and what is proposed for these services once the school has closed.

Balance of denominational provision

37. Where the school has a designated religious character, a statement about the impact of the proposed closure on the balance of denominational provision and impact on parental choice in the area.

Rural primary schools

38. Where a proposal relates to a rural primary school, a statement¹² that the LA or the governing body (as the case may be) has considered:

- the likely effect of closure of the school on the local community;
- the availability and likely cost to the LA, of transport to other schools;
- any increase in the use of motor vehicles which is likely to result from the closure of the school, and the likely effects of any such increase; and
- any alternatives to the closure of the school.

Maintained nursery schools

39. Where a proposal relates to the closure of a maintained nursery school, a statement setting out:

- the LA's assessment of the quality and quantity of the alternative provision compared to the school proposed to be closed and the proposed arrangements to ensure the expertise and specialism continues to be available; and
- the accessibility and convenience of replacement provision for local parents.

Provision for 16-19 year olds

40. Where the school proposed for closure provides sixth-form education, how the proposal will impact on:

- the educational or training achievements;
- participation in education or training; and
- the range of educational or training opportunities for 16-19 year olds in the area.

¹² As required by section 15(4) of the EIA 2006.

Special educational needs (SEN) provision

41. Where existing provision that is recognised by the LA as reserved for pupils with special educational needs is being closed, a statement as to how the LA or the governing body (as the case may be) believes a proposal is likely to lead to improvements in the standard, quality and/or range of the educational provision for these children.

Travel

42. The proposed arrangements for travel of displaced pupils to other schools including how the proposed arrangements will work to limit increased car use.

Consultation

43. Decision-makers will need to be assured that consultation has taken place, and that the statutory process has been adhered to. Therefore proposals should include evidence that the period of statutory consultation took place, and the results of that consultation.

Annex A.5: 'Who can do what?' table

Proposer	Type of proposal	Decision-maker	Right of appeal to the Adjudicator?
Local Authority	Community Schools (following a statutory process): <ul style="list-style-type: none"> - Expansion (enlargement of premises) - Alteration of upper or lower age limit including the addition or removal of a nursery or sixth-form - Addition, removal or change of SEN provision - Co-ed or single sex provision - Addition, removal or change of boarding provision - Transfer to a new site - Closure of one of multiple sites 	LA (Schools Adjudicator ¹³)	CofE Diocese RC Diocese
	Community Special Schools (following a statutory process): <ul style="list-style-type: none"> - Alteration of upper or lower age limit - Increase or decrease in the number of pupils - Change in the types of SEN - Addition, removal or change of boarding provision - Co-ed or single sex provision - Transfer to a new site 	LA (Schools Adjudicator ¹³)	CofE Diocese RC Diocese
	Foundation and Voluntary Schools (following a statutory process): <ul style="list-style-type: none"> - Expansion (enlargement of premises) - Addition of a sixth-form - Addition and removal of SEN provision 	LA (Schools Adjudicator ¹³)	CofE Diocese RC Diocese GB Trustees
	Foundation Special Schools (following a statutory process): <ul style="list-style-type: none"> - Change in the types of SEN - Increase in the number of pupils 	LA (Schools Adjudicator ¹³)	CofE Diocese RC Diocese GB Trustees
	Maintained Nursery Schools (following a statutory process): <ul style="list-style-type: none"> - Transfer to a new site 	LA (Schools Adjudicator ¹³)	CofE Diocese RC Diocese
	<ul style="list-style-type: none"> - Closure 		

¹³ Only where it relates to a proposal to be decided by them or where the LA has not made a decision within 2 months of the end of the representation period.

Proposer	Type of proposal	Decision-maker	Right of appeal to the Adjudicator?
Governors of Voluntary Schools	(without a statutory process): <ul style="list-style-type: none"> - Expansion (enlargement of premises) - Alteration of upper or lower age limit by up to 2 years (excluding the addition/removal of a sixth-form) - Addition of boarding provision 	n/a	n/a
	(following a statutory process): <ul style="list-style-type: none"> - Alteration of upper or lower age limit by 3 years or more - Addition or removal of a sixth-form - Addition, removal or change of SEN provision - Removal of selection (grammar schools) - Co-ed or single sex provision - Removal or alteration of boarding provision - Transfer to a new site - Closure of one of multiple sites - Change of category (VC to VA and VA to VC) - Closure 	LA (Schools Adjudicator ¹³)	CofE Diocese RC Diocese GB Trustees
	Foundation Proposals: <ul style="list-style-type: none"> - VC or VA to foundation - VC or VA to foundation and acquire a Foundation (Trust) - VC or VA to foundation and acquire a Foundation (Trust) and acquire a majority of Foundation governors on the governing body 	GB (Schools Adjudicator ¹⁴)	For proposals at a VA school when decided by the GB: LA CofE Diocese RC Diocese
Governors of Foundat. Schools	(without a statutory process): <ul style="list-style-type: none"> - Expansion (enlargement of premises) - Alteration of upper or lower age limit by up to 2 years (excluding the addition/removal of a sixth-form) - Addition of boarding provision 	n/a	n/a
	(following a statutory process): <ul style="list-style-type: none"> - Alteration of upper or lower age limit by 3 years or more - Addition or removal of a sixth-form - Addition, removal or change of SEN provision - Removal of selection (grammar schools) - Co-ed or single sex provision - Removal or alteration of boarding provision - Transfer to a new site - Closure of one of multiple sites - Change of category (Foundation to VC or VA) - Closure 	LA (Schools Adjudicator ¹³)	CofE Diocese RC Diocese GB Trustees
	Foundation Proposals: <ul style="list-style-type: none"> - Acquire a Foundation (Trust) - Acquire a majority of Foundation governors on the governing body 	GB (Schools Adjudicator ¹⁴)	n/a

¹⁴ Under certain circumstances set out in paragraph 8 of Schedule 1 to the Prescribed Alterations Regulations, the LA may require that the proposal to acquire a Trust or majority of foundation governors is referred to the Schools Adjudicator during the representation period.

