

department for  
**children, schools and families**

# Establishing a New Maintained Mainstream School

## A Guide for Local Authorities

For further information:

School Organisation Unit  
DCSF  
Mowden Hall  
Darlington  
DL3 9BG

Tel: 01325 391274

Email: [school.organisation@dcsf.gsi.gov.uk](mailto:school.organisation@dcsf.gsi.gov.uk)

Website: [www.dcsf.gov.uk/schoolorg](http://www.dcsf.gov.uk/schoolorg)

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

<b>Contents:</b>	<b>Para Nos.</b>	<b>Page Nos.</b>
Introduction	1-16	1-3
<b>PART A – Establishing a School by Competition</b>		
Overview	1-18	4-7
Stage 1 - Consultation	1.1-1.12	8-10
Stage 2 – Invitation to bid	2.1-2.19	11-15
Stage 3 – Publication of competition proposals	3.1-3.7	16-19
Stage 4 - Representations	4.1-4.2	20
Stage 5 - Decision	5.1-5.10	21-22
Stage 6 - Implementation	6.1-6.11	23-24
<b>PART B – Establishing a School Without a Competition</b>		
Overview	1-22	25-29
Stage 1 - Consultation	1.1- 1.6	30-31
Stage 2 - Publication	2.1-2.12	32-34
Stage 3 - Representations	3.1-3.2	34
Stage 4 - Decision	4.1-4.11	36-37
Stage 5 - Implementation	5.1-5.11	38-40
<b>PART C – Decision Makers’ Guidance on Establishing a New School</b>		
Checks on Receipt of Statutory Proposals	1-9	40-42
Statutory Guidance	10-89	42-61
Making and Publicising a Decision	90-98	61-64

<b>ANNEXES</b>		
<b>Annex A</b> - Part 1 - <u>Published Part</u> of the competition notice to establish a mainstream school		66-67
Part 2 – <u>Complete</u> competition notice to establish a mainstream school		68-71
<b>Annex B</b> - Information to be provided by proposers in response to a school competition	1-35	72-78
<b>Annex C</b> - Application form for consent to publish proposals for a community school in a competition (Section 7 of EIA 2006)		79-80
<b>Annex D</b> - Application form for LAs to request consent to publish proposals without holding a competition (Section 10 of EIA 2006)		81-82
<b>Annex E</b> - Part 1 - <u>Published Part</u> of the notice for Section 10 and 11 (of EIA 2006) proposals to establish a new mainstream	1-16	83-87
Part 2 – <u>Complete</u> competition notice for Section 10 and 11 (of EIA 2006) proposals to establish a new mainstream		88-96

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

## Introduction

1. This guide provides information on the procedures established by The Education and Inspections Act 2006 (EIA 2006) and The School Organisation (Establishment and Discontinuance of Schools)(England) Regulations 2007 (as amended by The School Organisation and Governance (Amendments)(England) Regulations 2007 which came into force on 21 January 2008). It contains both statutory guidance (i.e. guidance to which authorities have a statutory duty to have regard) and non-statutory guidance on the process for making changes to school provision. The statutory guidance sections are indicated by shading. The relevant provisions of EIA 2006 came into effect on 25 May 2007.

2. If you have any comments on the content or layout of this guide please send these to the School Organisation Unit (using the SOU website's "Contact Us" facility [[www.dcsf.gov.uk/schoolorg](http://www.dcsf.gov.uk/schoolorg)] or by e-mail to: [school.organisation@dcsf.gsi.gov.uk](mailto:school.organisation@dcsf.gsi.gov.uk) ) making sure that you identify the title of the guide and quote the page and paragraph numbers where relevant.

## Who this guide is for?

3. This guide is for local authorities (LAs) who have identified a requirement for a new school. Separate guides are available for proposers:

- who wish to publish proposals for a new school in response to a competition - "A Guide for those responding to a competition for a new school";

of new maintained schools where:

- (i) the Secretary of State has given consent for proposals to be published without a competition; or
- (ii) the proposers are seeking to bring an independent school into the maintained sector (i.e. where the Secretary of State's consent to publish is not required).

## School Organisation Planning Requirements

4. LAs 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. They **must** also ensure that there are sufficient schools in their area and promote diversity and increase parental choice.

5. Parents can make representations about the supply of school places and LAs have a statutory **duty** to respond to these representations. Further

guidance on this duty is available in “Duty to Respond to Parental Representations about the Provision of Schools” which is on the School Organisation website [www.dcsf.gov.uk/schoolorg](http://www.dcsf.gov.uk/schoolorg).

6. LAs are required to publish a Children and Young People’s Plan (CYPP) as the single strategic overarching plan for all services affecting children and young people and includes reference to strategic planning for school places. It is for LAs, in partnership with other stakeholders, to plan for the provision of places. LAs should also explore the scope for collaborating with neighbouring authorities when planning the provision of schools. In particular, LAs might work together to consider how to meet the needs of parents seeking a particular type of school for their children in cases where there is insufficient demand for such a school within the area of an individual LA.

### **The Secretary of State’s role**

7. The Secretary of State has the power to issue guidance to which the Decision Maker **must** have regard when they decide proposals. This should ensure that proposals are considered in a consistent way and that Ministers’ key priorities for raising standards and transforming secondary education are taken into account when decisions are taken. Proposers are strongly advised to look at the factors which the Decision Maker will take into account when considering their proposals (see Part C).

8. The Secretary of State does not decide statutory proposals relating to schools, except where proposals have been published by the Learning and Skills Council under Section 113A of the Learning and Skills Act 2000 (as inserted by section 72 of the Education Act 2002), for changes to 16-19 provision in schools. For further information please see guidance available at: <http://www.teachernet.gov.uk/docbank/index.cfm?id=4390>

### **School Competitions**

9. With effect from 25 May 2007 a new statutory framework applies for the establishment of any new maintained school – whether they are to be brand new schools (e.g. to meet population growth) or to replace existing schools (e.g. flowing from a reorganisation). The provisions will not apply to proposals to re-build a school on its existing site or to transfer it to a new site.

10. The new provisions will apply in all circumstances where it is intended to establish a new school but proposals have not been published before this date.

11. Where the LA wish to see a new school established they **must** either:

- invite proposals for the school as provided for in Section 7 of EIA 2006 and The School Organisation (Establishment and Discontinuance) (England) Regulations 2007 (SI: 2007 No 1288) (as amended). The process is generally referred to as a “competition”. This is expected to be the route by which most new schools will be established;

- apply to the Secretary of State for consent to publish proposals for a new school, without running a competition, as provided for in Section 10 of EIA 2006;
- work with the Secretary of State and sponsors to establish an Academy; or
- [for new maintained nursery schools and new 16-18/19 **foundation** schools] publish proposals for the new school under Section 11 of EIA 2006.

12. It is important to note that the consent being sought, and which can be given, is consent only to **publish** proposals: it is not permission to establish a new school. Where consent is granted to publish proposals, the normal statutory process will apply - i.e. Consultation; Publication; Representations; Decision (by the LA or schools adjudicator).

### **New School Proposers other than the LA**

13. Where proposers (i.e. other than an LA) wish to establish a new school, they **must** also apply to the Secretary of State for consent to publish proposals for a new school, without a competition. There is no provision for proposers other than LAs to hold competitions.

14. Academies are publicly funded independent schools and Section 482 of the Education Act 1996 provides for the Secretary of State to enter into funding agreements for new Academies with sponsors. Where an LA holds a competition, Academy sponsors may also submit proposals in response to the competition.

### **What this guidance covers**

15. This guidance covers:

- the stages involved in running a competition for a new school, from initial idea to implementation (including arrangements that apply if the LA wish to publish proposals for a community school) - **Part A**;
- the stages involved in establishing a school under Sections 10 or 11 of EIA 2006 (including how an LA can apply for consent under Section 10) – **Part B**; and
- the Decision Makers' Guidance for deciding all proposals for a new school – **Part C**.

### **Where to start?**

16. Before commencing formal consultation, the LA or governing body must ensure they understand the statutory process that must be followed, the factors that will be considered by the Decision Maker and that they have a sufficiently strong case and supporting evidence.



## Part A – Establishing a School by Competition

### Overview

1. LAs are required by Section 7 of EIA 2006 to invite proposals from potential providers for any proposed new school. They can also publish their own proposals for the new school as part of a competition.
2. The final decision on competition proposals **must** be taken by the LA except where the LA:-
  - is the proposer of any proposals;
  - is a member, or appoints a member, of the foundation of a proposed foundation school with a foundation (i.e. a “Trust School”);
  - appoints a charity trustee of the foundation of a proposed “Trust School”; or
  - exercises any voting rights, or appoints a person who exercises voting rights, in the foundation of a proposed “Trust School”.
3. In all other cases the proposals will be decided by the schools adjudicator.
4. Where the LA decides the proposals there is no provision to appeal against the decision. If, however, the LA does not decide the proposals within 2 months of the end of the representation period, the proposals **must** be referred to the schools adjudicator for decision.
5. The following pages include an outline of the main steps in running a competition together with information on the advice and support that is available from the DCSF.

### When is a school competition required?

6. A competition is required where an LA wishes to establish a new school. This includes cases where:
  - a brand new school is required to meet an increase in the local population;
  - a school is required to replace a discontinuing school; or
  - one or more schools are proposed to be closed and one or more new schools are to be established to replace them.
7. Competitions are not required where a school is:
  - a proposed new nursery school;

- a 16-18/19 school;
- transferring from its existing site to a new site; or
- to be re-built on its existing site.

### **Identifying the requirement**

8. When identifying the requirement for a new school the LA will need to consider the following:

- The outline specification for the school including:
  - the number of places to be provided at the school;
  - the age range including any proposed sixth form or early years provision;
  - whether the school will be mixed or single sex;
  - the proposed admission number;
  - the location including playing field provision and transport links;
  - the opening date;
  - the estimated capital costs of the school and funding sources in accordance with DCSF guidance on education building projects;
  - any provision that will be reserved for pupils with special educational needs;
  - the area and community to be served by the school;
  - any extended services or other community use they would like to see provided;
  - any preferred specialism the school should have; and
  - proposed arrangements for transport to the new school, sustainable transport alternatives and how the LA will discourage car use.

### **Capital funding**

9. All LAs are allocated capital funding over each spending review period to support their investment in school buildings. Where an authority identifies the need for a new school as part of a Building Schools for the Future project, the funding will be provided through the Building Schools for the Future programme. Details of capital funding for the project will be decided in discussions between the LA, the Department and Partnerships for Schools and will be included in the Final Business Case which the Department agrees. This may include the contribution by the authority to Building Schools for the Future funding of receipts from land made available through school reorganisation. Where in a Building Schools for the Future project a new voluntary aided school is agreed, government funding will normally be at 100% of the approved capital costs.

10. Where an authority identifies the need for a school which is not in a Building Schools for the Future project, it should prioritise this need in its asset management planning for the formulaic capital funding it receives, and

for other resources which are available to it. Where a brand new school is required to meet exceptional pupil population growth and an overall shortfall in resources can be demonstrated, the authority can apply for the “Basic Need Safety Valve” which is offered periodically, usually every other year, by the Department. Where investment is in leased premises, the relationship between the extent of the investment and the length of the lease will have to be considered to avoid unacceptable abortive expenditure.

