



School places in England

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This note provides background information on two broad areas:

- Applications for state school places in England, and how places are allocated
- How school places are planned and provided

The law on school admissions and policy on school place provision differs in Scotland, Wales and Northern Ireland – this note covers England only.

It looks at:

- The 'oversubscription criteria' schools can and cannot use to prioritise applicants
- How parents and guardians apply for state school places
- The legislation and statutory guidance on school admissions
- Appeals against the refusal of a place at a particular school or schools
- The supply of school places in England, and local authorities' duties
- How new school places are planned and provided
- How existing schools can expand, contract, merge or close.

The note is not intended as a guide for parents or guardians on admissions processes in particular areas. **Parents or guardians seeking a school place for their child should consult their home local authority for guidance well in advance of application deadlines.** Places at special schools are allocated through a different process. Again, parents and carers should seek individual guidance from their home local authority if they are seeking a place at this type of school.

This information is provided to Members of Parliament in support of their parliamentary duties and is not intended to address the specific circumstances of any particular individual. It should not be relied upon as being up to date; the law or policies may have changed since it was last updated; and it should not be relied upon as legal or professional advice or as a substitute for it. A suitably qualified professional should be consulted if specific advice or information is required.

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1.1 Admission to state-funded schools in England

Key Facts

- School places in England are not automatically allocated, even when children are attending an attached nursery school, feeder primary or junior school. Parents, carers or guardians should apply for a school place before their LA's deadline for the 'normal admission round'. Applications are made to the 'home' LA even if the school being applied for is outside the LA area.
- The LA must find a school place for all children who require one who have turned four prior to 1 September in the year of admission.
- Non-selective mainstream state schools with free places must offer a place to any child who applies, regardless of religious orientation or any other characteristic.
- Parents and carers have a right to express preferences for particular schools; there is no right to choose a particular school, unless that school is undersubscribed.
- Application forms are blind and applications are decided in accordance with published admissions criteria. Parents are not more likely to get a place at their preferred school by listing only the name of that school on the application form.
- Parents who do not get their preferred school can appeal the decision; success is likely to depend on the age of the child, the type of school being appealed for, and whether the admissions criteria and procedure have been applied correctly.

Admissions authorities

The 'admissions authority' is responsible for determining and applying a school's admissions policy. The table below summarises which body is the 'admissions authority' for different types of school

Type of school	Admissions authority
Academy or free school	Academy trust
Maintained community or voluntary controlled school	Usually the local authority
Maintained voluntary aided school or maintained foundation school	Governing body

In the normal application round, applications are usually made to the local authority, even when the local authority is not the admissions authority for the school.

Admissions authorities for maintained schools are required to have regard to the statutory [School Admissions Code](#) and [School Admissions Appeal Code](#).¹ Most academies and free schools are required to abide by the Codes via clauses in their funding agreements, although

¹ DfE, [School Admissions Code](#), December 2014; DfE, [School Admissions Appeals Code](#), February 2012. All web addresses last accessed 19 March 2015 unless otherwise stated.

the Secretary of State has the power to vary admissions requirements where necessary. Examples would include the small number of free schools that have ‘derogations’ incorporated into their funding agreements allowing them to give some priority in admissions to children of the school’s founders.

The admission process for ‘normal round’ school admissions

A [GOV.UK website article](#) on school admissions (updated 12 November 2014) offers general guidance on the school admissions process in England.² The admission process is also summarised in section two (paragraph 15) of the [School Admissions Code](#).

Local authorities are required to co-ordinate the admissions arrangements for their area, and administer the application process for mainstream schools in respect of pupils applying for entry at the normal points of admission (e.g., Reception, Year 3 in areas with junior schools, and Year 7 for entry to secondary school).³

Local authorities must publish their ‘co-ordinated scheme’ for admissions on their websites by 1 January each year. Where an admissions authority wishes to vary its admissions criteria from the previous year, it must undertake a statutory consultation on the proposed changes.⁴ Even where no changes are proposed, admissions authorities must consult on their admissions arrangements once every seven years as a minimum.

The Schools Adjudicator decides on objections to determined admission arrangements of all state-funded schools and variations to determined admission arrangements for maintained schools.⁵ Further Information is available on the [Office of the Schools Adjudicator website](#).

Local authorities are also required to produce guidance for parents and carers on the admissions process and on selecting schools. Often, this guidance will include information on how places were allocated in previous years – e.g., on the ‘cut off’ for places offered on the grounds of home-to-school distance. However, school intakes can vary significantly from year to year, depending on a wide range of factors – for example, the number of siblings applying. For this reason, while data on previous admission rounds can be a useful guide, it should never be relied upon in terms of guaranteeing entry in future years, even where oversubscription criteria remain unchanged.

Common application forms must allow parents to nominate at a minimum of three schools for their child, in order of preference. Admissions authorities must comply with parental preferences where this is reasonable. However, this does not usually mean that a place at a particular school must be offered if all places are taken by children ranking more highly against the published admissions criteria.

As such, there is no general parental right to **choose** a school, unless the school is undersubscribed; rather, there is a right to **express a preference**.

National offer days

There are two ‘National Offer Days’ in England each year, one for primary school places and one for secondary school places. These are the dates on which LAs send the offer of a

² Gov.uk website article, ‘[School admissions](#)’, updated 12 November 2014.

³ New free schools may choose to be outside the co-ordinated admissions arrangements in their first year of opening only.