Proposer	Type of proposal	Decision-maker	Right of appeal to the Adjudicator?
	Removal Proposals¹⁵: <ul style="list-style-type: none"> - Removal of a Foundation and/or reduction in a majority of Foundation governors on the governing body 	GB	n/a
Governors of Comm. Schools	(without a statutory process): <ul style="list-style-type: none"> - Expansion (enlargement of premises) - Alteration of upper or lower age limit by up to 2 years (excluding the addition/removal of a sixth-form) - Addition of boarding provision 	n/a	n/a
	(following a statutory process): <ul style="list-style-type: none"> - Addition of a sixth-form - Removal of selection (grammar schools) - Change of category from community to VC or VA 	LA (Schools Adjudicator ¹³)	CofE Diocese RC Diocese
	Foundation Proposals: <ul style="list-style-type: none"> - Community to foundation - Community to foundation and acquire a Foundation (Trust) - Community to foundation and acquire a Foundation (Trust) and acquire a majority of Foundation governors on the governing body 	GB (Schools Adjudicator ¹⁴)	n/a
Governors of Foundat. Special Schools	(following a statutory process): <ul style="list-style-type: none"> - Alteration of upper or lower age limit by 1 year or more - Increase or decrease in the number of pupils - Change in the types of SEN - Co-ed or single sex provision - Addition, removal or change of boarding provision - Transfer to a new site 	LA (Schools Adjudicator ¹³)	CofE Diocese RC Diocese GB Trustees
	Removal Proposals: <ul style="list-style-type: none"> - Removal of a Foundation and/or reduce a majority of Foundation governors on the governing body 	GB	n/a
Governors of Comm. Special Schools	(following a statutory process): <ul style="list-style-type: none"> - Alteration of upper or lower age limit by 1 year or more - Increase or decrease in the number of pupils - Change in the types of SEN - Co-ed or single sex provision - Addition, removal or change of boarding provision - Transfer to a new site 	LA (Schools Adjudicator ¹³)	CofE Diocese RC Diocese

¹⁵ Under section 25 of the EIA 2006 and the School Organisation (Removal of Foundation, Reduction in Numbers of Foundation Governors and Ability of Foundation to Pay Debts) (England) Regulations 2007.

Proposer	Type of proposal	Decision-maker	Right of appeal to the Adjudicator?
Other Proposers	<p>- Establish a new school under section 7 (in a competition)</p> <p>(Following the approval of the Secretary of State where academy presumption has gained no suitable proposals).</p>	<p><u>1. Academy proposals</u></p> <p>Secretary of State</p>	n/a
		<p><u>2. Non-academy proposals by proposers other than the LA</u> (where no academy bid is deemed suitable)</p> <p>LA</p> <p>(Schools Adjudicator¹⁶)</p> <p>Where no suitable bid is received at this stage the LA may propose a new foundation or community school (inc. special school) under section 11. It does not need further consent from the Secretary of State to do so. See below.</p>	n/a
	<p>Establish a new school under section 10 or 11</p>	<p>Schools Adjudicator decides LA proposals and where the LA is involved in the Trust of a Foundation school.</p> <p>The LA decides proposals from other proposers.</p>	<p>CofE Diocese</p> <p>RC Diocese</p> <p>The proposers (where the LA is the decision-maker)¹⁷</p>

¹⁶ Only where the LA is involved in the Trust of a proposed foundation school, or where the LA is required to refer proposals to them.

¹⁷ See paragraph 14 of Schedule 2 to the EIA 2006.



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Department
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Maintained Schools

Annex B: Guidance for Decision-makers

January 2014

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Summary

Key points

1. This Annex is for local authorities, the Schools Adjudicator and governing bodies in their roles as decision-makers. It is relevant to the 2013 School Organisation Regulations¹. Decisions on proposals published before 28 January 2014 must be made with regard to the previous Decision-makers Guidance.
2. The table in [Annex A.5](#) sets out the decision-maker for each type of school organisation proposal. The department does not prescribe the exact process by which a decision-maker carries out their decision-making function; however, decision-makers must have regard² to this guidance when making a decision.
3. The decision-maker should consider the views of those affected by a proposal or who have an interest in it, including cross-LA border interests. The decision-maker should not simply take account of the numbers of people expressing a particular view. Instead, they should give the greatest weight to responses from those stakeholders likely to be most directly affected by a proposal – especially parents of children at the affected school(s).

Related proposals

4. Any proposal that is ‘related’ to another proposal must be considered together. A proposal should be regarded as ‘related’ if its implementation (or non-implementation) would prevent or undermine the effective implementation of another proposal. Where proposals are ‘related’, the decisions should be compatible.
5. Where a proposal is ‘related’ to another proposal to be decided by the Secretary of State (e.g. for the establishment of a new academy) the decision-maker should defer taking a decision until the Secretary of State has taken a decision on the proposal, or where appropriate, grant a conditional approval for the proposal.

Conditional approval

6. Decision-makers may give conditional approval for a proposal subject to certain prescribed events³. The decision-maker must set a date by which the condition should be met but can modify the date if the proposer confirms, before the date expires, that the condition will be met later than originally thought.

¹ In the case of the removal of a Foundation or Foundation majority this guidance is relevant to The School Organisation (Removal of Foundation, Reduction in Number of Foundation Governors and Ability of Foundation to Pay Debts) (England) Regulations 2007.

² Under paragraphs 8(6) and 17 of Schedule 2 to the EIA 2006 and regulation 7 of the Prescribed Alterations Regulations.

³ The prescribed events are those listed under paragraph 8 of Schedule 3 to the Prescribed Alterations Regulations (for prescribed alterations), regulation 16 of the Establishment and Discontinuance Regulations (for closures and new schools) and paragraph 16 of Schedule 1 to the Prescribed Alterations Regulations (for foundation and trust proposals).

7. The proposer should inform the decision-maker (and the Secretary of State via schoolorganisation.notifications@education.gsi.gov.uk in the case of school closures) when a condition is modified or met. If a condition is not met by the date specified, the proposal should be referred back to the decision-maker for fresh consideration.

Publishing decisions

8. All determinations (rejected and approved – with or without modifications) must give reasons for such a decision being made. Within one week of making a determination the decision-maker must arrange (via the proposer as necessary) for the decision and the reasons behind it to be published on the website where the original proposal was published. The decision-maker must also arrange for the bodies below to be notified of the decision and reasons⁴:

- the LA (where the Schools Adjudicator or governing body is the decision-maker);
- the governing body/proposers (as appropriate);
- the trustees of the school (if any);
- the local Church of England diocese;
- the local Roman Catholic diocese;
- the parents of every registered pupil at the school – where the school is a special school;
- any other body that they think is appropriate; and
- the Secretary of State via schoolorganisation.notifications@education.gsi.gov.uk (in school opening and closure cases only).