11. Where an authority has identified a requirement for a new school and has launched a competition, but the competition is won by another proposer, the authority should provide the capital funding to invest in the school as if the LA had won the competition, unless the proposers offer funding towards the project.

12. Where proposals for a new Academy are successful the buildings will normally be funded by the LA in line with its initial funding plans for the competition proposal. Where the competition forms part of the LA’s Building Schools for the Future programme it will normally be funded via this route.

13. Voluntary aided schools must usually contribute 10 per cent towards the cost of any capital work, however, this contribution will **not** apply to the initial capital costs of a proposed school resulting from a competition.

14. The Learning and Skills Council administers a 16-19 capital fund for new post-16 places for schools, unless this additional provision is part of a Building Schools for the Future project, where it will be funded through Building Schools for the Future.

### **School Site**

15. The LA **must** identify the proposed school site for the new school although proposers may put forward proposals to establish the school on a different site. If the proposals are implemented on the site identified by the LA, and proposals are approved for a new foundation, Trust, voluntary aided or voluntary controlled school, the LA **must** provide the school site.

16. For all categories of schools, on value-for-money considerations, authorities should consider the use of existing buildings, and leased or temporary premises where appropriate, where their provision is in line with the approved proposals. Premises must comply with School Premises Regulations except where relaxation has been agreed by the Secretary of State.

### **Section 106 Agreements**

17. As part of a new housing development there may an opportunity for an LA to negotiate a Section 106 agreement whereby the developer bears all or a significant proportion of the costs of a new school. This can represent a significant saving to the public purse. A competition should still be run for the school and, when negotiating the agreement with the developer, the LA

should provide for input from the winner of the competition to the design and final specification of the school. Where the LA is required to provide the site and associated capital for the new school (see paragraphs 6.1-6.2), conveyance of the school to the winner of the competition will meet this obligation.

### Stages and prescribed timeline

18. There are six stages in the competition process:

Stage 1	Consultation (includes consultation on any linked school closures)	Not prescribed – (minimum of 6 weeks recommended)
Stage 2	Invitation to bid (first notice)	1 day
	Proposer engagement	This falls within the 4 month period for submission of proposals
	Submission of proposals	Minimum of 4 months from the first notice
Stage 3	Publication of proposals (second notice) & promotion of public awareness	Within 3 weeks of the expiry date for submitting proposals
Stage 4	Representations (to allow for comments and objections to be submitted)	6 weeks (LA holds at least 1 public meeting within the first 2 weeks)
Stage 5	Decision by:  LA  <u>or</u>  schools adjudicator	Within 2 months of end of Stage 4  No prescribed timescale
Stage 6	Implementation	No prescribed timescale – as specified in published notice subject to any modifications agreed by the Decision Maker

## **Stage 1 – Consultation**

1.1 Under Section 9 of EIA 2006 the LA **must** consult before publishing a notice inviting proposals for a new school. When consulting, the LA **must** have regard to the Secretary of State's guidance. Paragraphs 1.2 to 1.5 below contain the Secretary of State's statutory guidance.

1.2 The purpose of the consultation is to inform local people and seek their views about the specification for the new school (as set out in paragraph 8 of the overview above). It is not to shape opinion about how that specification might be met, or to promote or seek to close off particular options. The LA should, therefore, avoid implying during the consultation that a particular category of school, or a particular type of proposer, would be more or less likely than any other to be able to meet the specification. Any information about the categories of schools which might be proposed in a competition should be presented in a factual and objective way.

1.3 When consulting the Secretary of State considers that the LA must:

- allow adequate time;
- provide sufficient information for those being consulted to form a considered view on the matters on which they are being consulted;
- make clear how their views can be made known; and
- be able to demonstrate how they have taken into account the views expressed during consultation in reaching any subsequent decision as to the publication of proposals.

1.4 The Secretary of State considers that the interested parties who should be consulted by proposers include:

- any LA likely to be affected by the proposals, 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;
- families of any pupils at any other school who may be affected by the proposals 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 any other staff at schools who may be affected by the proposals;
- the local CE and RC dioceses and anyone else who has previously expressed an interest in setting up a school;

- (if the proposals affect the provision of full-time 14-19 education) the Learning and Skills Council (LSC);
- MPs whose constituencies include the schools that are the subject of the proposals or whose constituents are likely to be affected by the proposals;
- the local district or parish council where the proposed school is to be situated;
- any other interested party, for example, the Early Years Development and Child Care Partnership (or any local partnership that exists in place of an EYDCP) where proposals affect early years provision, or those who benefit from a contractual arrangement giving them the use of the premises;
- such other persons as appear to the LA to be appropriate.

1.5 Under Section 176 of the Education Act 2002 LAs and governing bodies are also under a duty to consult pupils on any proposed changes to local school organisation that may affect them. Guidance on this duty is available on the Teachernet website: [www.publications.teachernet.gov.uk](http://www.publications.teachernet.gov.uk) and is entitled “Pupil Participation Guidance: Working Together – Giving Children and Young People a Say”.

1.6 Although Regulations do not specify the consultation’s duration, the LA should allow at least 6 weeks for this. This will allow consultees an opportunity to consider what is proposed and to send their comments. The LA should avoid consulting on proposals during school holidays. As part of the consultation the LA should hold at least one public meeting to inform the public of the consultation, the planned specification for the school and a brief explanation of the competition process. It is good practice to hold the meeting in a venue close to the proposed location of the new school.

1.7 During the consultation the LA, in their role as commissioner of school places, should make it clear that the Government wishes to encourage a range of providers to put forward proposals for new schools in order to increase diversity and maximise parental choice. As indicated above, the purpose of the consultation is to seek views on the LA's specification for the new school, but the LA might also receive responses from parties expressing an interest in entering the competition. The LA should direct any parties expressing such an interest to the “Guide for those responding to a competition for a new school” on the Department’s website [www.dcsf.gov.uk/schoolorg](http://www.dcsf.gov.uk/schoolorg) . The LA should also keep a record of all interested parties as the regulations require the LA to send a copy of the notice inviting proposals to them. The LA should also pass contact details to the Department’s contractor who will carry out proposer engagement activity (see paragraphs 2.6 - 2.10 below).

1.8 If the LA wish to make proposals for a community school in the competition, and require the Secretary of State’s prior consent (see paragraph

2.13), they should apply to the Secretary of State after the 1<sup>st</sup> competition notice is issued. They should provide details of the views of interested parties on their preferred plans for the new community school with their application (see paragraph 2.16).

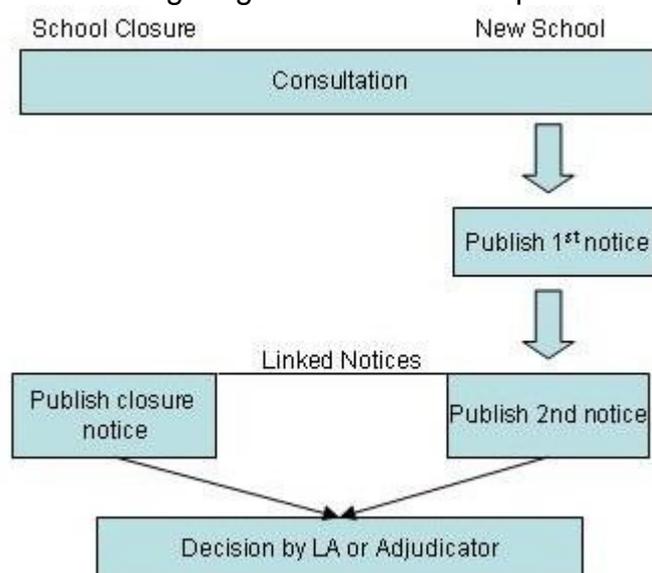
1.9 Once the LA have started their consultation they should inform the Secretary of State in writing, confirming the proposed duration of the consultation. This notification should be e-mailed to [School.Competitions@dcsf.gsi.gov.uk](mailto:School.Competitions@dcsf.gsi.gov.uk) and should include the information provided in the consultation document. The Department will contact the LA to confirm who will be their DCSF contact for questions relating to the competition and inform the proposer engagement contractor (see paragraphs 2.6 - 2.10).

1.10 At the end of the consultation the LA must consider the views expressed during the consultation before reaching any final decision on whether to publish about the specification for the school. Where, in the course of consultation, a new option emerges which the LA wish to consider, it will probably be appropriate to consult afresh on this option before proceeding to publish.

1.11 Where the LA carry out any preliminary consultation to consider a range of options, and/or principles, for a possible reorganisation, this would not be regarded as the statutory period of consultation as required by Section 9 of EIA 2006. The statutory consultation would need to cover the specific location and specification of the school in question.

### Area Reorganisations

1.12 If the need for the new school arises from an area wide reorganisation, the LA should consult on any proposed school closures at the same time as consulting on the new competition. However the LA should not publish notices for the closure until the second notice for the competition is published, and must ensure the proposals are “related” so that they are decided together. The following diagram illustrates the process:-



## **Stage 2 - Invitation to bid**

2.1 When the LA have considered the responses to the consultation they may then publish a competition notice inviting interested parties to bring forward proposals for setting up the new school. The regulations allow four months for proposals to be submitted.

2.2 A competition notice **must** contain the information specified in The School Organisation (Establishment and Discontinuance of Maintained Schools)(England) Regulations 2007 (SI 2007 No. 1288) (as amended). The regulations specify that part of the notice **must** be published in an appropriate national newspaper covering educational issues and in at least one local newspaper circulating in the area to be served by the school together with details of how complete copies of the notice may be obtained. It **must** also be posted in a conspicuous place in the area to be served by the school and, in cases where the proposed establishment of a school relates to the discontinuance of another school (or schools), posted at the entrance to any school or schools which is or are proposed to be discontinued.

2.3 The complete notice **must, within one week of publication,** be sent to:

- any LA likely to be affected by the proposals;
- the Secretary of State (i.e. via the School Organisation Unit, DCSF, Mowden Hall, Darlington DL3 9BG or by email to [school.organisation@dcsf.gsi.gov.uk](mailto:school.organisation@dcsf.gsi.gov.uk)). **In addition to the complete notice, a copy of the published part notice which appears in the newspaper must also be sent to the Secretary of State at the above address within one week of it appearing;**
- the Diocesan Board of Education for any diocese of the Church of England, any part of which is comprised in the area of the LA;
- the bishop of a diocese of the Roman Catholic Church, any part of which is comprised in the area of the LA,
- any other person or organisation that has expressed an interest in writing to the authority in establishing a new school to serve pupils in the area;
- the Learning and Skills Council for England if it is intended that the school should provide 14-16 education or sixth form education;
- the schools adjudicator (Office of the Schools Adjudicator, Mowden Hall, Darlington DL3 9BG);
- any other body or organisation that in the opinion of the LA is likely to

be interested in the notice; and

- in cases where the proposed school is to be a special school, sent to the relevant Primary Care Trust , NHS Trust or NHS foundation trust.

2.4 The School Organisation (Establishment and Discontinuance) (England) Regulations 2007 (as amended) set out the information that **must** be included in the competition notices (i.e. the published part notice and the complete notice) and details are included in Annex A (Part 1 and Part 2 respectively). To help the LA prepare their published part notice the School Organisation website includes a notice builder tool which will ensure that the published part notice complies with the Regulations. The notice builder can be found at [www.dcsf.gov.uk/schoolorg](http://www.dcsf.gov.uk/schoolorg). To gain access an LA official must register for the “Members’ Area” on the website but this is free of charge. A template for the complete notice is provided automatically by the website when the published part notice is built (i.e. using the notice builder tool), alternatively the template can be found in “Standard Forms” in the Members’ Area of the website.