⁴ A statutory consultation is not required for proposed increases to a school’s PAN or where the admissions arrangements are being changed in order to comply with the Code.

⁵ DfE, [School Admissions Code](#), December 2014, Section 3 and glossary.

school place to all parents who have applied for one. In 2015, applicants will receive offers of primary places on or around 16 April; for secondary places, the date was 2 March.

In-year applications

Parents who wish their child to change schools or join a school outside the normal application round (e.g., in the middle of a school year) will usually be required to make an in-year application.

In some areas, the local authority co-ordinates in-year applications, but there is no statutory requirement for them to do so. Some schools manage their own in-year applications. In these cases, parents can apply directly to the school in question. Parents seeking in-year places for their children can contact the local authority for advice to find out what the arrangements are locally, and where places might be available.

Criteria used by admission authorities to rank applicants

Where a school is under-subscribed, all applicants must be offered places. The exception is in designated grammar schools, which are allowed to select on the basis of general ability.

Where a school is oversubscribed (e.g., has more applicants than places) the school's admission authority must rank applications against its published oversubscription criteria. The oversubscription criteria used must be "reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation" (para 1.8 of the Code).

The [School Admissions Code](#) provides that certain children must be given the highest priority in oversubscription criteria. These are:

- Children looked after by the local authority
- Children previously looked after, who have left care via adoption, the granting of a special guardianship order (SGO) or a child arrangements order (CAO).⁶

Where a school has a faith designation and is proposing to offer some priority to children on the basis of faith, it must prioritise looked after and previously looked after children of the faith ahead of other children of that faith.

The Code also specifies that all children who have a statement of special educational needs or Education, Health and Care Plan (EHC plan) that names the school must be admitted.

Criteria not allowed under the Code

While it is for admission authorities to formulate their admission arrangements, the Code sets out certain things that they must not do. The following are not permissible under the Code – this is not an exhaustive list:

- Arrangements that directly or indirectly disadvantage children from particular social or racial groups, or children with disabilities or special educational needs
- Use of any other criteria other than those clearly stated in published admissions criteria when ranking applicants

⁶ Grammar schools that select by ability and provide for only those pupils who score highest in any selection test to be admitted are not required under the code to give priority to looked after and previously looked after children.

- Taking into account previous schools attended unless this is a named feeder school
- Taking into account the rank of parental preferences – e.g., affording a lower priority to an application simply because the parent had named the school third rather than first on the application form.
- Giving preference based on parents' practical or financial support for the school or a related body, including a religious organisation.
- Except in the case of the children of staff and those who would qualify for the pupil premium or service premium, giving priority to children on the basis of parents' income, occupation, marital or financial status.
- Interviewing parents or children.⁷

Commonly-used oversubscription criteria

The Code does not seek to give a definitive list of acceptable oversubscription criteria since it is for the admission authority to decide which criteria would most be suitable to the school in the local circumstances. However, it does offer guidance on the most common criteria used. These may, for example, include:

- siblings of pupils at the school
- distance between home and school
- practising members of the faith (in the case of faith schools)
- catchment areas
- feeder primary schools
- social or medical need

The Code sets out in some detail the rules relating to selection by ability or aptitude. There is also guidance on banding as a permitted form of selection.

The Code also provides guidance on faith-based oversubscription criteria in schools with a religious character. Any new academy⁸ or free school with a religious character will be required to admit, as a minimum, 50 per cent of their pupils without reference to faith, where oversubscribed.⁹

Catchment area

Some areas and schools operate a system of catchment areas, sometimes referred to as 'priority admission areas'. Children living within a catchment area may be afforded some priority where a school is oversubscribed, but catchment areas cannot be used to prevent applications in respect of children who live outside. Catchment areas must be drawn up in ways that are reasonable and clearly defined (para 1.14 of the Code). If an admission

⁷ There are exceptions for state boarding schools, which may interview children to ascertain their suitability for boarding, and for entry into the sixth form where a meeting may take place to discuss course options and academic entry requirements. The meeting, however, cannot "form part of the decision-making process on whether to offer a place" (para. 1.9 of the Code).

⁸ I.e. not converters from the maintained or independent sectors, or sponsored academies with a predecessor maintained school.

⁹ DfE, [School Admission Code](#), Dec 2014, paragraphs 1.36 to 1.38, in particular see footnote 30.

authority is considering changing its catchment area, then this will require a statutory consultation.

Residence inside a school's catchment area is not necessarily a 'passport' to admission to the school if it is oversubscribed. Although many schools with catchment areas are able to admit all catchment children who apply, this is not always the case and some may use 'tie-breaker' criteria based on, e.g., distance from the school or having a sibling already attending. Therefore, a child can be 'in catchment' but not offered a place.

What happens if a parent or guardian does not get offered a place at their highest preference school?

As noted above, national offer day for primary places in 2015 is 16 April. National offer day for secondary schools was 2 March 2015. Each year, the Library receives constituency enquiries from Members on behalf of parents who have not obtained a place at their preferred school or occasionally at any of the schools they named on their application form.

Where the LA is unable to offer a place at *any* of the applicant's preferred schools, it may allocate a place at another school which does have spare places. Sometimes this is at a school a distance from the child's home or at a school considered undesirable by the applicant.