Factors to consider

9. Paragraphs [10](#) to [78](#) of this annex set out some the factors that decision-makers should consider when deciding a proposal. Paragraphs [10](#) to [29](#) are relevant to all types of proposals. Paragraphs [30](#) to [78](#) are more relevant to certain types of proposals (as specified). These factors are not exhaustive and the importance of each will vary depending on the type and circumstances of the proposal. All proposals must be considered on their individual merits.

⁴ In the case of proposals to change category to foundation, acquire/remove a Trust and/or acquire/remove a Foundation majority the only bodies the decision-maker must notify are the LA and the governing body (where the Schools Adjudicator is the decision-maker).

Factors relevant to all types of proposals

Consideration of consultation and representation period

10. The decision-maker will need to be satisfied that the appropriate consultation and/or representation period has been carried out and that the proposer has had regard to the responses received. If the proposer has failed to meet the statutory requirements, a proposal may be deemed invalid and therefore should be rejected. The decision-maker must consider all the views submitted, including all support for, objections to and comments on the proposal.

Education standards and diversity of provision

11. Decision-makers should consider the quality and diversity of schools in the relevant area and whether the proposal will meet or affect the aspirations of parents, raise local standards and narrow attainment gaps.

12. The decision-maker should also take into account the extent to which the proposal is consistent with the government's policy on academies as set out on the department's website.

Demand

13. In assessing the demand for new school places the decision-maker should consider the evidence presented for any projected increase in pupil population (such as planned housing developments) and any new provision opening in the area (including free schools).

14. The decision-maker should take into account the quality and popularity of the schools in which spare capacity exists and evidence of parents' aspirations for a new school or for places in a school proposed for expansion. The existence of surplus capacity in neighbouring less popular schools should not in itself prevent the addition of new places.

15. Reducing surplus places is not a priority (unless running at very high levels). For parental choice to work effectively there may be some surplus capacity in the system as a whole. Competition from additional schools and places in the system will lead to pressure on existing schools to improve standards.

School size

16. Decision-makers should not make blanket assumptions that schools should be of a certain size to be good schools, although the viability and cost-effectiveness of a proposal is an important factor for consideration. The decision-maker should also

consider the impact on the LA's budget of the need to provide additional funding to a small school to compensate for its size.

Proposed admission arrangements (including post-16 provision)

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

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

National Curriculum

19. All maintained schools must follow the National Curriculum unless they have secured an exemption for groups of pupils or the school community⁵.

Equal opportunity issues

20. The decision-maker must have regard to the Public Sector Equality Duty (PSED) of LAs/governing bodies, which requires them to have 'due regard' to the need to:

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

21. 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. Similarly there should 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.

⁵ Under sections: 90, 91,92 and 93 of the of the Education Act 2002.

Community cohesion

22. Schools have a key part to play in providing opportunities for young people from different backgrounds to learn with, from and about each other; by encouraging, through their teaching, an understanding of, and respect for, other cultures, faiths and communities. When considering a proposal, the decision-maker must consider its impact on community cohesion. This will need to be considered on a case-by-case basis, taking account of the community served by the school and the views of different sections within the community.

Travel and accessibility

23. Decision-makers should satisfy themselves that accessibility planning has been properly taken into account and the proposed changes should not adversely impact on disadvantaged groups.

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

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

Capital

26. The decision-maker should be satisfied that any land, premises or capital required to implement the proposal will be available and that all relevant local parties (e.g. trustees or religious authority) have given their agreement. A proposal cannot be approved conditionally upon funding being made available.

27. Where proposers are relying on the department as the source of capital funding, there can be no assumption that the approval of a proposal will trigger the release of capital funds from the department, unless the department has previously confirmed in writing that such resources will be available; nor can any allocation 'in principle' be increased. In such circumstances the proposal should be rejected, or consideration deferred until it is clear that the capital necessary to implement the proposal will be provided.

School premises and playing fields

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

29. [Guidelines](#) setting out suggested areas for pitches and games courts are in place although the department has been clear that these are non-statutory.

Factors relevant to certain types of proposals:

Expansion

30. When deciding on a proposal for an expansion on an additional site (a 'satellite school'), decision-makers will need to consider whether the new provision is genuinely a change to an existing school or is in effect a new school (which would trigger the academy presumption in circumstances where there is a need for a new school in the area⁶). Decisions will need to be taken on a case-by-case basis, but decision-makers will need to consider the following non-exhaustive list of factors which are intended to expose the extent to which the new site is integrated with the existing site, and to ensure that it will serve the same community as the existing site:

- The reasons for the expansion
 - What is the rationale for this approach and this particular site?
- Admission and curriculum arrangements
 - How will the new site be used (e.g. which age groups/pupils will it serve)?
 - What will the admission arrangements be?
 - Will there be movement of pupils between sites?
- Governance and administration
 - How will whole school activities be managed?
 - Will staff be employed on contracts to work on both sites? How frequently will they do so?
 - What governance, leadership and management arrangements will be put in place to oversee the new site (e.g. will the new site be governed by the same governing body and the same school leadership team)?
- Physical characteristics of the school
 - How will facilities across the two sites be used (e.g. sharing of the facilities and resources available at the two sites, such as playing fields)?
 - Is the new site in an area that is easily accessible to the community that the current school serves?

⁶ Or require an proposal under section 11 of the EIA 2006 for a new maintained school.

Expansion of existing grammar schools

31. Legislation prohibits the establishment of new grammar schools⁷. Expansion of any existing grammar school onto a satellite site can only happen if it is a genuine continuance of the same school. Decision-makers must consider the factors listed in paragraph [30](#) on 'expansions' when deciding if an expansion is a legitimate enlargement of an existing school.

Changes to boarding provision

32. In making a decision on a proposal to close a school that has boarding provision, or to remove boarding provision from a school that is not closing, the decision-maker should consider whether there is a state maintained boarding school within reasonable 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.

Addition of post-16 provision

33. In assessing a proposal to add post-16 provision, decision-makers should look for evidence that the proposal will improve, extend the range, and increase participation in high quality educational or training opportunities for post-16 pupils within the LA or local area.

34. The decision-maker should also look for evidence on how new places will fit within the 16-19 organisation in an area and that schools have collaborated with other local providers in drawing up a proposal.