### **Compulsory Purchase Orders**

2.5 Where an LA needs to acquire land compulsorily for the new school they should not make the compulsory purchase order until the Decision Maker has confirmed that proposals have been approved conditionally on the acquisition of the site. The Secretary of State will not consider confirming and sealing an order until proposals have been approved.

### **Proposer Engagement**

2.6 When the LA have decided to publish a notice inviting proposals they should e-mail the Department at: [School.Competitions@dcsf.gsi.gov.uk](mailto:School.Competitions@dcsf.gsi.gov.uk).

2.7 The Department has appointed consultants who will market a competition to potential proposers and will help to engage the local community in the competition. They will also alert national provider organisations who have expressed an interest in submitting proposals for new schools in response to competitions. The regulations require that LAs must consult with, and have regard to the advice of, the Department’s consultants when running a competition.

2.8 The consultants will place advertisements, publicising the competition in the local newspapers. These advertisements will summarise the LA’s requirement for the new school and offer the consultants as the first point of contact for advice on the competition.

2.9 Once potential proposers have been identified, the consultants will arrange and manage a seminar to inform potential proposers about:

- the competition process;
- the requirements that need to be covered in a proposal;

- what it means to win a competition; and
- consultancy support to help proposers formulate a proposal.

2.10 The LA will have the opportunity to attend and take part in the seminar, particularly the Q&A session.

### **Submission of Proposals**

2.11 The LA's first notice **must** allow potential proposers at least four months from its date of publication to prepare proposals. Regulations specify the information that the proposers **must** provide in response to the first notice – details are set out in Annex B.

2.12. If the LA receive proposals for an Academy, the LA **must** consult the Secretary of State within two weeks of receiving the proposals ([schools.commissioner@dcf.gov.uk](mailto:schools.commissioner@dcf.gov.uk)). The Secretary of State **must** confirm whether he would be willing in principle to commence negotiations with a view to entering into an agreement for establishing an Academy.

### **What if the LA wish to publish community school proposals?**

2.13 Section 8 of EIA 2006 provides that if the LA wish to publish proposals for a community school in response to a competition, they will be subject to provisions in regulations. Regulation 9 of The School Organisation (Establishment and Discontinuance)(England) Regulations 2007 (as amended) provides that.

- LAs with APA rating of 4 can publish proposals for a new community school and do not need the prior consent of the Secretary of State;
- LAs with APA rating of 3 need consent;
- LAs with APA rating of 2 and either or both of the following:
  - less than 15% of community, foundation and voluntary primary or secondary schools in the LA's area are eligible for intervention;
  - more than 15% of their "relevant" schools are foundation, voluntary, Academies, CTCs or city colleges for technology or arts.

need consent; and

- Other LAs with an APA rating of 2, and LAs with an APA rating of 1 cannot publish proposals.

NOTES:

"APA rating" - means the performance rating awarded to an LA under section 138 (3) of EIA 2006.

Eligible for intervention – where schools are in special measures or require significant improvement\_ it is only necessary to take account of existing primary schools in the categories listed when publishing proposals for a new primary school, and when publishing for a secondary school it is only necessary to take account of existing secondary schools.

“Relevant” schools means schools maintained by the LA or an Academy, CTC or city college for the technology of the arts.

### **When will consent be given?**

2.14 All applications will be considered on their merits, taking into account the particular circumstances and factors that apply. For proposals planned by an LA, Ministers have indicated during debates in Parliament that they may be prepared to consider giving consent where:

- there is a higher than average number of Academies, voluntary or foundation schools and there are few or no schools in special measures within the authority;
- there is a clear case that a community school would build on existing diversity in the area. (Note: the definition of diversity should be given a wider meaning than purely the different categories of schools and should include different curriculum specialisms and schools that have a distinct character and ethos.)

2.15. The following factors will be considered by the Secretary of State in considering applications for consent:

- the diversity (including distinct character and ethos) of provision within the area;
- the views of interested parties e.g. parents and the local community;
- whether the proposals will contribute to raising standards: taking into consideration performance across the LA and local schools;
- the range of curricular specialisms to be offered by the proposed community school and within the authority; and
- whether the core offer of extended services will be provided and if there will be a varied menu of interesting activities.

### **Applying for consent to publish community school proposals**

2.16 LAs **must** submit a completed proforma (Annex C) if they wish to make proposals for a community school in a competition. The LA must provide statements on the views of interested parties on their preferred plans for the new community school. The LA are therefore strongly advised to seek views in any early consultation they carry out on principles/options for their reorganisation plans, to ensure that they can provide suitable evidence to

support their application (see paragraph 1.8).

2.17 If consent is granted, it is consent to publish proposals: it is not consent to establish a new school. Where permission is granted to publish proposals, the normal statutory process for publishing proposals in the competition will apply. The Secretary of State's consent to the publication of the proposals does not include agreement to providing the necessary capital for their implementation.

### **Timing and handling**

2.18 All applications should be e-mailed to the School Organisation Unit (SOU) Mailbox: [school.organisation@dcyf.gsi.gov.uk](mailto:school.organisation@dcyf.gsi.gov.uk).

2.19 The Department will acknowledge receipt of an application within 3 days of receipt. The target for responding to an application is 6 weeks.

## **Stage 3 – Publication of Competition Proposals**

3.1 Within three weeks of the expiry of the date for submitting proposals, the LA **must** publish a second notice. This notice **must** include a statement referring to the first notice and confirm that the proposals in the second notice are proposals for the new school on the proposed site/location. The notice should provide a summary of the proposals received, and any proposal they wish to make. The summary must include, for each proposal:

### **Contact details**

- The name of the proposer or proposers and a contact address.
- Whether the proposals are being submitted independently or jointly with another proposer or proposers.

### **Category**

- The type of school that it is proposed be established (a foundation school and, if so, whether it is to have a foundation, a voluntary school, a community school or an Academy) and, where it is to be a community school, if required by section 8, a statement that the Secretary of State's consent has been obtained to publication of the proposals.

### **Extended Services**

- Information on the extended services which it is envisaged will be provided on the site of the new school.

### **Ethos/Religious Character**

- A short statement suitable for publication setting out the proposed ethos of the school, including details of any educational philosophy, which it is proposed that the school will adhere to.
- If the school is to have a religious character, confirmation of the religion or religious denomination in accordance with whose tenets religious education will, or may be required to be provided at the school; and a statement that the proposers intend to ask the Secretary of State to designate the school as a school with such a religious character.

### **Admission Arrangements**

- An indication of the proposed admission arrangements

and over-subscription criteria for the new school including, where the school is proposed to be a foundation or voluntary school or Academy which is to have a religious character—

- the extent to which priority for places is proposed to be given to children of the school's religion or religious denomination; and
- the extent if any to which priority is to be given to children of other religions or religious denominations or to children having no religion or religious denomination.

### **Schools with a religious character or particular educational philosophy – parental demand**

Where the school is—

- proposed to have a religious character, evidence of the demand in the area for education in accordance with the tenets of the religion; or
- proposed to adhere to a particular philosophy, evidence of the demand for education in accordance with the philosophy in question that is not already met in other maintained schools or Academies in the area.

### **Specialisms**

Whether the school will have any specialisms on implementation and whether the proposer intends to apply to the Secretary of State for the new school to be a specialist school from implementation.

### **Foundation Schools**

Where the school is to be a foundation school with a foundation—

- the name of the foundation where known;
- a summary of the rationale for the foundation and the particular ethos that it will bring to the school; and
- the details of membership of the foundation, including the names of the members.

3.2 The notice **must** confirm any proposed divergence, in any of the proposals, from the characteristics specified by the LA in the first notice.

3.3 The notice **must** also explain how complete copies of the published

proposals can be obtained and provide details of where and when the first public meeting will be held (see para 4.2 below). It **must** also say where comments should be sent and clearly state the deadline for sending comments i.e. which must be six weeks from the notice publication date.

3.4 The notice **must** be published in at least one local newspaper circulating in the area and in a conspicuous place in the area that the school will serve. The LA **must** also publish the second notice, and also complete copies of all proposals they have received, on the LA's website. Further, the LA **must** publish a statement explaining that any person may object to or comment on the proposal and include the address to which objections or comments should be sent and the date by which they must be submitted.

### **Related proposals**

3.5 Where proposals are interdependent they should be identified as "related", either by being published in a single notice or the link to the other proposals made clear in each notice. If the new school will replace a school that is proposed for closure, the school closure proposals should be published on the competition proposals notice to ensure the proposals are "related" and decided together.

### **Who should be sent copies of proposals?**

3.6 The LA **must, within one week of the date of publication**, send full copies of all proposals to:

- all proposers who have submitted proposals in response to the competition notice;
- any other LA likely to be affected by the proposals;
- the Diocesan Board of Education for any diocese of the Church of England which is comprised in the area of the LA;
- the bishop of a diocese of the Roman Catholic Church which is comprised in the area of the LA;
- any other person or organisation that has previously expressed an interest in writing to the LA in establishing a school to serve pupils in the area;
- the local LSC;
- in cases where the proposed school is to be a special school, the relevant Primary Care Trust and NHS Trust or NHS foundation trust; and
- the Secretary of State (via the School Organisation Unit, DCSF, Mowden Hall, Darlington, Co Durham DL3 9BG or via email to [school.organisation@dcsf.gsi.gov.uk](mailto:school.organisation@dcsf.gsi.gov.uk)), together with a copy of the

notice that appears in the newspaper summarising the proposals received .

3.7 The LA must also send a copy of any particular proposal to any individual or organisation that requests it, within one week of receipt of the request. The LA may also wish to send a copy of the proposals to any schools in the area that may be affected by the proposals, such as local feeder primary schools.

## **Stage 4 – Representations**

4.1 Comments on the proposals must be sent to the LA within six weeks of the publication of the second notice. Any person can send comments, which can be objections as well as expressions of support for specific proposals or elements of proposals.

### **Public Meeting to raise public awareness**

4.2 The LA must hold at least one public meeting within two weeks of publishing the second notice. The purpose of this meeting is to inform people of the proposals received and tell them how they can provide their comments and objections. The LA must invite all of the proposers to all of the meetings - this will give them the opportunity to outline their proposals in more detail and give people an opportunity to ask questions.

## **Stage 5 – Decision**

### **Who Will Decide the Proposals?**

5.1 Decisions on school organisation proposals are taken by the LA or by the schools adjudicator. In this chapter both are covered by the form of words 'Decision Maker' which applies equally to both.

5.2 Paragraphs 8 and 10 of Schedule 2 to EIA 2006 set out who should decide proposals for new schools. Most decisions will be taken by the LA with some rights of appeal to the schools adjudicator. There are some other instances when the schools adjudicator will be the Decision Maker. The following paragraphs set out who the Decision Maker is in each case.

5.3 LAs decide:

- a. School competitions, published under Section 7 of EIA 2006, **except** those which include either: proposals where the LA are the proposer of a school, or proposals for a new foundation school where the LA:
  - i) are a member of the foundation;
  - ii) appoint a member of the foundation or a charity trustee;  
or
  - iii) exercise voting rights in the foundation or appoints anyone who can exercise voting rights.