Parents sometimes believe that by formally rejecting the offer they have received in this way, they may compel the local authority to find another, more suitable, place for their child. This is not the case; once a suitable offer has been made, the LA is considered to have discharged its statutory duty.

Occasionally, an LA may be unable to offer any place at all on national offer day. In these cases parents may wish to seek independent advice from a specialist organisation on how best to proceed.

Examples include:

- [Citizen's Advice](#)
- [ACE Education](#)
- [Coram Children's Legal Centre](#)

Waiting lists

All admissions authorities are required to maintain a waiting list for at least the first term of the school year. Applicants can contact the local authority to enquire whether their child has been automatically placed on the 'continuing interest' or waiting lists for the schools they would like their children to attend. There can be considerable movement on waiting lists between the initial offer date and the start of the autumn term in September. However, this varies from school to school.

Waiting lists are kept in order of the school's admission oversubscription criteria, not according to the date the child's name was added to the list, and so parents can find that their child's position on a waiting list goes down as well as up.

Obtaining a school place dishonestly

Where an LA has cause to believe that a place has been obtained dishonestly, then it may decide to undertake an investigation. The Code allows for places to be withdrawn if they

have been obtained in this way – e.g., by using the address of a relative as the child’s home address for application purposes. This is sometimes referred to by admissions authorities as using an ‘address of convenience’. Parents who have cause to believe that other applicants have been incorrectly awarded places can contact their local authority for advice.

Where a place has been obtained dishonestly, the Code allows for the place to be withdrawn even when the child has started school, but the length of time a child has been at the school will be a likely factor when deciding whether taking such action would be reasonable. The Code suggests that “it might be considered appropriate to withdraw the place if the child has been at the school for less than one term.”¹⁰

Child’s address for the purposes of school applications

Admissions authorities are required to make clear how the child’s home address will be determined. LAs may request evidence of a child’s address in connection with an application for a school place.

When children have two addresses

Constituents sometimes approach members with queries about which address to put on application forms where parents have shared care and the child(ren) live for part of each week with each parent. It is not possible to give general advice on this issue, as different admissions authorities use different criteria to determine a child’s address. Written confirmation should be sought from the local authority if there is any doubt over the address that should be used in this type of situation.

Moving into the area after the application deadline

There are also sometimes issues when a family moves area after the ‘cut-off’ date for on-time applications, or moves house soon before the application deadline. Again, parents should seek written clarification from the relevant local authority about which address to include in the application, and what proof will be needed that the address being used is the child’s primary residence.

Summer-born children: New provisions in the statutory Code

The School Admissions Code contains revised guidance about the admission of summer-born and other children outside their ‘usual year group’. The option of placing a child in a year group other than the one they would usually join is not new – as explained in the DfE’s consultation on revisions to the Code:

Schools are required to provide for the admission of all children in the September following their fourth birthday, but children do not reach compulsory school age until after their fifth birthday. Children born in the summer term, therefore, are not required to start school until a full year after the point at which they could first have been admitted – the point at which other children in their age range are beginning year 1.

5.2 A parent who chooses not to send their summer born child to school until they have reached compulsory school age may request that they are admitted outside their normal age group – to reception rather than year 1. Paragraph 2.17 of the current Code requires that, where a parent requests that their child is admitted outside their normal age group, the admission authority must make a decision on the basis of the circumstances of the case.

¹⁰ DfE, [School Admission Code](#), Dec 2014, Para 2.13

5.3 We believe that the vast majority of parents of summer born children are happy for their child to start school in the September following their fourth birthday, or at some point during that school year. The number of parents who would like their summer born child to be admitted out of their normal age group appears to be very small. However, correspondence received from parents and MPs and feedback from local authorities suggests the decision is problematic in a high proportion of these cases.¹¹

Paragraphs 2.17 to 2.17b of the [Code](#) now contains more explicit requirements relating to the admission of a child outside of their normal year group. Admission authorities must, among other things:

- Make clear in admissions arrangements how parents can request admission to a different year group
- Make decisions on an individual basis and in the best interests of the child
- Take into account the views of the head teacher

The DfE has published [non-statutory advice](#) for local authorities and admission authorities on the admission of summer-born children outside of their normal age group.¹²

On 4 March 2014, the Education Committee took oral evidence on the school starting age; the session covered the issue of summer-born children. The [transcript of oral evidence](#) has been published on the Committee's website.¹³ DfE written [evidence on summer-born children](#) is also available to download.¹⁴

On 19 March 2015, the Committee published a [letter](#) sent by the Chair, Graham Stuart MP, to Nick Gibb, Minister for School Reform, on this issue.¹⁵ Among other things, this urged the Government to:

- Undertake analysis of which admissions authorities fail to provide flexibilities described in the DfE guidance.
- Assess how a right of appeal could be introduced where admission authorities don't agree to a request for admission outside the usual age group
- Monitor the effectiveness of DfE guidance in terms of whether or not it changes admissions authorities' practices

Fair access protocols

Each local authority must have a fair access protocol (FAP), which must be agreed with the majority of schools in the local area. The protocol sets out how a place should be found for children – and in particular, vulnerable children - who have not been able to obtain one through the usual in-year admissions process.

FAPs are intended to ensure that such children are offered a suitable place as quickly as possible, and must as a minimum cover:

¹¹ DfE, [Consultation. Changes to the School Admission Code](#), 22 July 2014, Pps 8 - 9

¹² DfE, [Advice on the admission of summer born children. For local authorities, school admission authorities and parents](#) (December 2014)

¹³ Education Committee, [Transcript of oral evidence – 4 March 2015](#), published 6 March 2015.