35. The decision-maker may turn down a proposal to add post-16 provision if there is compelling and objective evidence that the expansion would undermine the viability, given the lagged funding arrangements, of an existing high quality post-16 provider.

36. Decision-makers should consider the viability of a proposal bearing in mind the formulaic approach to funding; that the school will have to bear any potential diseconomies of scale; and the impact of future demographic trends.

37. A proposal should take account of the timeline for agreeing 16-19 funding which will be available in the most recent guidance on the department's website. Decision-makers should note that post-16 funding runs on an August – July academic year cycle.

⁷ Except where a grammar school is replacing one of more existing grammar schools. See [paragraph 53](#).

Changes of category to voluntary-aided

38. For a proposal to change the category of a school to voluntary-aided, the decision-maker must be satisfied that the governing body and/or the Foundation 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 capital expenditure for at least five years from the date of implementation, taking into account anticipated building projects.

Changes to special educational need provision – the SEN improvement test

39. In planning and commissioning SEN provision or considering a proposal for change, LAs should aim for a flexible range of provision and support that can respond to the needs of individual pupils and parental preferences. This is favourable to establishing broad categories of provision according to special educational need or disability.

Decision-makers should ensure that proposals:

- take account of parental preferences for particular styles of provision or education settings;
- take account of any relevant local offer for children and young people with SEN and disabilities and the views expressed on it;
- 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;
- take full account of educational considerations, in particular the need to ensure a broad and balanced curriculum, within a learning environment where children can be healthy and stay safe;
- 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;
- 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;
- ensure appropriate provision for 14-19 year-olds; and
- ensure that appropriate full-time education will be available to all displaced pupils. Their statements of special educational needs must be amended and all parental rights must be ensured. Other interested partners, such as the Health Authority

should be involved. Pupils should not be placed long-term or permanently in a Pupil Referral Unit (PRU) if a special school place is what they need.

40. When considering any reorganisation of provision that the LA considers to be reserved for pupils with special educational needs, including that which might lead to children being displaced, proposers will need to demonstrate how the proposed alternative arrangements are likely to lead to improvements in the standard, quality and/or range of educational provision for those children. Decision-makers should make clear how they are satisfied that this SEN improvement test has been met, including how they have taken account of parental or independent representations which question the proposer's assessment.

Additional factors relevant to proposals for new maintained schools

Suitability

41. When considering a proposal for a new maintained school, the decision-maker should consider each proposal on its merits, and take into account all matters relevant to the proposal. Any proposals put forward by organisations which advocate violence or other illegal activity must be rejected. In order to be approved, a proposal should demonstrate that they would support UK democratic values including respect for the basis on which UK laws are made and applied; respect for democracy; support for individual liberties within the law; and mutual tolerance and respect.

Competitions (under section 7 EIA 2006)

42. Where a LA considers that there is a need for a new school in its area it must first seek proposals to establish an academy/free school under section 6A of EIA 2006 (though proposals may also be made under section 10 and 11 of the EIA 2006). In such cases the Secretary of State is the decision-maker. However, in exceptional circumstances where no academy/free school proposals are received (or are received but are deemed unsuitable) a statutory competition under section 7 of the EIA 2006 may be held. Where there is demand for faith places the LA may seek to establish a new faith VA school (see paragraphs [47-51](#)).

43. Where two or more proposals are complementary, and together meet the requirements for the new school, the decision-maker may approve all the proposals.

44. The specification for the new school is only the minimum requirement; a proposal may go beyond this. Where a proposal is not in line with the specification, the decision-maker must consider the potential impact of the difference to the specification.

45. 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 against the others. If the proposal is judged to be superior, the decision-maker should consider the additional elements and whether they should be approved. If the decision-maker considers they cannot be approved, they may consider a modification to the proposal, but will need to first consult the proposers and - if the proposal includes provision for 14-19 year olds - the Education Funding Agency (EFA).

Capital in competitions

46. For competitions the LA will be expected to provide premises and meet the capital costs of implementing the winning proposal, and must include a statement to this effect in

the notice inviting proposals. Where the estimated premises requirements and/or capital costs of a proposal submitted in response to a competition exceed the initial cost estimate made by the LA, the decision-maker should consider the reasons for the additional requirements and/or costs, as set out in the proposal and whether there is agreement to their provision.

New voluntary-aided schools (under section 11 of EIA 2006)

47. Section 11 of the EIA 2006 permits a new VA school to be proposed without the requirement for the Secretary of State's approval. Such a school must be proposed following the required statutory process and may be for a school with or without a designated religious character.

48. Many VA schools are schools with a religious character. The department recognises the important contribution that faith schools make to the education system and that 'faith need' (demand for faith places on choice grounds) may be viewed as separate from 'basic need' (demand for new school places).

49. When assessing basic need, LAs need to look at the general demand for places and if a new school is needed to address basic need, must go down the academy presumption route. Where there is a demand for faith places, the law allows for LAs to seek to establish a new academy with religious designation, or for other proposers to establish new VA schools outside the presumption process.

50. The approval of a new school to meet local demand for faith places may also meet the demand (or some of the demand) for basic need.

51. Legislation allows maintained schools to seek to convert to academy status.

Independent faith schools joining the maintained sector

52. Legislation allows an independent faith school to move into the maintained sector. However, decision-makers must ensure that the decision to proceed with such a proposal is clearly based on value for money and that the school is able to meet the high standards expected of state-funded educational provision. The department would expect the decision-maker to consider the following points:

- that there is genuine demand/need for this type of school place in the local community;
- that the current and projected financial health of the proposer is strong;
- that the proposal represents long term value for money for the taxpayer;
- that the school will be able to deliver the whole of the national curriculum to the expected high standard;
- that all aspects of due diligence have been considered and undertaken; and

- that the school building is appropriate for the delivery of a high standard of education and in good condition throughout, or can easily be improved to meet such standards.

Replacement grammar schools

53. 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 closing grammar schools⁸. Decision-makers should therefore satisfy themselves that if a new school is proposed as a grammar school it is eligible for designation. Where an existing grammar school is expanding the proposer and decision maker must consider the points listed in paragraph [30](#).

⁸ Under section 104 of the SSFA 1998.