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

5.5 There is no right of appeal against an LA's decision on competition proposals published under Section 7 of EIA 2006.

5.6 The schools adjudicator decides:-

- a) School competitions published under Section 7 of EIA 2006, which include either: proposals where an LA are the proposer of a school, or proposals for a new foundation school where an LA:
  - (i) are a member of the foundation;
  - (ii) appoint a member of the foundation or a charity trustee;  
or
  - (iii) exercise voting rights in the foundation or appoint anyone who can exercise voting rights.

- b) other proposals which an LA have failed to decide within 2 months.

5.7 Where the schools adjudicator is to decide the proposals, under these provisions, the representations **must** still be sent to the LA. The LA must then pass the proposals together with any comments and objections, to the schools adjudicator within 2 weeks from the end of the representation period. If the proposals are “related” to any other proposals (e.g. closures or enlargements) all the “related” proposals must also be passed to the adjudicator for decision.

### **LA Decision Making**

5.8 The Department does not prescribe the process by which an LA carry out their decision-making function (e.g. full Cabinet or delegation to Cabinet member or officials). This is a matter for the LA to determine but the requirement to have regard to statutory guidance (see Part C Paragraph 10) applies equally to the body or individual who takes the decision.

### **Who Can Appeal Against an LA Decision?**

5.9 There is no right of appeal against an LA’s decision on school competition proposals.

### **Decision Makers’ Guidance**

5.10 Part C contains the Decision Makers’ Guidance that the LA or schools adjudicator will have regard to when making their decision.

## **Stage 6 – Implementation**

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

<b>Type of School</b>	<b>Body that published proposals</b>	<b>Duty to implement</b>
<b>Community</b>	LA	LA
<b>Foundation</b>	Proposers	LA and the proposers as set out in published proposals
	LA	LA
<b>Voluntary Controlled</b>	Proposers	LA and the proposers as set out in published proposals
<b>Voluntary Aided</b>	Proposers	Proposers but LA to provide the site and playing fields (except where proposals provide for a site other than that in the competition notice)
<b>Academy</b>	Proposers	Proposers

6.2 If the proposals are to be implemented on the site that was identified on the first notice, and proposals are approved for a new foundation, Trust or voluntary controlled school, the LA **must** convey their interest to the school trustees (or the governing body if the new foundation school will not have a foundation). If a voluntary aided school is approved the LA should also convey their interest to the school trustees.

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

### **Can proposals be modified?**

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

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

6.6 Before modifying proposals the Decision Maker **must** consult the proposers and the LA, if the LA did not publish the proposals. The proposals

must not be modified in a way that would in effect substitute new proposals – this would run the risk of successful legal challenge in the courts.

## **Revocation**

6.7 If proposers cannot implement approved proposals they must publish fresh proposals to be relieved of the duty to implement (paragraph 21(4) of Schedule 2 to EIA 2006). The School Organisation (Establishment and Discontinuance of Maintained Schools)(England) Regulations 2007 (as amended) provide that revocation proposals must contain the following information:-

- a description of the original proposals as published;
- the date of publication of the original proposals;
- details of who published the proposals; and
- a statement as to why it is proposed that, in accordance with paragraph 21(3), paragraph 21(1) of Schedule 2 to the Act (duty to implement proposals) should not apply in relation to the original proposals.

6.8 The proposals **must** be published in a local newspaper and at some other conspicuous place in the area served by the school. The proposals must provide for anyone to submit comments and objections on the proposals to the LA within 6 weeks of the proposals being published. The proposers must forward a copy of the proposals to the LA within 1 week of publication. Proposers are advised to consult interested parties on the planned revocation proposals before publication although there is no statutory requirement to do so.

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

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

## **Admission arrangements**

6.11 Paragraph 1.39 of the Schools Admissions Code provides that where proposals for a new school have been approved, the admission arrangements (i.e. as set in the published proposals) must remain unchanged for two years after the first year of operation, unless the schools adjudicator allows an application to vary them because of a major change in circumstances.

## Part B - Establishing a school without a Competition

### Overview

1. Where an LA wish to establish a new school the following provisions apply:
  - for proposals to establish a maintained nursery school or a foundation or foundation special school for pupils above statutory school age (i.e. a 16-18/19 school) – the LA may publish proposals under Section 11 of The EIA 2006 and do not need the Secretary of State’s consent; or
  - in all other cases – the LA must apply to the Secretary of State for consent to publish proposals under Section 10 of EIA 2006.
2. For proposers other than an LA:-
  - where the proposed school is a foundation, voluntary or foundation special school that will replace an existing independent school that has been registered for at least 2 years (i.e. under Chapter 1 of Part 10 of The Education Act 2002) or is a foundation special school that will replace a non-maintained special school- the proposers may publish proposals under Section 11 of EIA 2006 and do not need the Secretary of State’s consent; or
  - in all other cases – the proposers must apply to the Secretary of State for consent to publish proposals under Section 10 of EIA 2006.
3. Expressions of Interest in an Academy fall outside of Sections 10 and 11 of The EIA 2006. Consequently, LAs and potential sponsors, who are working together on plans to establish an Academy, do not need apply for consent to establish the school without running a competition.
4. The final decision on proposals must be taken by the LA except where the LA:-
  - are the proposer of the new school;
  - are a member, or appoints a member, of the foundation of a proposed foundation school with a foundation (i.e. a “Trust School”);
  - appoint a charity trustee of the foundation of a proposed “Trust School”; or
  - exercise any voting rights, or appoint a person who exercises voting rights, in the foundation of a proposed “Trust School”.
5. In all other cases the proposals **must** be decided by the schools adjudicator.

6. Where proposals are to be decided by the LA, but the LA do not take a decision within 2 months of the end of the representation period, the proposals **must** be referred to the schools adjudicator for decision. If the LA rejects proposals made by another proposer, the proposer may appeal against the decision.

### **Applying for consent to publish proposals**

7. It is important to note that the consent, if given, is consent to publish proposals: it is not consent to establish a new school. Where permission is granted to publish proposals, the normal statutory process will apply i.e. Consultation; Publication; Representations; Decision and Implementation.

8. The Secretary of State's consent to the publication of the proposals does not include agreement to providing the necessary capital for their implementation. Where a proposer requires capital funding to implement proposals, they would have to secure this before publishing proposals (i.e. after having obtained the Secretary of State's approval to publish) - see paragraph 14 below.

### **When will consent be given?**

9. All applications will be considered on their merits taking into account the particular circumstances and factors that apply. However, Ministers have indicated they might be prepared to give consent in the following circumstances:

- straightforward amalgamations of infant and junior schools where a replacement primary school is proposed;
- where there is to be a reorganisation of religious schools in the area, and schools with a particular religious character are to be replaced by schools with the same religious character; or
- where an independent proposer proposes a new school to increase diversity in the area, rather than in response to an LA's need to reorganise;

10. The following factors will be considered by the Secretary of State in considering applications for consent:

- the contribution the school would make to levels of local diversity i.e. including the range of categories, specialisms, size etc;
- the prospect of other proposer interest if a competition were run;
- local standards i.e. the standards achieved by existing schools and the performance of the LA in delivering children's service;
- the contribution to 14-19 provision;

- urgency for the new school to be in place and the impact of the competition process; and
- any views expressed by interested parties e.g. parents and the local community.

### **Information required**

11. Annex D is the proforma that must be completed and submitted by an LA. It should be noted that the LA must provide statements on the views of interested parties on their preferred plans for the new school and also any consultation they have carried out, to assess whether there might be any interest by other proposers. The LA are therefore strongly advised to consult on these matters in any early consultation they carry out on principles/options for their reorganisation plans, to ensure that they can provide suitable evidence to support their application.

### **Timing and handling**

12. All applications should be e-mailed to the School Organisation Unit (SOU) Mailbox: [school.organisation@dcsf.gsi.gov.uk](mailto:school.organisation@dcsf.gsi.gov.uk) .

13. The Department will acknowledge receipt of an application within 3 days of receipt. The target for responding to an application is 6 weeks.

### **Capital Funding**

14. The Secretary of State's consent to the publication of the proposals does not include agreement to provide the necessary capital funding for their implementation. Published proposals cannot be considered unless the capital funding for their implementation is in place (perhaps conditionally on the proposals being agreed). Where proposers require capital funding to implement their proposals, they have to secure this before publishing proposals.

15. Where proposals form part of a Building Schools for the Future project, funding will be provided through this programme.

16. Otherwise, for new foundation, Trust or voluntary controlled schools, the proposers should secure a capital allocation from the LA. Where the authority can demonstrate that it has considered all possible options, but does not have resources to fund a value-for-money option without unacceptably impacting on the capital needs of other schools, it may apply to the Department for exceptional funding.

17. Where in a Building Schools for the Future project a new voluntary aided school is agreed, government funding will normally be at 100% of the approved capital costs. For new voluntary aided schools, not being funded through the Building Schools for the Future programme, the proposers *must*

obtain a voluntary aided capital grant commitment from the Department and the proposers will usually be responsible for funding 10% of capital costs (i.e. unless an LA uses its power to assist proposers).

18. For the provision of additional sixth form places, the local Learning and Skills Council should be contacted for access to the 16-19 capital fund which it administers.

### **School Site**

19. The LA must provide the new school site where proposals are approved for a new foundation, Trust or voluntary controlled school and convey their interest to the governing body or the trustees as appropriate, except where proposals state that the site will be provided by the proposers. For voluntary aided schools the duty to provide the site rests with the proposers, although the LA may use its power to assist proposers by providing and conveying its interest in a site. LAs have a statutory duty to provide the playing fields and any associated buildings for a voluntary aided school.

20. For all categories of schools, on value-for-money criteria, authorities should consider the use of existing buildings, and leased or temporary premises where appropriate, where what they provide is in line with the approved proposals. Premises must comply with School Premises Regulations except where relaxation has been agreed by the Secretary of State.

### **Section 106 Agreements**

21. As part of a new housing development there may an opportunity for an LA to negotiate a Section 106 agreement whereby the developer bears all or a significant proportion of the costs of a new school. This can represent a significant saving to the public purse.

### **Statutory Proposal Process**

22. If the Secretary of State approves the LA's request to publish proposals for a new school (Section 10 of EIA 2006), or the proposals do not need the Secretary of State's consent (Section 11 of EIA 2006), the LA must follow the statutory process as follows:

Stage 1	Consultation	Not prescribed (minimum of 6 weeks recommended)
Stage 2	Publish statutory notice	
Stage 3	Representation period (to allow for comments and objections to be submitted)	6 weeks
Stage 4	Decision by:  LA  <u>or</u>	Within 2 months of end of Stage 3

	schools adjudicator	No prescribed timescale
Stage 5	Implementation	No prescribed timescale

## **Stage 1 – Consultation**

1.1 Under Sections 10(4) and 11(6) of EIA 2006 the LA **must** consult before publishing a notice for the new school. When consulting, the LA must have regard to the Secretary of State's guidance. Paragraphs 1.2 to 1.4 below contain the Secretary of State's statutory guidance.