¹⁴ Education Committee, [DfE written evidence: Summer-born children](#), undated.

¹⁵ Education Committee, [Letter from Graham Stuart to Nick Gibb](#), published 18 March 2015.

- a) children from the criminal justice system or Pupil Referral Units who need to be reintegrated into mainstream education;
- b) children who have been out of education for two months or more;
- c) children of Gypsies, Roma, Travellers, refugees and asylum seekers;
- d) children who are homeless;
- e) children with unsupportive family backgrounds for whom a place has not been sought;
- f) children who are carers; and
- g) children with special educational needs, disabilities or medical conditions (but without a statement or Education, Health and Care Plan).¹⁶

The requirement to have regard to a parent's preference as to choice of school does not apply in the case of children placed via a FAP. In some areas, panels are convened to discuss the placement of children under the protocol.

1.2 Infant class size rule

The *School Admissions (Infant Class Sizes) England Regulations 2012*,¹⁷ limit maintained school infant classes (i.e. classes in which the majority of children will reach the age of five, six or seven during the school year) to 30 pupils per school teacher. However, there are exceptions to the general rule, and these are set out in paragraph 2.15 of the [School Admission Code](#). 'Excepted pupils' can be admitted if they fall into one of the following categories:

- a) children admitted outside the normal admissions round with statements of special educational needs or Education, Health and Care Plans specifying a school;
- b) looked after children and previously looked after children admitted outside the normal admissions round;
- c) children admitted, after initial allocation of places, because of a procedural error made by the admission authority or local authority in the original application process;
- d) children admitted after an independent appeals panel upholds an appeal;
- e) children who move into the area outside the normal admissions round for whom there is no other available school within reasonable distance;
- f) children of UK service personnel admitted outside the normal admissions round;
- g) children whose twin or sibling from a multiple birth is admitted otherwise than as an excepted pupil;
- h) children with special educational needs who are normally taught in a special educational needs unit attached to the school, or registered at a special school, who attend some infant classes within the mainstream school¹⁸

¹⁶ DfE, [School Admissions Code](#), December 2014, para. 3.15, Pp. 30

¹⁷ SI 2012/0010, made under S 1 of the *School Standards and framework Act 1998*, as amended.

¹⁸ *Ibid.*, December 2014, para 2.15

Data from the annual DfE school census originally suggested that in 2014 5.1 per cent of reception and Key Stage 1 classes (ages 4 to 7) were above the statutory maximum size, 4.2 per cent unlawfully and 0.9 per cent lawfully (e.g., because they had ‘excepted pupils’ or for another reason).¹⁹ On 11 March 2015, the DfE published a [technical note](#) following a review of the accuracy of the data on large infant classes. This concluded:

The department’s Head of Profession for Statistics has concluded that the statistics on unlawfully (and lawfully) large infant classes are not fit-for-purpose and has written to the UK Statistics Authority recommending they should be de-designated as National Statistics and removed from the main statistical first release. He has also set out an Action Plan for improving the quality of these statistics so they can be re-assessed for National Statistics status by the UK Statistics Authority as soon as possible. The remaining data on infant classes is unaffected and remains in the publication which retains National Statistics status.²⁰

There are no statutory maximum class sizes for children in year three or above.

1.3 School admission appeals

Parents who are unhappy about the decision not to award their child a place at a school can appeal to an independent appeal panel. Parents appeal *for* a place at a school that has declined them a place, not *against* the place they have been allocated.

Statutory guidance on the appeal process is contained in the [School Admission Appeals Code](#), dated 1 February 2012.

An appeal panel must consider whether the admission arrangements complied with the mandatory requirements and whether the admission arrangements were correctly and impartially applied in the case in question. The panel must also decide whether admission of additional children would prejudice the provision of efficient education or efficient use of resources. An appeal panel’s decision that a child should be admitted is binding on the admission authority.

Section 4 of the Code deals with infant class size appeals – that is, appeals about admission to reception, year 1 or year 2 classes. Infant class size appeal panels will only consider:

- the legality of the admissions arrangements
- whether a mistake has been made in the particular case
- Whether the decision to refuse a place was unreasonable. The test of what is unreasonable is strict.

Section 5 of the Code describes possible further avenues for appeals and complaints in certain circumstances.

Where there is evidence that a school place has been refused because of some unfairness or mistake by the admissions authority and/or a school admissions appeal has been handled incorrectly, the Local Government Ombudsman (LGO) or the Education Funding Agency

¹⁹ See Section 1 of DfE technical note, [Results of an investigation into the quality of statistics on unlawful/lawful infant class sizes](#), 11 March 2015.

²⁰ *Ibid.*, Pp. 13

(EFA) may be able to consider a complaint.²¹ The LGO is not another level of appeal and cannot question decisions if they were taken properly and fairly by the admissions authority or the appeal panel. The [LGO website](#) (last updated 11 February 2014) provides information about making complaints in relation to school admissions.²²

Parents who decide to pursue an appeal may wish to obtain tailored individual advice. The following may be useful initial background for parents or carers considering this route:

- Coram Children’s Legal Centre factsheet, ‘[School admission appeals](#)’ (January 2015)
- ACE Education website article, ‘[Disappointed with the school place offered to your child?](#)’ (undated)
- Gov.uk website article, ‘[School admissions – appealing a school’s decision](#)’ (updated 12 November 2014)

Admission authorities are required to set a timetable for organising and hearing appeals – this should be published on their website.