Additional factors relevant to closure proposals

Closure proposals (under s15 EIA 2006)

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

Schools to be replaced by provision in a more successful/popular school

55. Such proposals should normally be approved, subject to evidence provided.

Schools causing concern

56. For all closure proposals involving schools causing concern, copies of the Ofsted monitoring letters for the relevant schools should be made available. Decision-makers should have regard to the length of time the school has been in special measures, requiring improvement or otherwise causing concern. The decision-maker should also have regard to the progress the school has made, the prognosis for improvement, and the availability of places at other existing or proposed schools within a reasonable travelling distance. There is a presumption that these proposals should be approved, subject to checking that there are sufficient accessible places of an acceptable standard available to accommodate displaced pupils and to meet foreseeable future demand for places in the area.

Rural schools

57. There is a presumption against the closure of rural schools. This does not mean that a rural school will never close, but the case for closure should be strong and the proposal clearly in the best interests of educational provision in the area⁹. Those proposing closure should provide evidence to show that they have carefully considered the following:

- alternatives to closure including the potential for federation with another local school or conversion to academy status and joining a multi-academy trust or umbrella trust to increase the school's viability;

⁹ Not applicable where a rural infant and junior school on the same site are closing to establish a new primary school on the same site(s).

- the scope for an extended school to provide local community services; and facilities e.g. child care facilities, family and adult learning, healthcare, community internet access etc.;
- the transport implications; and
- the overall and long term impact on local people and the community of closure of the village school and of the loss of the building as a community facility.

58. When deciding a proposal for the closure of a rural primary school the decision-maker must refer to the [Designation of Rural Primary Schools Order](#) to confirm that the school is a rural school.

59. For *secondary schools*, the decision-maker must decide whether a school is to be regarded as rural for the purpose of considering a proposal. In doing so the decision-maker should have regard to the department's register of schools – EduBase¹⁰ which includes a rural/urban indicator for each school in England. Where a school is not recorded as rural on Edubase, the decision-maker can consider evidence provided by interested parties, that a particular school should be regarded as rural.

Early years provision

60. In considering a proposal to close a school which currently includes early years provision, the decision-maker should consider whether the alternative provision will integrate pre-school education with childcare services and/or with other services for young children and their families; and should have particular regard to the views of the Early Years Development and Childcare Partnership.

61. The decision-maker should also consider whether the new, alternative/extended early years provision will maintain or enhance the standard of educational provision for early years and flexibility of access for parents. Alternative provision could be with providers in the private, voluntary or independent sector.

Nursery school closures

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

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

¹⁰ Any school classed as urban will have a rural/urban indicator of either 'Urban>10K – less sparse' or 'Urban>10K – sparse' – all other descriptions refer to rural schools.

Balance of denominational provision

63. In deciding a proposal to close a school with religious character, decision-makers should consider the effect that this will have on the balance of denominational provision in the area.

64. The decision-maker should not normally approve the closure of a school with a religious character where the proposal would result in a reduction in the proportion of relevant denominational places in the area. However, this guidance does not apply in cases where the school concerned is severely under-subscribed, standards have been consistently low or where an infant and junior school (at least one of which has a religious character) are to be replaced by a new all-through primary school with the same religious character on the site of one or both of the predecessor schools.

Community Services

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

Additional factors relevant to proposals to change category to foundation, acquire/remove¹¹ a Trust¹² and acquire/remove a foundation majority governing body

Standards

66. Decision Makers should consider the impact of changing category to foundation and acquiring or removing a Trust on educational standards at the school. Factors to consider include:

- the impact of the proposals on the quality, range and diversity of educational provision in the school;
- the impact of the proposals on the curriculum offered by the school, including, if appropriate, the development of the school's specialism;
- the experience and track record of the Trust members, including any educational experience and expertise of the proposed trustees;
- how the Trust might raise/has raised pupils' aspirations and contributes to the ethos and culture of the school;
- whether and how the proposals advance/have advanced national and local transformation strategies;
- the particular expertise and background of Trust members. For example, a school seeking to better prepare its pupils for higher education might have a higher education institution as a partner.

67. In assessing standards at the school, the decision-maker should take account of recent reports from Ofsted or other inspectorates and a range of performance data. Recent trends in applications for places at the school (as a measure of popularity) and the local reputation of the school may also be relevant context for a decision.

68. The government wants to see more schools benefit from the freedom to control their own assets, employ their own staff and set their own admissions criteria. However, if a proposal is not considered strong enough to significantly improve standards at a school that requires it, the decision maker should consider rejecting the proposal.

11 Regulation 19 of The School Organisation (Removal of Foundation, Reduction in Number of Foundation Governors and Ability of Foundation to Pay Debts) (England) Regulations 2007 requires the governing body, LA, trustees and Schools Adjudicator to have regard to guidance when exercising their functions in relation to the removal of: a foundation, a Trust, or a Foundation majority.

12 A 'Trust school' is a foundation school with a charitable foundation complying with the requirements set out in section 23A of the SSFA 1998. These include that the Trust must have a charitable purpose of advancing education and must promote community cohesion.

Community Cohesion

69. Trusts have a duty¹³ to promote community cohesion. In addition to the factors outlined in paragraph 22, the decision-maker should also carefully consider the Trust's plans for partnership working with other schools, agencies or voluntary bodies.

General points on acquiring a Trust

70. For new Trust schools (foundation schools with a charitable foundation) the decision-maker must be satisfied that the following criteria are met for the proposal to be approved:

- the proposal is not seeking to alter the religious character of a school or for a school to acquire or lose a religious character. These alterations cannot be made simply by acquiring a Trust;
- the necessary work is underway to establish the Trust as a charity and as a corporate body; and
- that none of the trustees are disqualified from exercising the function of trustee, either by virtue of:
 - disqualifications under company or charity law;
 - disqualifications from working with children or young people;
 - not having obtained a criminal record check certificate¹⁴; or
 - the Requirements Regulations which disqualify certain persons from acting as charity trustees.

Other points on Trust proposals

71. Additionally, there are a number of other factors which should be considered when adding or removing a Trust:

- whether the Trust acts as the Trust for any other schools and/or any of the members are already part of an existing Trust;
- if the proposed Trust partners already have a relationship with the school or other schools, how those schools perform (although the absence of a track record should not in itself be grounds for regarding proposals less favourably);
- how the partners propose to identify and appoint governors. What, if any, support would the Trust/foundation give to governors?

¹³ Under section 23(A)6 of the EIA 2006.

¹⁴ Under section 113A of the Police Act 1997.