1.2 When consulting the Secretary of State considers that the LA must:

- allow adequate time;
- provide sufficient information for those being consulted to form a considered view on the matters on which they are being consulted;
- make clear how their views can be made known; and
- able to demonstrate how they have taken into account the views expressed during consultation in reaching any subsequent decision as to the publication of proposals.

1.3 The Secretary of State considers that the interested parties who should be consulted by proposers include:

- any LA likely to be affected by the proposals, 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;
- families of any pupils at any other school who may be affected by the proposals 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 any other staff at schools who may be affected by the proposals;
- the local C of E and RC dioceses and anyone else who has previously expressed an interest in setting up a school;
- (if the proposals affect the provision of full-time 14-19 education) the Learning and Skills Council (LSC);
- MPs whose constituencies include the schools that are the subject of the proposals or whose constituents are likely to be affected by the proposals;
- the local district or parish council where the proposed school is to be situated;

- any other interested party, for example, the Early Years Development and Child Care Partnership (or any local partnership that exists in place of an EYDCP) where proposals affect early years provision, or those who benefit from a contractual arrangement giving them the use of the premises; and
- such other persons as appear to the LA to be appropriate.

1.4 Under Section 176 of the Education Act 2002 LAs and governing bodies are also under a duty to consult pupils on any proposed changes to local school organisation that may affect them. Guidance on this duty is available on the Teachernet website: [www.publications.teachernet.gov.uk](http://www.publications.teachernet.gov.uk) and is entitled “Pupil Participation Guidance: Working Together – Giving Children and Young People a Say”.

1.5 At the end of the consultation the LA should consider the views expressed during the consultation before reaching any final decision on whether to publish. Where, in the course of consultation, a new option emerges which the LA wish to consider, it will probably be appropriate to consult afresh on this option before proceeding to publish.

1.6 Where the LA carry out any preliminary consultation to consider a range of options, and/or principles, for a possible reorganisation, this would not be regarded as the statutory period of consultation as required by Section 10(4) or 11(6) of EIA 2006. The statutory consultation would need to cover the specific location and specification of the school in question.

## **Stage 2 – Publication**

2.1 The LA should publish proposals within a reasonable timeframe following consultation so that the proposals are informed by up-to-date feedback. Proposals should therefore be published within 12 months of consultation being concluded.

2.2 Proposals **must** contain the information specified in The School Organisation (Establishment and Discontinuance of Maintained Schools)(England) Regulations 2007 (SI 2007 No. 1288) (as amended). Part of the information, as set out in Part 1 of Annex E, is published in a statutory notice (see paragraphs 2.3-2.4 below), but the complete proposal, as set out in Part 2 of Annex E, must be sent to a range of copy recipients (see paragraph 2.9-2.10 below). Proposals should be published within a reasonable timeframe following consultation so that they are informed by up-to-date feedback, preferably within 12 months of consultation being concluded.

2.3 A statutory notice containing specified information (see Part 1 of Annex E) **must** be published in a local newspaper, and also posted at the main entrance to the school (or all the entrances if there is more than one entrance) and at some other conspicuous place in the area served by the school (e.g. the local library, community centre or post office etc). Proposers may circulate a notice more widely in order to ensure that all those substantially affected have the opportunity to comment.

2.4 The DCSF School Organisation Website contains an online Statutory Notice Builder tool. Proposers are strongly advised to use this facility as it will help them to draft a statutory notice that complies with regulations, and offers an opportunity for the notice to be checked by the School Organisation Unit of the DCSF. The notice builder can be found at [www.dcsf.gov.uk/schoolorg](http://www.dcsf.gov.uk/schoolorg). To gain access you must register for the “Members’ Area” on the website but this is free of charge. A template for the complete proposal is provided automatically by the website when a statutory notice is built (i.e. using the notice builder tool), alternatively the template can be found in “Standard Forms” in the Members’ Area of the website.

### **Related proposals**

2.5 Where proposals are interdependent they should be identified as “related” either by being published in a single notice or the link to the other proposals made clear in each notice. Where proposals by the LA are “related” to proposals for voluntary schools (e.g. where an entire area is to be reorganised) the LA and governors or proposers may publish a single notice but this must make it clear who is making which proposals, under their respective powers, and there should be separate signatures for each relevant section. Where proposals are not “related”, they should not be published on the same notice unless the notice makes it very clear that the proposals are not “related”.

## **Implementation date**

2.6 There is no maximum limit on the time between the publication of a proposal and its date of implementation but circumstances may change significantly if too long a period elapses. In general, therefore - with the possible exception of **BSF** or major authority-wide reorganisation proposals which may have to be phased in over a long period - the implementation date for proposals should be within 3 years of their publication. The LA may be expected to show good reason if they propose a longer timescale.

## **Explanatory note**

2.7 If the full effect of the proposals is not apparent to the general public from the published notice, it may be supplemented by an explanatory note or background statement, but this should be clearly distinguishable from the formal proposals.

## **Invalid notice**

2.8 Where a published notice has not been properly formulated in accordance with the regulations, the notice may be judged invalid and therefore ineligible to be considered by the LA or schools adjudicator. In these circumstances the LA should publish a revised notice making it clear that this replaces the first notice and that the statutory period for representations will run from the publication date of the revised notice.

2.9 We recommend that the LA use the “Statutory Notice Builder” tool, which is available via the DCSF School Organisation Unit website Forum – [www.dcsf.gov.uk/schoolorg](http://www.dcsf.gov.uk/schoolorg), to prepare a draft notice. This can help guard against the construction of a flawed notice and offers an opportunity for the notice to be checked by the School Organisation Unit of the DCSF.

## **Who should be sent copies of the proposals?**

2.10 Within one week of proposals being published, the LA must send a copy of the complete proposal, to:

- any other LA likely to be affected by the proposals;
- the Diocesan Board of Education for any diocese of the Church of England which is comprised in the area of the LA;
- the bishop of a diocese of the Roman Catholic Church which is comprised in the area of the LA;
- the Learning and Skills Council for England if the proposals include the provision of 14-16 education or sixth form education;
- in cases where the proposed school is to be a special school, the relevant Primary Care Trust and NHS Trust or NHS foundation trust; and

- the Secretary of State (i.e. to SOU, DCSF, Mowden Hall, Darlington DL3 9BG or via e-mail to [school.organisation@dcsf.gsi.gov.uk](mailto:school.organisation@dcsf.gsi.gov.uk). **In addition to the complete proposal, a copy of the statutory notice which appeared in the newspaper must also be sent to the Secretary of State at the above address within one week of it appearing.**

2.11 The LA must also send a complete copy of their proposals to any person who requests a copy.

### **Compulsory Purchase Orders**

2.12 Where an LA needs to acquire land compulsorily in conjunction with any statutory proposals, the LA should not make the compulsory purchase order until proposals have been approved conditionally on the acquisition of the site. The Secretary of State will not consider confirming and sealing an order until proposals have been approved.

### **Stage 3 – Representations**

3.1 Once proposals are published there follows a 6 week statutory period during which representations (i.e. objections or comments) can be made. These must be sent to the LA.

3.2 The representation period is the final opportunity for people and organisations to express their views about the proposals and ensure that they will be taken into account by the Decision Maker.

## **Stage 4 – Decision**

### **Who Will Decide the Proposals?**

4.1 Decisions on school organisation proposals are taken by the LA or by the schools adjudicator. In this chapter both are covered by the form of words 'Decision Maker' which applies equally to both.

4.2 Paragraphs 8 and 10 of Schedule 2 to EIA 2006 set out who should decide proposals for new schools. Most decisions will be taken by the LA with some rights of appeal to the schools adjudicator. There are some other instances when the schools adjudicator will be the Decision Maker. The following paragraphs set out who the Decision Maker is in each case.

4.3 LAs decide:

(a) Any new school proposals, published with the consent of the Secretary of State under Section 10 of the EIA 2006, **except** those which include either: proposals where the LA is the proposer of a school, or proposals for a new foundation school where the LA:

- (i) are a member of the foundation;
- (ii) appoint a member of the foundation or a charity trustee;  
or
- (iii) exercise voting rights in the foundation or appoint anyone who can exercise voting rights.

(b) Any new school 'special case' proposals published under Section 11 of the EIA 2006 **except** any for a new foundation school where the LA has a role as at para 4.3(a)(i) to (iii) above.

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

4.5 Paragraph 4.8 below set out the bodies who may appeal against an LA's decision on proposals made under Section 10 and 11 of the EIA 2006.

4.6 The schools adjudicator decides:-

- a) proposals for a new community or foundation school, published by the LA, with the consent of the Secretary of State under Section 10 of the EIA 2006;
- b) proposals for a new foundation school, published with the consent of the Secretary of State under Section 10 of the EIA 2006, where an LA have a role as at paragraph 4.3(a)(i) to (iii) above;

- c) 'special case' proposals for a new foundation school published under Section 11 of the EIA 2006 where an LA have a role as at paragraph 4.3(a)(i) to (iii) above;
- d) other proposals which an LA have failed to decide within 2 months;
- e) proposals for which there has been an appeal under Paragraph 14 of Schedule 2 to the EIA 2006.

4.7 Where the schools adjudicator is to decide the proposals, under these provisions, the proposals and representations must still be sent to the LA. The LA must then pass the proposals, together with any comments and objections, to the schools adjudicator within 2 weeks from the end of the representation period. If the proposals are "related" to any other proposals (e.g. closures or enlargements) all the "related" proposals must also be passed to the adjudicator for decision together with any comments and objections.

4.8. The Department does not prescribe the process by which an LA carries out their decision-making function (e.g. full Cabinet or delegation to Cabinet member or officials). This is a matter for the LA to determine but the requirement to have regard to statutory guidance (see Part C paragraph 10) applies equally to the body or individual that takes the decision.

### **Who Can Appeal Against a Local Authority Decision?**

4.9 The following bodies may appeal against an LA decision:

- The local Church of England diocese;
- The bishop of the local Roman Catholic diocese;
- The school proposer where the proposals are rejected by the LA; and
- The Learning and Skills Council where the school is to provide education for pupils aged 14 and over.

4.10 Appeals **must** be submitted to the LA within 4 weeks of the notification of the LA's decision. On receipt of an appeal the LA **must** then send the proposals and the representations (together with any comments made on these representations by the proposers) to the schools adjudicator within 1 week of the receipt of the appeal. The LA should also send a copy of the minutes of the LA's meeting or other record of the decision and any relevant papers. Where the proposals are "related" to other proposals, all the "related" proposals should also be sent to the schools adjudicator.

### **Decision Makers' Guidance**

4.11 Part C contains the Decision Makers' Guidance that the LA or schools adjudicator will have regard to when making their decision.

## **Stage 5 – Implementation**

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

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

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

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

### **Can proposals be modified?**

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

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

5.6 Before modifying proposals the Decision Maker **must** consult the proposers and the LA, if the LA did not publish the proposals. The proposals must not be modified in a way that would in effect substitute new proposals –

this would run the risk of successful legal challenge in the courts. The Secretary of State (via the School Organisation Unit, DCSF, Mowden Hall, Darlington DL3 9BG or by e-mail to [school.organisation@dcsf.gsi.gov.uk](mailto:school.organisation@dcsf.gsi.gov.uk) ) must be notified of any modification within one week of the proposal being modified.