1.4 Current issues in school admissions

Chief School Adjudicator’s annual report for 2014

On 16 January 2015, the Office of the Schools’ Adjudicator (OSA) published its [annual report](#) covering the period September 2013 to August 2014.²³ This provided commentary on cases the OSA had dealt with during the year, and analysis of trends in admission authorities’ compliance with statutory requirements. Its main findings are summarised below:

Main finding 1. Too many admission authorities of schools that are their own admission authority do not comply fully with the Code in respect of consultation about, determination of, and publication of their admission arrangements. Paragraphs 1.42 to 1.49 of the Code set out very clearly what an admission authority must do for itself and also do to enable its local authority to meet the requirement set for it in respect of publication of admission arrangements.

Main finding 2. Admission arrangements for admission to the sixth form are frequently found to contravene the Code. They are, for example, difficult to find, lack an admission number, do not include oversubscription criteria and have application forms that request information prohibited by the Code.

Main finding 3. Schools that are their own admission authority often have arrangements that lack the required information and request prohibited information in their supplementary information forms. They do not meet their responsibility for having admission arrangements that comply fully with admissions law and the Code.

Main finding 4. Admission arrangements for too many schools that are their own admission authority are unnecessarily complex. The arrangements appear to be more likely to enable the school to choose which children to admit rather than simply having oversubscription criteria as required by paragraph 1.8 of the Code that are reasonable, clear, objective and procedurally fair.

²¹ The LGO can only consider complaints about admission to community, foundation, voluntary aided, voluntary controlled or nursery school or convertor academies where the conversion took place during the admissions process.

²² <http://www.lgo.org.uk/complaints-about-school-admissions/>

²³ OSA, *Office of the Schools Adjudicator annual report. September 2013 to August 2014*, December 2014.

Main finding 5. The practice of some primary schools of giving priority for admission to the reception year to children who have attended particular nursery provision has again been found to be unfair to other local children, constrain parents' preferences for child care and pre-school provision and not comply with the general requirements of the Code.²⁴

1.5 School places – supply and demand

Overarching sufficiency duty

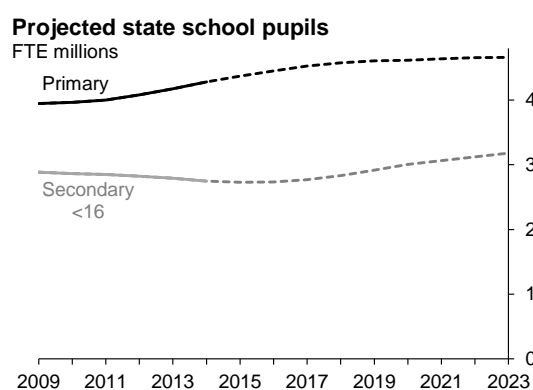
Section 14(1) of the *Education Act 1996*, as amended, places a duty on local authorities to secure sufficient school places for all children of statutory school age in the area who require one.

The schooling available must be suitable for pupils' different ages, abilities and aptitudes and the different periods they are expected to remain in school (Section 14(3) of the 1996 Act). LAs are also required by Section 14(1) of the 1996 Act to discharge their duty with a view to ensuring a diversity of school places, and increasing opportunities for parental choice (Section 3(A)).

The statutory [School Admissions Code](#)²⁵ makes clear that the LA must provide for the September admission of children who have turned four prior to the start of that school term (para 2.16).²⁶

1.6 Matching supply and demand²⁷

Primary pupil numbers in state schools increased by one third of a million or 8% in the five years to 2014 and are projected to increase further by almost 400,000 (9%) by 2023. This is illustrated opposite. If this projection is accurate then primary pupil numbers would reach their highest levels since the late 1970s. The number of five-year-olds starting full-time at primary schools is expected to increase to almost two-thirds of a million pupils by 2018 (up a quarter from a decade earlier) and remain at around this level



for the rest of the projection period. The increase in pupil numbers is not expected to reach secondary schools until 2016. Between then and 2023 they are projected to rise by almost half a million or 17%. The earlier decline and projected increase in secondary pupils is also shown in the chart above.

The Department for Education (DfE) undertakes an annual school capacity survey, which provides information on school capacity in May, by LA area. Results of the survey are usually published early the following year. More information is available on the [relevant section](#) of the GOV.UK website.

Nationally, in May 2014 primary schools had around 10% of their places unfilled, while the figure for secondaries was around 15%. Currently, therefore, there are many more places

²⁴ OSA, *Office of the Schools Adjudicator annual report. September 2013 to August 2014*, December 2014

²⁵ DfE, *School Admissions Code. Statutory guidance for admission authorities, governing bodies, local authorities, schools adjudicators and admission appeals panels*. December 2014.