- to what extent the proposed Trust partners have knowledge of the local community and the specific needs of the school/area and to what extent the proposal addresses these; and
- the particular expertise and background of Trust members.

General point on removing a Trust

72. If a proposal is for the removal of a Trust, the governing body should consider the proposal in the context of the original proposal to acquire the Trust, and consider whether the Trust has fulfilled its expectations. Where new information has come to light regarding the suitability of Trust partners, this should be considered.

Suitability of partners

73. Decision-makers will need to be satisfied of the suitability of Trust partners and members. They should use their own discretion and judgement in determining on a case-by-case basis what circumstances might prevent the reputation of a Trust partner being in keeping with the charitable objectives of a Trust, or could bring the school into disrepute. However, the decision-maker should seek to come to a balanced judgement, considering the suitability and reputation of the current/potential Trust. Decision-makers should seek to assure themselves that:

- the Trust members and proposed trustees (where the trustees are specified in the proposals) are not involved in illegal activities and/or activities which could bring the school into disrepute;
- the Trust partners are not involved in activities that may be considered inappropriate for children and young people (e.g. tobacco, gambling, adult entertainment, alcohol).

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

- [The Health and Safety Executive Public Register of Convictions](#)¹⁵;
- [The Charity Commission's Register of Charities](#); and
- [The Companies House web check service](#).

¹⁵ Appearance on this database should not automatically disqualify a potential Trust member; decision-makers will wish to consider each case on its merits.

Land and Assets, when removing a Trust/foundation majority

75. When removing a Trust, the governing body is required to resolve all issues relating to land and assets before the publication of proposals, including any consideration or compensation that may be due to any of the parties. Where the parties cannot agree, the issues may be referred to the Schools Adjudicator to determine.

76. The Schools Adjudicator will take account of a governing body's ability to pay when determining any compensation. Therefore, all of these issues must be resolved by the point at which the decision is made and the amount of compensation due to either party may be a factor in deciding proposals to remove a Trust.

Finance - when removing a Trust/foundation majority

77. Trusts are under no obligation to provide financial assistance to a school, but there may be instances where the Trust does provide investment. The well-being and educational opportunities of pupils at the school should be paramount, and no governing body should feel financial obligations prevent the removal of a Trust where this is in the best interests of pupils and parents.

Other services provided by the Trust - when removing a Trust/foundation majority

78. Trusts may offer a variety of services to the school, such as careers advice, work experience placements, strategic partnerships with other schools, access to higher education resources and so on. The damage to relationships and/or loss of any of these advantages should be weighed up against the improvements envisaged by a change in governance or the removal of the Trust.



Department
for Education

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Department
for Education

School Organisation

Maintained Schools

Annex C: Foundation and Trust Proposals

**(Including: changing school category to foundation,
acquiring/removing a Trust and acquiring/removing a
Foundation majority governing body)**

January 2014

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Key Points

1. The guidance in this annex relates to Schedule 1 to [The School Organisation \(Prescribed Alterations to Maintained Schools\) \(England\) Regulations 2013](#) and the [School Organisation \(Removal of Foundation, Reduction in the Number of Foundation Governors and Ability of Foundation to Pay Debts\) \(England\) Regulations \(2007\)](#).
2. The statutory purpose of a foundation is to hold land on trust for one or more schools; they may also appoint foundation governors to those schools where the instrument of government allows.
3. A 'Trust school' is a foundation school with a charitable foundation complying with the requirements set out in section 23A of the SSFA 1998. These include that the Trust must have a charitable purpose of advancing education and must promote community cohesion.
4. This guidance will use the term 'acquire a foundation majority' to mean acquiring an instrument of government whereby the school's Trust has the power to appoint a majority of governors on the governing body.
5. While a voluntary or foundation school may be initially established with a religious character, it is not possible for any school to gain, lose or change religious character through a change of category.
6. It is possible for the governing body of a school to complete the statutory process to change category to foundation at the same time as the statutory process to acquire a Trust and/or give the Trust the power to appoint a majority of governors.

Foundation Proposals: Changing category to foundation, acquiring a Trust and/or acquiring a foundation majority

The statutory process

7. Where a school's governing body considers changing category from community, voluntary-aided or voluntary-controlled to foundation or, from community special to foundation special, acquiring a Trust and/or acquiring a foundation majority on the school's governing body, the following five-stage statutory process must be followed:

Stage 1	Initiation	The governing body considers a change of category to foundation/acquisition of a trust/ acquisition of a foundation majority.
Stage 2	Publication	1 day (having gained consent where appropriate).
Stage 3	Representation (formal consultation)	Must be 4 weeks (as prescribed in regulations). (The LA may refer a Trust proposal to the Schools Adjudicator during this period if it considers the proposal to have a negative effect on standards at the school).
Stage 4	Decision	The governing body must decide within 12 months of the date of publication (unless the LA has referred the proposal to Schools Adjudicator at Stage 3).
Stage 5	Implementation	No prescribed timescale. Must be as specified in the statutory notice, subject to any modifications agreed by the decision-maker.

Stage 1 - Initiation

8. In the case of a proposal to change the category of a school to foundation, the governing body should inform the LA in writing, at least seven days in advance of a meeting, if a motion to consult on a change of category proposal is to be discussed.

9. The existing trustees and whoever appoints the foundation governors must¹ give consent before the governing body can publish a proposal to change category from a voluntary-school to a foundation school or acquire a foundation majority.

Stage 2 - Publication

10. Part 1 of Schedule 1 to the Prescribed Alterations Regulations specifies the information that the statutory proposal must contain. When drafting a proposal the proposer will need to be mindful of the factors that will inform the decision-maker's assessment when determining the proposal (see Decision-makers Guidance at [Annex B](#)).

11. Part 2 of Schedule 1 to the Prescribed Alterations Regulations specifies which bodies must be sent copies of the proposal and where a brief notice of the proposal must be published.

12. Where a proposal is 'related' to another proposal, details of this should be made clear in the notice.

Stage 3 - Representation Period

13. The representation period starts on the date of the publication of the proposal and must last four weeks. During this period, any person or organisation can submit comments on the proposal to the governing body to be taken into account when the decision is made.

14. During the representation period, the LA has the power² to require the referral of a proposal to acquire a Trust/foundation majority to the Schools Adjudicator for decision if they consider it will have a negative impact on standards at the school. The specific circumstances in which a referral can be made are prescribed in paragraph 8(2) and paragraph 10 of Schedule 1 to the Prescribed Alterations Regulations. The LA does not have this power in respect of a proposal solely to change category to foundation³.