## **Revocation**

5.7 If proposers cannot implement approved proposals they must publish fresh proposals to be relieved of the duty to implement (paragraph 21(4) of Schedule 2 to EIA 2006). The School Organisation (Establishment and Discontinuance of Maintained Schools)(England) Regulations 2007 (as amended) provide that revocation proposals **must** contain the following information:-

- description of the original proposals as published;
- the date of publication of the original proposals;
- details of who published the proposals; and
- a statement as to why it is proposed that, in accordance with paragraph 21(3), paragraph 21(1) of Schedule 2 to the Act (duty to implement proposals) should not apply in relation to the original proposals.

5.8 The notice **must** be published in at least one local newspaper circulating in the area to be served by the school. It **must** also be posted in a conspicuous place in the area to be served by the school. The proposals **must** provide for anyone to submit comments and objections on the proposals to the LA within 6 weeks of the proposals being published. The proposers **must** forward a copy of the proposals to the LA within 1 week of publication. Proposers are advised to consult interested parties on the planned revocation proposals before publication although there is no statutory requirement to do so.

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

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

## **Admission arrangements**

5.11 Paragraph 1.39 of the School Admissions Code provides that where

proposals for a new school have been approved, the admission arrangements (i.e. as set in the published proposals) **must** remain unchanged for two years after the first year of operation, unless the schools adjudicator allows an application to vary them because of a major change in circumstances.

## **PART C**

### **Decision Makers' Guidance on Establishing a New School**

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

### **Checks on Receipt of Statutory Proposals**

2. There are 4 key issues which the Decision Maker must consider before judging the respective factors and merits of the statutory proposals:-

- a. Is any information missing? If so, the Decision Maker should write immediately to the proposer specifying a date by which the information must be provided;
- b. Does the published notice comply with statutory requirements? (see paragraph 3 below);
- c. Has the statutory consultation been carried out prior to the publication of the notice? (see paragraph 4 below); and
- d. Are the proposals "related" to other published proposals? (see paragraphs 5-9 below).

### **Does the Published Notice Comply with Statutory Requirements?**

3. The Decision Maker should consider whether the notice is valid as soon as a copy is received. Where a published notice does not comply with statutory requirements - as set out in The School Organisation (Establishment and Discontinuance of Schools)(England) Regulations 2007 (SI:2007 - 1288) (as amended) - it may be judged invalid and the Decision Maker should consider whether they can decide the proposals.

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

4. Details of the consultation should be included in the proposals. The Decision Maker must be satisfied that the consultation meets statutory requirements (see paragraphs 1.2-1.5 of Stage 1, Part A for school competitions and paragraphs 1.2-1.4 of Stage 1, Part B for other new school proposals). If some parties submit objections on the basis that consultation was not adequate, the Decision Maker may wish to take legal advice on the points raised. If the requirements have not been met, the Decision Maker may judge the proposals to be invalid and should consider whether they can decide the proposals. Alternatively the Decision Maker may take into account the sufficiency and quality of the consultation as part of their overall judgement of the proposals as a whole.

### **Are the Proposals Related to Other Published Proposals?**

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

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

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

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

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

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

### **Statutory Guidance – Factors to be Considered by Decision Makers**

10. Paragraphs 8(6) and 17 of Schedule 2 to the EIA 2006 provides that both the LA and schools adjudicator are required to have regard to guidance issued by the Secretary of State when they take a decision on proposals. Paragraphs 11 to 89 below contain the statutory guidance.

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

### **EFFECT ON STANDARDS AND SCHOOL IMPROVEMENT**

#### **A System Shaped by Parents**

12. The Government's aim, as set out in the Five Year Strategy for Education and Learners and the Schools White Paper *Higher Standards, Better Schools For All*, is to create a schools system shaped by parents which delivers excellence and equity. In particular, the Government wishes to see a dynamic system in which:

- weak schools that need to be closed are closed quickly and replaced by new ones where necessary;
- the best schools are able to expand and spread their ethos and success; and
- new providers have the opportunity to share their energy and talents by establishing new schools - whether as voluntary schools, Trust schools or Academies - and forming Trusts for existing schools.

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

### **School Competitions**

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

15. The specification for the new school is just the minimum requirement and proposals may go beyond this. Where a proposal is not in line with the specification, the Decision Maker should consider the potential impact of the difference. Where additional provision is proposed (e.g. early years or a sixth form) the Decision Maker should first judge the merits of the main proposal (i.e. that meets the original specification) against the other proposals. If the proposal is judged to be the superior proposal, the Decision Maker should consider the additional elements and whether they should be approved. If the Decision Maker considers the additional elements cannot be approved they may consider a modification to the proposals but will need first to consult the proposers, the LA and, if the proposals include provision for 14-19 year olds, the LSC.

### **Standards**

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

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

### **Diversity**

18. Decision Makers should be satisfied that new provision for children with Special Educational Needs (SEN) will meet the statutory SEN improvement test (see paragraphs 82 to 88).

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

20. Decision Makers should consider how proposals will contribute to local diversity. They should consider the range of schools in the relevant area of the LA and whether the new school will meet the aspirations of parents, help raise local standards and narrow attainment gaps.

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

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

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

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

### **Fresh Start /Collaborative Restart**

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

### **Every Child Matters**

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

## **TYPES OF SCHOOLS**

### **The Importance of Self Governance**

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

28. In considering proposals for a new school the Decision Maker should take into account the Government’s views of the benefits of self-governance and Trust, VA and Academy status.

### **Trust Schools**

29. For Trust schools, the Decision Maker should consider whether the necessary statutory requirements relating to Trusts are met or are in progress:

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

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

- a. to what extent the proposed partners already have a relationship

with other schools; and how those schools perform (though the absence of a track record should not be grounds for regarding proposals less favourably);

- b. to what extent the proposed partners have knowledge of the local community and the specific needs of the area and to what extent the proposal addresses these; and
- c. how the partners propose to identify and appoint governors. What, if any, support would the Trust/foundation give to governors – e.g. training, encouraging exchanges of information on best practice?

This list is not exhaustive. Where proposals identify a particular contribution to be made by partners, the Decision Maker will wish to take these features into account on a case by case basis.

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

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

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

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

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

33. Decision Makers should consider the impact of the Trust on educational standards in the new school. In particular they should consider the particular expertise and background of Trust members in relation to the

overall ethos proposed for the school, and in relation to the needs of an area. How would the Trust utilise relevant leadership and/or experience in order to contribute to raising standards?

### **Foundation Body**

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

### **Academies**

35. Statutory proposals are not required to establish a new Academy but proposals for a new Academy may be received in response to a school competition run by the LA. If one of the proposals is for an Academy, the LA should consult the Secretary of State within one week of receiving the proposals. The Secretary of State will then confirm whether or not he would be willing in principle to commence negotiations with a view to entering into an agreement for establishing an Academy. Following a response from the Secretary of State that he would be willing in principle to commence negotiations the Decision Maker can consider all the proposals submitted, including the Academy. If the Secretary of State is not willing in principle to commence negotiations the Academy proposals must be rejected.

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

### **Independent Schools**

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

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

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

39. Where the Secretary of State has given 'in principle' agreement as at paragraph 35 above, the Decision Maker should give conditional approval so that when the Secretary of State gives his agreement, the proposals will automatically gain full approval.

## **SCHOOL CHARACTERISTICS**

### **Boarding Provision**

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

### **Grammar Schools**

41. In line with Government policy, that there should be no increase in selection, 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 schools (Section 104 of the Schools Standards and Framework Act refers). Decision Makers should therefore satisfy themselves that if a new school is proposed as a grammar school it is eligible for designation.

### **School Size**

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

### **Proposed Admission Arrangements**

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

## **National Curriculum**

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

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

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

## **Specialist Schools**

46. When a proposal for a new school states that it will have a specialism it is important to take into account any specialism that the proposer wishes to attach to this. Any application from a school for entry into the specialist schools programme will need to be submitted to the Department for Children, Schools and Families (DCSF). However, when considering the proposal for a new school that intends to acquire specialist status the Decision Maker may wish to consider several factors that apply to the opening of a specialist school. The Decision Maker should consider whether the proposal demonstrates that the particular specialism is appropriate given all the circumstances.

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

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

## **Extended Schools**

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

### **Federations**

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

### **Equal Opportunity Issues**

51. The Decision Maker should consider whether there are any sex, race or disability discrimination issues that arise from the changes being proposed, for example, that where there is a proposed change to single sex provision in an area, there is equal access to single sex provision for the other sex to meet parental demand. In considering proposals for an existing independent school to become maintained the Decision Maker should be satisfied that if the school is co-educational it will provide equal opportunities for boys and girls. Similarly there needs to be a commitment to provide access to a range of opportunities which reflect the ethnic and cultural mix of the area, while ensuring that such opportunities are open to all.

### **NEED FOR PLACES**

#### **Creating Additional Places**

52. The Decision Maker should consider whether there is a need for the new school. The Decision Maker should consider the evidence presented for any projected increase in pupil population such as planned housing development. The Decision Maker should take into account not only the existence of spare capacity in neighbouring schools, but also the quality and popularity with parents of the schools in which spare capacity exists and evidence of parents' aspirations for a new school. The existence of surplus capacity in neighbouring less popular or successful schools should not in itself prevent the addition of new places. Assessment of demand should include all

potential admissions, not only those from the area of the authority in which the school will be situated.

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

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

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

### **Community Cohesion and Race Equality**

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

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

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

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

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

### **Travel and Accessibility for All**

58. In considering proposals for the reorganisation of schools, Decision Makers should satisfy themselves that accessibility planning has been

properly taken into account. Facilities are to be accessible by those concerned, by being located close to those who will use them, and the proposed changes should not adversely impact on disadvantaged groups.

59. In deciding statutory proposals, the Decision Maker should bear in mind that proposals should not have the effect of unreasonably extending journey times or increasing transport costs, or result in too many children being prevented from travelling sustainably due to unsuitable routes e.g. for walking, cycling etc. The EIA 2006 provides extended free transport rights for low income groups – see Home to School Travel and Transport Guidance re 00373 – 2007BKT-EN at [www.teachernet.gov.uk/publications](http://www.teachernet.gov.uk/publications). Proposals should also be considered on the basis of how they will support and contribute to the LA's duty to promote the use of sustainable travel and transport to school.

## **SPECIFIC AGE PROVISION ISSUES**

### **Early Years Provision**

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

### **14-19 Curriculum and Collaboration**

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

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

### **16-19 Provision**

63. The Learning and Skills Act 2000 provides an entitlement to further education and training for young people aged 16-19. Schools and colleges should offer high quality provision that meets the diverse needs of all young people, their communities and employers. 16-19 provision should be organised to ensure that, in every area, young people have access, within reasonable travelling distance, to high-quality learning opportunities across

schools, colleges and work-based training routes.

64. In September 2003 Ministers set out their **five key principles** for the reorganisation of 16-19 provision, following requests from partners (including LSC and LAs) for more clarity on Government expectations. Decision Makers should therefore consider all proposals for new schools which affect local 16-19 provision in the context of these principles.

65. Details of the five key principles can be found in [‘Principles underpinning the organisation of 16-19 provision’](#) booklet. Briefly they are:

- a. quality - all provision for all learners should be high quality, whatever their chosen pathway;
- b. distinct 16-19 provision - all young people should be attached to a 16-19 base which will meet the particular pastoral, management and learning needs of this age group;
- c. diversity to ensure curriculum breadth – well-managed collaboration between popular and successful small providers will enable them to remain viable and to share and build on their particular areas of expertise;
- d. learner choice – all learners should normally have local access to high quality 16-19 provision in a range of settings and any proposals for change to this provision should take into account the views of all stakeholders; and
- e. affordability, value for money and cost effectiveness - proposals for change should include how any capital and recurrent costs and savings will lead to improved educational opportunities.