²⁶ Ibid., Pp. 24

²⁷ This section contributed by Paul Bolton, House of Commons Library

than pupils at both primary and secondary levels, but the balance between the two varies greatly across the country, within local areas and particularly school-by-school. Shortages of places at popular schools exist alongside substantial numbers of surplus places at others. In May 2014 3,700 or 22% of primary schools had more pupils than places, up from just over 3,500 schools in May 2013. In *these schools* there were 30,700 more pupils than places. At the same time there were 500 secondaries (15%) with more pupils than places, down from 580 in May 2013. In these schools there were 19,000 more pupils than places, down from 23,600 a year earlier.²⁸

At a local level the highest excess rate²⁹ at primary level was 3.4%. The highest secondary school figure was 5.0% in Tower Hamlets. The highest primary level unfilled places rates were in the Isle of Wight and Hammersmith & Fulham; both over 18%. The highest rates at secondary level were in Hull, Bournemouth and the Isle of Wight; all at 25% or higher.³⁰

There are also large variations in local level pupil forecasts. Excluding the City of London and the Isles of Scilly, forecast increases in primary school pupils between 2013/14 and 2018/19 varied from 1% to 34%. At secondary level the forecast changes to 2020/21 were even wider from a 12% fall to a 56% increase. In general, the authorities with larger projected pupil increases are London, the South East and some other urban areas. Each local authority makes its own forecasts of pupil numbers and while these follow broad national guidance they do not use the same methodology in all respects so direct comparisons should be made with caution.³¹

Who decides where the school places are at the local level?

The mechanisms for matching supply of, and demand for, state school places in England are complex. Policy in this area has evolved significantly in the last twenty years, in a context where parental preference has been viewed as increasingly important.

The means by which schools can expand, contract, a new school can open or an existing school can close depend on the type of school concerned, what specific changes are being proposed, and who is proposing the changes. The decision-making body also varies depending on these factors – for example, the DfE is the decision-maker for new applications to open free schools, but the local authority may be both the proposer and decision-maker on proposals to expand a community school.

Maintained schools and local authorities are required to have regard to [statutory guidance](#) on school organisation.³² This was last updated in January 2014. The guidance is underpinned by the [School Organisation \(Prescribed Alterations to Maintained Schools\) \(England\) Regulations 2013](#) (SI 2013/3110), as amended, and the [School Organisation \(Establishment and Discontinuance of Schools\) Regulations 2013](#) (SI 2013/3109), as amended.

Generally speaking, maintained schools' admissions authorities can make the following changes without undertaking a statutory consultation process:

- Expansion (enlargement of premises) in support of an increase to the school's published admissions number (PAN)

²⁸ [School capacity: academic year 2013 to 2014](#), DfE

²⁹ Number of pupils in excess of capacity as a percentage of total places in all schools

³⁰ [School capacity: academic year 2013 to 2014](#), DfE

³¹ *Ibid.*

³² DfE, [School organisation. Maintained schools](#). January 2014

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

The guidance makes clear that the even though formal statutory consultation is not usually required in these circumstances, the DfE expects proposers to engage with the local authority, and consult effectively with parents and other interested parties.

The following changes are ‘prescribed alterations’ and require governing bodies or LAs to follow a statutory consultation process:

- 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.³³

The table ‘Who can do what?’ in [Annex A.5](#) of school organisation guidance explains which bodies can propose which changes, and which bodies decide on proposals.

In some cases, schools (and other parties) may be able to appeal to the Schools Adjudicator if they disagree with a school organisation proposal. More information on when appeals can be made, and by whom, can be found in [Annex A.5](#). The Schools Adjudicator [website](#) also provides information on the kinds of school organisation disputes that can be referred.

Making changes to academies and free schools

Academies and free schools operate outside of local authority control; they are also not directly covered by much of the legislation and regulation that applies to maintained schools. The DfE publishes [separate guidance](#) for academies (and free schools) on making significant school organisation changes.³⁴

Some ‘significant changes’ to academies can be made as ‘fast track’ changes – for example:

³³ DfE, *School organisation. Maintained schools*. January 2014, Pp. 9

³⁴ DfE, *Making significant changes to an existing academy. Departmental advice for academy trusts*. January 2014.

- Enlargement of the premises – e.g., in support of increases to the school’s published admissions number (PAN)
- Change of lower or upper age limit by up to two years (NOT adding or removing a sixth form)
- Adding or increasing boarding provision.

In these cases, although the academy trust will need the approval of the Secretary of State, it does not need to submit a formal business case to the Education Funding Agency (EFA).³⁵

Other ‘significant changes’ require both the approval of the Secretary of State and the submission of a formal business case to the EFA. Examples include:

- Changes to lower or upper age limit of 3 years or more
- Adding or removing a sixth form
- Change of gender composition
- Enlargement of a special academy
- Mergers or amalgamations
- Academy establishing or joining a multi-academy trust

Regardless of whether a significant change is a ‘fast track’ change, academy trusts are required to consult with those who will be affected, and with the local authority.

Opening new schools – the academy presumption

Via amendments to the *Academies Act 2010*, the *Education Act 2011* fundamentally changed the process for setting up new schools. If a local authority identifies a need for a completely new school in its area, it is required to invite proposals from individuals or groups interested in setting up an academy or free school.³⁶ The DfE has published guidance, [The academy/ free school presumption](#) (October 2014), for local authorities and new school proposers.³⁷

In cases where an LA invites academy proposers or sponsors to come forward, it is able to state its preferred bidder. However, the Secretary of State is not under an obligation to accept the LAs’ recommendation. The current DfE guidance on the academy presumption suggests that it is Regional Schools Commissioners³⁸ (on behalf of the Secretary of State) who will make the final decision on choosing the best proposer to run the school.³⁹

Limited opportunity to open new maintained schools

There are only very limited circumstances where a new maintained school can be opened – e.g., where no suitable academy proposals come forward, and where there are no free school proposals that might otherwise meet the anticipated need. The DfE has published

³⁵ The EFA is an executive agency of the Department for Education executive agency.