15. Where a proposal is referred to the Schools Adjudicator, the governing body must forward any objections or comments it has received to the Schools Adjudicator within 1 week of the end of the representation period.

Stage 4 - Decision

16. Paragraphs 13 to 16 of Schedule 1 to the Prescribed Alterations Regulations prescribe the decision-making process.

17. Where a proposal to acquire a Trust or a foundation majority is linked to a proposal to change category to foundation, they will fall to be decided together.

¹ Under section 20 of the EIA 2006.

² Under section 23 of the EIA 2006 and paragraphs 8 to 11 of Schedule 1 to the Prescribed Alterations Regulations.

³ However, where such a proposal is related to a proposal to acquire a Trust, then the whole set of proposals will be referred to the Schools Adjudicator.

18. Unless a proposal has been referred to the Schools Adjudicator (see paragraph 14), the governing body will be the decision-maker. Decisions must be taken in accordance with the 'Decision-makers Guidance' (at [Annex B](#)). The governing body must determine the proposal within 12 months of the date of publication of the proposal.

19. When issuing a decision, the decision-maker can:

- reject the proposal;
- approve the proposal without modification; or
- approve the proposal with modifications, having consulted the LA.

20. Where the LA has referred a proposal to acquire a Trust/foundation majority to the Schools Adjudicator for decision, any related proposal(s) (including a change of category to foundation) will also fall to be decided by the Schools Adjudicator.

21. The decision-maker may conditionally approve a proposal subject to a prescribed event⁴. When doing so it must set a date by which the event must occur, but this can be modified if required. This date must be before the proposed implementation date of the proposal. If the event has not occurred by the date specified, the proposal must be referred back to the decision-maker for re-consideration.

22. Decision-makers must give reasons for their decision irrespective of whether the proposal was rejected or approved. They must also arrange for a copy of the decision (together with reasons) to be posted on the website where the original proposal was published and for it to be forwarded to the bodies specified in paragraph 17 of Schedule 1 to the Prescribed Alterations Regulations.

23. Where a proposal has been decided by the governing body and is to change the category of a VA school to foundation (with or without the acquisition of a Trust/foundation majority), the following bodies have the right of appeal to the Schools Adjudicator⁵:

- the LA;
- the local Church of England diocese; and
- the local Roman Catholic diocese.

Stage 5 - Implementation

24. The governing body is under a statutory duty to implement any approved proposal by the approved implementation date, taking into account any modifications made by the decision-maker.

⁴ The events are those listed in paragraph 16 of Schedule 1 to the Prescribed Alterations Regulations.

⁵ The specific circumstances in which a referral can be made are prescribed under paragraphs 15 of Schedule 1 to the Prescribed Alterations Regulations.

25. Modifications can be made to a proposal by the governing body after determination but before implementation (see paragraph 20 of Schedule 1 to the Prescribed Alterations Regulations).

26. There is no limit on the time between the publication of a proposal and its date of implementation⁶ but circumstances may change significantly if a long period passes. If the proposer cannot implement an approved proposal because circumstances have changed so that implementation would be inappropriate or implementation of the proposal would be unreasonably difficult, they must publish a revocation proposal to be relieved of the duty to (see paragraph 19 of Schedule 1 to the Prescribed Alterations Regulations).

27. Once proposed changes have been implemented, the proposer must⁷ inform the Secretary of State by ensuring that the department's Register of Educational Establishments (EduBase) is updated. Guidance on how schools and LAs can update EduBase is available at: www.education.gov.uk/edubase/faq.xhtml.

28. Requirements as to the revision or replacement of the school's instrument of government, reconstitution or replacement of the governing body, transfer of staff and transitional admission arrangements are prescribed in Schedule 4 to the Prescribed Alterations Regulations.

29. Requirements as to land transfers, when a school changes category or acquires a Trust, are prescribed in Schedule 5 to the Prescribed Alterations Regulations.

⁶ For a proposal to acquire a foundation majority, proposers should build in enough time for a new instrument of government to be made (where required).

⁷ Under paragraph 18(2) of Schedule 1 to the Prescribed Alterations Regulations.

Removal Proposals: Proposals for removing a Trust and/or removing a foundation majority

The statutory process

30. There are five or six statutory stages (depending on the proposal and circumstances) to remove a Trust and/or to reduce a Trust majority. It may be triggered in two different ways – either by a majority or a minority of the governing body:

Stage 1	Initiation	<p>Majority</p> <p>A majority of governors considers publishing a proposal to remove a Trust/reduce the number of governors appointed by the Trust.</p> <p>or</p> <p>Minority</p> <p>A minority (of not less than a third of the governors) notify the clerk of the governing body of their wish to publish a proposal to remove a Trust/reduce the number of governors appointed by the Trust.</p>
Stage 2	<p>Land Issues</p> <p>(applicable only to removal of Trusts)</p>	<p>In cases of removing Trusts, the governing body, Trustees and the LA must resolve issues related to land and assets before a proposal is published.</p> <p>If not resolved within 3 months, disputes must be referred to the Schools Adjudicator.</p>
Stage 3	Consultation	<p>Majority</p> <p>It is for the governing body to determine the length of consultation (a minimum of 4 weeks is recommended).</p> <p>or</p> <p>Minority</p> <p>No consultation required.</p>

Stage 4	Publication and representation	<p>Majority</p> <p>No specified timescale by which to publish – followed by a 6 week representation period.</p> <p>or</p> <p>Minority</p> <p>Where there are no land or asset issues – publish within 3 months of receipt of notice by governing body clerk – followed by a 6-week representation period.</p> <p>Where there are land issues, publish within 1 month of receipt of School Adjudicator’s determination – followed by a 6-week representation period.</p>
Stage 5	Decision	<p>The governing body must decide within 3 months.</p> <p>(A proposal initiated by a minority of governors may not be rejected unless at least two-thirds of the governing body are in favour of the rejection).</p>
Stage 6	Implementation	<p>No prescribed timescale, but must be as specified in the statutory notice, subject to any modifications agreed by the decision-maker.</p>

Stage 1 - Initiation of Statutory Process

31. A proposal for removing a Trust and/or removing a foundation majority can be triggered by a (a) majority or (b) minority of the governing body:

a) under regulation 4 of the Removal Regulations, by a simple majority of the governing body or a committee deciding to publish a proposal. The decision to publish must be confirmed by the whole governing body at a meeting held at least 28 days after the meeting at which the initial decision was made; or

b) under regulation 5 of the Removal Regulations, by at least one-third of the governors requesting in writing to the clerk of the governing body, that a proposal be published. No vote of the governing body is required as they are obliged to publish a proposal. To prevent on-going challenges there are a number of prescribed

circumstances in which there is no obligation to follow the wishes of the minority of governors⁸.