### **Conflicting Sixth Form Reorganisation Proposals**

66. Where the implementation of reorganisation proposals from the LSC conflict with other published proposals put to the Decision Maker for decision, the Decision Maker is prevented by the School Organisation Proposals by the LSC for England Regulations 2003 from making a decision on the “related” proposals until the Secretary of State has decided the LSC proposals (see paragraphs 8-9 above).

### **FUNDING & LAND**

#### **Capital**

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

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

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

70. Proposals should not be approved conditionally upon funding being made available, subject to the following specific exceptions. For schools being funded under the Private Finance Initiative (PFI) or through the Building Schools for the Future (BSF) programme, the Decision Maker should be satisfied that funding has been agreed 'in principle', but the proposals should be approved conditionally on the entering into of the necessary agreements and the release of funding. A conditional approval will protect proposers so that they are not under a statutory duty to implement the proposals until the relevant contracts have been signed and/or funding is finally released. Similarly, for Academy proposals in response to a competition, proposals should be approved conditionally on the Secretary of State entering into a funding agreement with the sponsors (see paragraph 94 below).

### **Capital Receipts**

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

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

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

b. Foundation and Voluntary Schools:

i. playing field land - the governing body, foundation body or

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

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

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

73. Where consent to the disposal of land is required, but has not been obtained, the Decision Maker should consider issuing a conditional approval for the statutory proposals so that the proposals gain full approval automatically when consent to the disposal is obtained (see paragraph 94(p) below).

### **New Voluntary Aided School Funding**

74. For proposals for a new voluntary aided school the Decision Maker should have a statement (Form 18), signed by the promoters that provides evidence that the new school's Governing Body would be able to meet their financial responsibilities for any future building work.

### **New Site or Playing Fields**

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

### **Land Tenure Arrangements**

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

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

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

78. Where the site of a new foundation or voluntary controlled school is being provided by the proposers, they should discuss the land tenure arrangements with the LA as the LA will be responsible for meeting future capital building costs. The LA should provide assurance to the Decision Maker that land tenure arrangements will be satisfactory.

79. Where the site of a new VA school is being provided by proposers the Secretary of State will want to consider land tenure arrangements when making grants available for any capital building work. He is likely to set a condition of grant that if the school closes or ceases to use the premises (i.e. that have been provided or enhanced by grant) he will be able to recover grant. Nonetheless the Decision Maker should ensure that the land tenure arrangements will be satisfactory taking into account the factors in paragraph 76 above.

### **School Playing Fields**

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

- a. the premises will meet the minimum requirements of The Education (School Premises) Regulations 1999; or

b. if the premises do not meet those requirements, the proposers have secured the Secretary of State's agreement in principle to grant a relaxation.

81. Where the Secretary of State has given 'in principle' agreement as at paragraph 80(b) above, the Decision Maker should consider issuing conditional approval so that when the Secretary of State gives his agreement, the proposals will automatically gain full approval.

## **Special Educational Needs (SEN) Provision**

### **Initial Considerations**

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

- i. take account of parental preferences for particular styles of provision or education settings;
- ii. offer a range of provision to respond to the needs of individual children and young people, taking account of collaborative arrangements (including between special and mainstream), extended school and Children's Centre provision; regional centres (of expertise ) and regional and sub-regional provision; out of local authority day and residential special provision;
- iii. are consistent with the LA's Children and Young People's Plan;
- iv. take full account of educational considerations, in particular the need to ensure a broad and balanced curriculum, including the National Curriculum, within a learning environment in which children can be healthy and stay safe;
- v. support the LA's strategy for making schools and settings more accessible to disabled children and young people and their scheme for promoting equality of opportunity for disabled people;
- vi. provide access to appropriately trained staff and access to specialist support and advice, so that individual pupils can have the fullest possible opportunities to make progress in their learning and participate in their school and community;
- vii. ensure appropriate provision for 14-19 year-olds, taking account of the role of local LSC funded institutions and their admissions policies; and
- viii. ensure that appropriate full-time education will be available to all

displaced pupils. Their statements of special educational needs will require amendment and all parental rights must be ensured. Other interested partners, such as the Health Authority should be involved.

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

### **The Special Educational Needs Improvement Test**

84. When considering any reorganisation of SEN provision, including that which might lead to some children being displaced through closures or alterations, LAs, and all other proposers for new schools or new provision, will need to demonstrate to parents, the local community and Decision Makers how the proposed alternative arrangements are likely to lead to improvements in the standard, quality and/or range of educational provision for children with special educational needs. All consultation documents and reorganisation plans that LAs publish and all relevant documentation LAs and other proposers submit to Decision Makers should show how the key factors set out in the paragraphs below (85 to 88) have been taken into account. Proposals which do not credibly meet these requirements should not be approved and Decision Makers should take proper account of parental or independent representations which question the LA's own assessment in this regard.

### **Key Factors**

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

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

providers of existing and proposed provision to set out their views on the changing pattern of provision seeking agreement where possible;

- b) clearly state arrangements for alternative provision. A 'hope' or 'intention' to find places elsewhere is not acceptable. Wherever possible, the host or alternative schools should confirm in writing that they are willing to receive pupils, and have or will have all the facilities necessary to provide an appropriate curriculum;
- c) specify the transport arrangements that will support appropriate access to the premises by reference to the LA's transport policy for SEN and disabled children; and
- d) specify how the proposals will be funded and the planned staffing arrangements that will be put in place.

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

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

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

## **OTHER ISSUES**

### **Views of Interested Parties**

89. The Decision Maker should consider the views of all those affected by the proposals or who have an interest in them including: pupils; families of pupils; staff; other schools and colleges; local residents; diocesan bodies and

other providers; LAs; the LSC (where proposals affect 14-19 provision) and the Early Years Development and Childcare Partnership if one exists, or any local partnership or group that exists in place of an EYDCP (where proposals affect early years and/or childcare provision). This includes statutory objections and comments submitted during the representation period. The Decision Maker should not simply take account of the numbers of people expressing a particular view when considering representations made on proposals. Instead the Decision Maker should give the greatest weight to representations from those stakeholders likely to be most directly affected by the proposals, for example the parents of children who might be eligible to attend the new school.

### **Types of Decision**

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

- reject all of the proposals;
- approve any of the proposals (e.g. they may decide to approve complementary proposals which together meet the need for the new school);
- approve any of the proposals with a modification (e.g. the school opening date); or
- approve any of the proposals subject to them meeting a specific condition (see paragraph 94 below).

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

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

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

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

(see paragraph 94 below).

### **Conditional Approval**

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

- a. the grant of planning permission under Part 3 of the Town and Country Planning Act 1990;
- b. the acquisition of the site on which a new school is to be constructed;
- c. the acquisition of playing fields to be provided for the school;
- d. the securing of any necessary access to a site referred to in sub-paragraph (b) or playing fields referred to in sub-paragraph (c);
- e. the private finance credit approval given by the Department for Children, Schools and Families following the entering into of a private finance contract by an LA or the approval by the Department for Children, Schools and Families of capital grant in an equivalent arrangement for voluntary aided schools;
- f. the entering into an agreement for any necessary building project supported by the Department for Children, Schools and Families in connection with Building Schools for the Future programme;
- g. the making of any scheme relating to any charity connected with the school;
- h. the formation of any federation (within the meaning of section 24(2) of the 2002 Act) of which it is intended that the proposed school should form part, or the fulfilling of any other condition relating to the proposed school forming part of a federation.
- i. the Secretary of State giving notice under regulation 5(4) of the Education (Foundation Body) (England) Regulations 2000 that a foundation body should be established and that the school should form part of a group for which a foundation body should act;
- j. the Secretary of State making a declaration under regulation 22(3) of the Education (Foundation Body) (England) Regulations 2000 that the school should form part of a group for which a foundation body acts;
- k. the agreement to any change to admission arrangements specified

in the approval, relating to another school;

- l. the establishment of any foundation meeting the requirements of section 23A of SSFA 1998;
- m. the making of any agreement under section 482(1) of the 1996 Act for the establishment of an Academy;
- n. in the case of proposals to establish a maintained school in place of an existing independent school, the securing of approval by the Secretary of State to relax the requirements of the Education (School Premises) Regulations 1999 as provided for by section 543 (1) of EA 1996;
- o. in the case of proposals to establish any other maintained school, the securing of approval by the Secretary of State to relax the requirements of the Education (School Premises) Regulations 1999 in respect of school playing fields as provided for by section 543 (1) of EA 1996;
- p. in the case of proposals whose funding is dependent upon capital receipts from the disposal of any school land or buildings, the securing of consent from the Secretary of State for the disposal as provided for by paragraph 2 of Schedule 35A to EA 1996 or section 77 of SSFA 1998, or determination in accordance with Schedule 22 to the SSFA 1998 as applicable;
- q. in the case of proposals to establish a maintained school, the Secretary of State making a direction under section 90 of EA 2002 that the National Curriculum for England shall not apply or shall apply with modifications; and
- r. where the proposals in question depend upon any of the events specified in paragraphs (a) to (q) occurring by a specified date in relation to proposals relating to any other school or proposed school, the occurrence of such an event.

95. The Decision Maker **must** set a date by which the condition should be met but will be able to modify the date if the proposers confirm, before the date expires, that the condition will be met later than originally thought. The proposer should inform the Decision Maker and the Department (School Organisation Unit, DCSF, Mowden Hall, Staindrop Road, Darlington, DL3 9BG) or by email to [school.organisation@dcsf.gsi.gov.uk](mailto:school.organisation@dcsf.gsi.gov.uk) when a condition is met. If a condition is not met by the date specified, the proposals should be referred back to the Decision Maker for fresh consideration.

## **Decisions**

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

factors/criteria for the decision.

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

- the person or body who published the proposals or, in the case of school competitions, the person or body who submitted the proposals;
- each objector except where a petition has been received. Where a petition is received a decision letter should be sent to the person who submitted the petition, or where this is unknown, the signatory whose name appears first on the petition;
- the Secretary of State (via the School Organisation Unit, DCSF, Mowden Hall, Darlington DL3 9BG or by email to [school.organisation@dcf.gsi.gov.uk](mailto:school.organisation@dcf.gsi.gov.uk));
- where the school includes provision for 14-16 education or sixth form education, the LSC;
- the local C of E diocese; and
- the local bishop of the RC diocese.

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

## **Annex A**

### **Part 1 – Published Part of the competition notice to establish a mainstream school**

#### **2. A statement explaining—**

- (a) the location of the possible site (including details of whether the possible site is a single or split site), including where appropriate the postal address or addresses;
- (b) the area or particular community or communities the school is expected to serve; and
- (c) the effect of paragraph 28 and paragraph 31 of Schedule 2 to EIA 2006 (that the LA must transfer their interest in the site, buildings or premises to the school's trustees, foundation body, or governing body).