³⁶ Section 6A of the *Education and Inspections Act 2006*, as amended.

³⁷ DfE, [The academy/ free school presumption](#), October 2014.

³⁸ There are eight RSCs each covering a separate region of England. RSCs are DfE appointees and oversee academies and free schools in their areas.

³⁹ *Ibid.*, Pp. 8

guidance for LAs, *Establishing new maintained schools* (June 2013), which outlines the situations in which new maintained schools can be opened.⁴⁰

Opening of new free schools

Free schools are entirely new state schools, which operate legally as academies. A small number are independent schools that have converted to be state-funded schools (and are now non-fee-paying). There are currently around two hundred and fifty open free schools, with more in the pipeline.

Applications to open a free school are made by proposer groups including parents, voluntary organisations, charities, religious groups, existing high-performing 'sponsoring' schools, academy trusts, or other stakeholders. Applications to open free schools are made in 'waves'. On 6 February 2015, the DfE published guidance for proposer groups on a ninth application 'wave'; this is planned to open in May 2015.⁴¹

LAs do not have any final decision-making role in respect of applications, although they may liaise with the DfE or Regional Schools Commissioners about local need and may express a preference for a particular free school proposal.

It is expected that the eight Regional Schools Commissioners will have an increasing role in advising on, and eventually deciding on, free school applications; the February 2015 free school proposer guidance says the RSCs will continue to be "fully involved in the decision making process" for the ninth round.⁴²

Closing maintained schools and academies

School closures are often highly controversial, and head teachers, governors or others community groups wishing to challenge a closure proposal should seek independent specialist advice. The main teaching unions may be a useful first port of call for school staff in these circumstances.

There are many reasons why a LA may propose to close a school it maintains – these include:

- oversupply of school places
- falling rolls
- planned rationalisation of local provision

LAs and own-admission authority mainstream schools can publish their own closure proposals, but in doing so they must follow a strict statutory procedure as prescribed by the *School Organisation (Establishment and Discontinuance of Schools) (England) Regulations 2013* (SI 2013/3109). This is a five-stage process, consisting of:

- A consultation period – usually between 6 weeks and 12 months. Proposers must have regard to [statutory guidance](#) on the content and conduct of the consultation, and must include information on key issues with the consultation document, e.g. reason

⁴⁰ DfE, *Establishing new maintained schools*, July 2013.

⁴¹ DfE, *Free schools: how to apply Mainstream, 16 to 19, alternative provision and special free schools*, February 2015

⁴² *Ibid.*, Pp. 30

for proposal, anticipated impact on the community, and what will happen to displaced pupils.

- Publication of proposal
- A representation period (strictly 4 weeks in length)
- Decision
- Implementation

There are additional requirements when a closure proposal relates to a rural school or a school exclusively for pupils with special educational needs - these are discussed in [Annex A.4](#) to the statutory school organisation guidance and in the main body of the document. For rural schools, there is a presumption against closure, but where a closure proposal is being considered the proposer must consider factors such as the cost and availability of transport to other schools, alternatives to closure, and likely impact on educational standards.

With regard to special schools, the proposer must publish a statement about how it believes the closure would lead to an increase in the quality, standard or range of provision available for children with SEN. This is referred to as the 'SEN improvement test', and is also relevant where other types of reorganisations involving SEN provision are being proposed. The test is covered in more detail in [Annex A.2](#) of the school organisation guidance.

Any decision to close a particular free school or academy rests with the Secretary of State, and would be taken in accordance with the terms of the school's funding agreement. The Secretary of State may seek to terminate a school's funding agreement where it is seriously underperforming and where there is no prospect of improvement, or, in the case of free schools, where the school has failed to attract enough pupils. Alternatively, academies and free schools may be 're-brokered' (e.g., found a new sponsor), merged with another school or encouraged to join a multi-academy trust.

Capital funding for additional school places

Expansions of existing schools – whether maintained or academy – are often contingent on the availability of capital funding. The DfE's guide to the law for school governors, the [Governors' Handbook](#) (January 2015),⁴³ explains the different capital funding streams for different categories of maintained schools, and academies:

7.10.1 Condition Maintenance Capital

Maintenance funding is provided to local authorities and schools to support them in maintaining the condition of the school estate. Funding is allocated on a purely formulaic basis for LAs, including community and VC schools, VA schools, non-maintained special schools and sixth-form colleges. The formula uses pupil number data taken from the Annual School Census, as a proxy for building need.

For academies, allocations for condition needs are made using the Academies Capital Maintenance Fund [this has now been replaced by the [Condition Improvement Fund](#)].

⁴³ DfE, [Governors' Handbook](#), January 2015

This budget is administered by the Education Funding Agency and accessed through a bidding process.⁴⁴

Maintenance funding for VA schools is made available via the 'Locally Co-ordinated Voluntary-aided Programme' (LCVAP). The local authority, in discussion with the voluntary sector, agrees which projects from their maintenance allocation should be prioritised for funding. The EFA administers LCVAP payments.