32. All decisions must be taken in accordance with the processes prescribed in Procedures Regulations⁹.

Stage 2 - Where a proposal is to remove the school's Trust - resolution of issues relating to land and assets

33. Once the decision has been taken to initiate the process of removing the school's Trust (whether triggered by a majority or a minority of governors), the governing body must¹⁰ reach agreement with the Trust and LA on issues relating to the school's land and assets. Where such issues remain unresolved within 3 months of the initial decision (majority) or receipt of notice by the clerk (minority), they must be referred to the Schools Adjudicator for determination.

34. On the removal of the Trust, all publicly provided land held by the Trust for the purposes of the school will transfer to the governing body¹¹. Where the land originated from private sources (for example, where land was gifted on trust), the land will transfer to the governing body in accordance with a transfer agreement, providing for consideration to be paid by the governing body to the Trust where appropriate. However, there may be land which has benefited from investment from public funds which remains with the trustees under the transfer agreement.

35. Alternatively, there may have been investment by trustees in the publicly provided land or from public funding in the land provided by the trustees. In either of these cases, it may be appropriate for either the trustees or the public purse to be compensated. The possibility of stamp duty land tax may also need to be taken into account.

36. The Schools Adjudicator will announce its determination in writing to both parties.

Stage 3 - Consultation

37. Where a minority of governors initiated the process, this stage does not apply.

38. Where a majority of governors initiated the process, before publishing a proposal the governing body must consult local stakeholders as prescribed in regulation 7 of the Removal Regulations.

Stage 4 - Publication and representation period

39. Where the decision to publish a proposal was made by a majority of governors, the governing body at this stage must decide whether to go ahead with publishing the proposal.

⁸ See regulation 5(4) of the Removal Regulations for further details.

⁹ Except as otherwise provided by the Removal Regulations.

¹⁰ Under regulation 6 of the Removal Regulations.

¹¹ By virtue of regulation 17(1) of the Removal Regulations

40. Where the decision to publish a proposal was made by a minority of governors and there are no land issues to be determined, the governing body must publish the proposal within 3 months of the receipt of the notice by the clerk. If land issues were referred to the Schools Adjudicator, the proposal must be published within 1 month of receipt of its determination.

41. Regulations 8 and 9 and Schedules 1 and 2 of the Removal Regulations specify the information that the statutory notice must contain, where it must be published and the bodies to whom the proposal must be sent.

42. The representation period starts on the date of the publication of the proposal and must last six weeks. During this period, any person or organisation can submit comments on the proposal to the governing body to be taken into account when the decision is made.

43. Unlike the Trust acquisition process there is no power for the LA to refer to the Schools Adjudicator a proposal to remove a school's Trust or to reduce the number of governors appointed by the Trust. However, governing bodies must bear in mind that failure to follow the requirements of the statutory process could lead to a complaint to the Secretary of State under Section 496/497 of the Education Act 1996, and/or ultimately be challenged through judicial review.

Stage 5 - Decision

44. The governing body is the decision-maker for a removal proposal and must determine the proposal within 3 months of the date of its publication. Decisions must be taken in accordance with the Decision-makers Guidance (at [Annex B](#)).

45. If a proposal was brought forward by a majority of governors, then it may be determined by a majority vote of those governors present¹².

46. If a proposal was brought forward by a minority of governors, then the governing body may not reject the proposal unless two thirds or more of the governors indicate that they are in favour of its rejection¹³.

47. The governing body must notify the relevant LA and Trustees of their decision.

Stage 6 – Implementation

48. The governing body is under a statutory duty to implement any approved proposal, as published, by the approved implementation date, taking into account any modifications made.

49. Modifications can only be made to the implementation date and the proposed constitution of the governing body. This can only be done in line with paragraph 12(2) of the Removal Regulations.

¹² As per the School Governance (Roles, Procedures and Allowances) (England) Regulations 2013.

¹³ As per regulation 11(2) of the Removal Regulations.

50. Removal of a Trust must be implemented in accordance with regulations 14-18, and reconstitution of the governing body must be implemented as per regulation 14-16 of the Removal Regulations.

51. **Once proposed changes have been implemented, the governing body must¹⁴ inform the Secretary of State by ensuring that the department's Register of Educational Establishments (EduBase) is updated. Guidance on how schools and LAs can update EduBase is available at:**

<http://www.education.gov.uk/edubase/faq.xhtml>.

¹⁴ Section 538 of the Education Act 1996 imposes an obligation on governing bodies of maintained schools to provide information to the Secretary of State that he may require for the purpose of the exercise of his education functions. Section 29(5) of the Education Act 1996 requires LAs to publish information at such times and in such manner as may be required by regulations in respect of their arrangements relating to primary or secondary education.

Further guidance on the implementation of foundation and Trust proposals

Reconstitution of the governing body

52. In changing category, an implementation period begins when the proposal is decided and ends on the date the proposal is implemented. During this period the LA and governing body are required to make a new instrument of government for the school, so enough time must be built into the timeframe for this to happen. The governing body must then 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 2012.

53. When removing a Trust or a Trust majority, a governor may continue as a governor in the corresponding category (e.g. staff governor, parent governor) if that category remains under the new instrument of government. A member of a current governing body who continues as a governor on these grounds holds office for the remainder of the term for which he or she was originally appointed or elected. Where a school with a religious character has no foundation, the governing body must appoint partnership governors with a view to ensuring that the religious character of the school is preserved and developed in accordance with the School Governance (Constitution) (England) Regulations 2012. There is nothing to prevent the appointment of a former foundation governor being reappointed by the governing body as a partnership governor.

Variation of foundation and voluntary school Trusts

54. 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 a proposal 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 and the relevant site trustees are advised to make early contact with the Charity Commission to apply for the trust to be varied under the relevant trust law.



Department
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