7.10.2 Basic Need Capital

'Basic need' supports the capital requirement for providing additional pupil places both in new or expanded maintained schools, and academies. Basic need funding is allocated on a purely formulaic basis using data from the Annual Schools Capacity Survey. It is made available to local authorities in the first instance and it is for each local authority to decide how basic need allocations should be prioritised at local level. Further information on the planned use of basic need funding can be supplied by the local authority officer with responsibility for pupil place planning.

7.10.3 Devolved Formula Capital

Devolved Formula Capital (DFC) is capital funding that is allocated, via local authorities, on a purely formulaic basis and is made available to schools for their own use, in line with departmental guidance. DFC is based on the Annual Schools Census data set, collected in January. The level of DFC, as calculated for each school by us, should be passed on by local authorities to their maintained schools and by the EFA for academies. DFC is normally used for smaller capital purchases, including information and communication technology.

DFC is calculated for all maintained mainstream primary and secondary schools, special schools, pupil referral units, academies, community technical colleges and non-maintained special schools. Independent schools and nursery (direct grant) schools do not receive DFC.

Details of the capital programmes available to local authorities and schools are available on [GOV.UK](#). The arrangements for VA schools are explained in the [Blue Book](#) guidance on capital funding for VA schools in England.

Further information on capital funding, including specific advice on academies, VA schools and the 16-19 sector capital, can be accessed by email to:

Enquiries.EFACAPITAL@education.gsi.gov.uk.⁴⁵

Basic need capital allocations for 2017-18, and levels of additional funding for 2015-16 and 2016-17 were [published](#) on 12 February 2015.⁴⁶ A DfE [explanatory note](#) sets out the background and the methodology used to determine allocations.

Information about allocations made under the earlier Targeted Basic Need programme can be found in a separate [GOV.UK web page](#) (updated 11 March 2014).⁴⁷ The Targeted Basic Need scheme provided additional capital funding for areas that demonstrated significant need for new school places. Funding was allocated on the basis of a competitive bidding round, rather than on a formulaic basis.

⁴⁴ Multi-academy trusts with more than five academies and 3,000 pupils do not need to bid for the Condition Improvement Fund. They receive a formula payment instead.

⁴⁵ DfE, [Governors' Handbook](#), January 2015, Pps. 115-116

⁴⁶ See: GOV.UK web page, '[Basic need allocations: 2015 to 2018](#)', updated 12 February 2015.

⁴⁷ See: GOV.UK web page, '[Targeted Basic Need Programme](#)', updated 11 March 2014.

Current issues in school places provision

As noted above, the numbers of places needed at both primary schools is predicted to continue to rise, and this cohort 'bulge' will soon start to feed through into secondary schools.

In light of this, and in the run-up to the 2015 General Election, the Local Government Association (LGA) has warned of what it says is a potential impending shortfall in school places. Shortly before the 'cut-off date' for applications to primary school in 2015, it warned of the risk of reaching a "tipping point where there is no more space or money to expand schools".⁴⁸ The [press release](#) summarised:

The LGA is calling on the Government to fully-fund the cost of all school places, now and in the future, and to give councils the powers to open new schools without bureaucratic burdens so they can be delivered according to local need.

Department for Education (DfE) data predicts there could be 900,000 extra pupils in English schools over the next decade. New LGA modelling suggests the cost of creating places for all of these pupils is £12 billion.

The LGA has published plans to ensure every child gets a place at a good, local school. This forms part of the LGA's campaign 'Investing in our nation's future', which sets out what the next government needs to do in its first 100 days after May's General Election by radically devolving power to local areas. The campaign outlines a raft of measures, which, if implemented, would save the public purse £11 billion, tackle the country's housing crisis, ensure every child had a place at a good school, reduce long-term unemployment, address the pothole backlog and improve the nation's health.

The Government has already committed £7.35 billion to create extra school places, but the LGA says this still leaves a shortfall. Local authorities created 90,000 school places in 2012/13 and while they are working with schools to ensure there is a place for every child, the scale of the problem is too big to be solved at a local level.⁴⁹

The National Union of Teachers has also campaigned on this issue, calling for a reinstatement of local authorities' rights to directly commission new school places in response to local need. In September 2013, the Local Government Information Unit (LGiU) and the NUT also published a report on school place need, [Standing room only. Have we enough school places?](#)⁵⁰

In a speech on 2 February 2015, Prime Minister David Cameron reiterated the Government's commitment to additional funding of £7 billion for school places over the life of the next Parliament, and also committed to maintaining per-pupil spend at the same level as currently should the Conservatives be returned to government.⁵¹ This would mean that per-pupil spending would be 'cash flat' during the next Parliament. Critics – including the Leader of the Opposition, Ed Miliband, have countered that the cash-flat per-pupil funding commitment does not allow for inflation, and would therefore represent a real-terms cut.⁵² Further information on party positions on school place provision will be included in a forthcoming Library standard note.

⁴⁸ ['Councils fear school place tipping point'](#), LGA media release, 13 January 2015

⁴⁹ *Ibid.*

⁵⁰ LGiU/ NUT, [Standing room only. Have we got enough school places?](#) September 2013

⁵¹ ['A Britain that gives every child the best start in life'](#), speech by David Cameron, published on conservatives.com website, 2 February 2015.

⁵² For an account of the debate surrounding the Prime Minister's announcement, see ['Cameron challenged on 'no cuts' funding promise'](#), in BBC News (online), 2 February 2015.