#### **3. The date on which the school should open and where it is proposed that the proposals are to be implemented in stages, information about each stage and the dates on which each stage should be implemented.**

#### **4. Information on—**

- (a) the number of pupil places the school should provide;
- (b) the upper and lower age limits of the school;
- (c) where it is intended that it should provide sixth form education, the number of pupils for whom it is intended that such education should be provided;

- (d) where it is intended that it should make early years provision, the number of pupils for whom it is intended that such education should be provided;
  
- (e) where it is intended that the school should provide for boarding pupils, the number of pupils for whom it is intended such facilities should be provided;
  
- (f) the number of pupils to be admitted to the school in each relevant age group in the first school year in which the proposals will be implemented or, where it is intended that the proposals should be implemented in stages, the number of pupils to be admitted to the proposed school in each stage that the proposals will be implemented;
  
- (g) whether it is proposed that the school should admit pupils of both sexes or boys or girls only and, in the case of a single sex school where it is intended to provide sixth form education, whether both sexes or boys or girls only are to be admitted to the sixth form;
  
- (h) any extended services which the LA would like to see provided on the proposed site of the school (whether by the LA, governing body or another party);
  
- (i) whether the new school should make provision which is recognised by the LA as reserved for children with special educational needs, and, if so, the range of special needs and the number of pupils for which provision is proposed; and

- (j) the estimated capital costs of providing the school (such an estimate to take account of the standards in Building Bulletin 77: Designing for Pupils with Special Educational Needs and Disabilities in Schools; Building Bulletin 98: Briefing Framework for Secondary School Projects and Building Bulletin 99: Briefing Framework for Primary School Projects).

**5. A statement giving—**

- (a) the address of the LA; and
- (b) the name of the person to whom proposals should be addressed.

**6. The date by which proposals must be submitted, being not less than 4 months from the date of publication of the competition notice.**

## Annex A

### Part 2 – **Complete** competition notice to establish a mainstream school

1. A statement explaining the reason why the new school is considered necessary and whether it is to replace particular schools.

2. A statement explaining:

- (a) the location of the possible site (including details of whether the possible site is a single or split site) including, where appropriate, the postal address or addresses;
- (b) the reason for the choice of site;
- (c) the area or particular community or communities the school is expected to serve;
- (d) the accessibility of the possible site (or, if it is a split site, the accessibility of the accommodation);
- (e) the proposed arrangements for transport of pupils to the new school and a statement about other sustainable transport alternatives where pupils are not using transport provided, and how the local education authority will seek to discourage car use in the school area;
- (f) the tenure (freehold or leasehold) on which the site will be held, and if the site is to be held on a lease, details of the proposed lease;
- (g) the effect of paragraph 28 and paragraph 31 of Schedule 2 to the Act (that the local education authority must transfer their interest in the site, buildings or premises to the school's trustees, foundation body, or governing body);
- (h) where the new school is to be established in substitution for one or more discontinued grammar schools, a statement to that effect and that the school may be designated as a grammar school for the purposes of Chapter 2 of Part 3 of SSFA 1998; and
- (i) an indication of the local education authority's preference for the specialism which the school should have.

3. The date on which the school should open and, where it is proposed that the proposals are to be implemented in stages, information about each stage and the dates on which each stage should be implemented.

4. Information on—

- (a) the number of pupil places the school should provide;
- (b) the upper and lower age limits of the school;
- (c) where it is intended that it should provide sixth form education, the number of pupils for whom it is intended that such education should be provided;
- (d) where it is intended that it should make early years provision, the number of pupils for whom it is intended that such education should be provided;
- (e) where it is intended that the school should provide for boarding pupils, the number of pupils for whom it is intended such facilities should be provided;
- (f) the number of pupils to be admitted to the school in each relevant age group in the first school year in which the proposals will be implemented or, where it is intended that the proposals should be implemented in stages, the number of pupils to be admitted to the proposed school in each stage that the proposals will be implemented;
- (g) whether it is proposed that the school should admit pupils of both sexes or boys or girls only and, in the case of a single sex school where it is intended to provide sixth form education, whether both sexes or boys or girls only are to be admitted to the sixth form;
- (h) any extended services which the local education authority would like to see provided on the site of the school (whether by the local education authority, governing body or another party);
- (i) whether the school should make provision which is recognised by the local education authority as reserved for children with special educational needs, and, if so, the range of special educational needs and the number of pupils for which provision is proposed; and
- (j) the estimated capital costs of providing the school (such an estimate to take account of the standards in Building Bulletin 77: Designing for

Pupils with Special Educational Needs and Disabilities in Schools; Building Bulletin 98: Briefing Framework for Secondary School Projects and Building Bulletin 99: Briefing Framework for Primary School Projects).

**5.** A statement explaining that proposals should be in line with requirements set out in paragraph 4 above, but that proposals that do not comply with all of the requirements but meet the need for places in the area will be considered.

**6.** A statement giving—  
the address of the local education authority; and  
(b) the name of the person to whom proposals should be addressed.

**7.** A brief statement explaining the procedure to be followed after the date when proposals must be received by the local education authority.

**8.** A statement that any proposals submitted in response to a competition notice must contain the information specified in Part 1 of Schedule 2 and that the information specified in Part 3 of Schedule 5 to these regulations will be published in accordance with regulation 8.

**9.** A statement that the local education authority will meet the capital costs of implementing the proposals as specified in paragraph 4 (j) above or, if there is an agreement made under section 106 of the Town and Country Planning Act 1990, a statement setting out the buildings to be available, and the obligations to be entered into, on completion.

**10.** A statement of any resources that the local education authority will make available to secure the provision of the services specified in paragraph 4 (h) above.

**11.** Where the school will replace existing educational provision for children with special educational needs, a statement setting out how the local education authority believes the proposed new school is likely to lead to improvements in the standard, quality and range of the educational provision for these children.

**12.** A statement to the effect that the statutory requirement to consult under section 9 (1) has been complied with, a summary of the views expressed and a statement of how full details of the consultation can be obtained.

## **Annex B**

### **Information to be provided by proposers in response to a school competition notice**

#### **Contact Details**

1. The name of the proposer or proposers and a contact address.
2. Whether the proposals are being submitted independently or jointly with another proposer or proposers.

#### **Category**

3. The type of school that it is proposed be established (a foundation school and, if so, whether it is to have a foundation, a voluntary school, a community school or an Academy) and, where it is to be a community school, if required by section 8 of EIA 2006, a statement that the Secretary of State's consent has been obtained to publication of the proposals.

#### **Pupil numbers and admissions**

4. Confirmation that the size, age-range and pupil number of the school will be in line with the specification in the competition notice, or, if this is not the case, the proposed details.

#### **Extended Services**

5. Information on the extended services which it is envisaged will be provided on the site of the school.

#### **Ethos/Religious Character**

6. A short statement suitable for publication setting out the proposed ethos of the school, including details of any educational philosophy, which it is proposed that the school will adhere to.
7. If the school is to have a religious character, confirmation of the religion or religious denomination in accordance with whose tenets religious education will, or may be required to be provided at the school; and a statement that the proposers intend to ask the Secretary of State to designate the school as a school with such a religious character.

#### **Area or community that school serves**

8. The area or particular community or communities that the school is expected to serve if different from that specified in the competition notice.

#### **Admission Arrangements**

9. An indication of the proposed admission arrangements and over-subscription criteria for the new school including, where the school is proposed to be a foundation or voluntary school or Academy which is to have a religious character—

(a) the extent to which priority for places is proposed to be given to children of the school's religion or religious denomination; and

(b) the extent, if any, to which priority is to be given to children of other religions or religious denominations or to children having no religion or religious denomination.

### **Grammar schools**

10. Where the school is to be established in substitution for one or more discontinued grammar schools, a statement to this effect and a statement that the school may be designated as a grammar school for the purpose of Chapter 2 of Part 3 of SSFA 1998.

### **Schools with a religious character or particular educational philosophy – parental demand**

11. Where the school is—

(a) proposed to have a religious character, evidence of the demand in the area for education in accordance with the tenets of the religion;

(b) proposed to adhere to a particular philosophy, evidence of the demand for education in accordance with the philosophy in question that is not already met in other maintained schools or Academies in the area.

### **Sixth Form Education**

12. Where it is proposed that the school will provide sixth form education, how the proposals will—

(a) improve the educational or training achievements;

(b) increase participation in education or training; and

(c) expand the range of educational or training opportunities, for 16-19 year olds in the area.

### **Early Years Provision**

13. Where the proposals are to include provision for pupils aged between 2 and 5, the following information must be provided—

(a) details of how the early years provision will be organised, including

the number of full-time and part-time pupils, the number of places, the number and length of sessions in each week, and the services for disabled children that will be offered;

(b) how the school will integrate the early years provision with childcare services, and how the proposals for the establishment of the school are consistent with the integration of early years provision with childcare;

(c) evidence of parental demand for additional provision of early years provision;

(d) assessment of capacity, quality and sustainability of provision in schools, and in settings outside the maintained school sector who deliver the Early Years Foundation Stage within 3 miles of the school; and

(e) the reasons why schools and establishments other than schools who deliver the Early Years Foundation Stage within 3 miles of the school and who have spare capacity, cannot make provision for any forecast increase in the numbers of such children.

### **Specialisms**

14. Whether the school will have any specialisms on implementation and whether the proposer intends to apply to the Secretary of State for the school to be a specialist school from implementation.

### **Effects on Standards and Contributions to School Improvement**

15. Information and supporting evidence on:

(a) how the school will contribute to enhancing the diversity and quality of education in the area; and

(b) how the school will help to raise the standard of education in the area and contribute to school improvement.

16. Information and supporting evidence on how the proposals will contribute to enabling children and young people to be healthy, stay safe, enjoy and achieve, make a positive contribution to the community and society, and achieve economic well-being.

### **Community Cohesion**

17. The following information relating to the proposals—

(a) how the school will promote and contribute to community cohesion;

(b) how the school will increase inclusion and equality of access for all social groups; and

(c) how the school will collaborate with other schools, and in relation to secondary school proposals, how the school will collaborate with colleges and training providers.

### **Accommodation**

18. A statement as to whether accommodation will be adequate to meet the number of pupil places specified in paragraph 4 of the competition notice.

### **Single sex or co-educational school**

19. Whether the new school will admit pupils of both sexes or boys only or girls only and, in the case of a single sex school where it is intended to provide sixth form education, whether both sexes or boys or girls only are to be admitted to the sixth form.

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

(a) evidence of local demand for single sex education and how this will be met if the proposals are approved; and

(b) a statement giving details of the likely effect the new school will have on the balance of the provision of single sex education in the area.

### **Location**

21. Confirmation that the school will be established on the site specified in the competition notice or where that is not the case—

(a) the location of the site (including where appropriate the postal address or addresses if the school is to occupy a split site);

(b) whether the school will occupy a single or split site;

(c) the accessibility of the site (or if the school is to occupy a split site the accessibility of the accommodation);

(d) the current ownership and tenure (freehold or leasehold) of the site and the proposed use of any buildings already on the site;

(e) details of the tenure (freehold or leasehold) on which the site of the school will be held, and if the site is to be held on a lease, details of the proposed lease including details of any provisions which could obstruct the governing body or the head teacher in the exercise of any of their functions under any of the Education Acts or place indirect pressures upon funding bodies;

(f) whether the site is currently used for the purposes of another school

which will no longer be required for the purposes of that school. If so, provide details as to why the site will no longer be required for the purposes of that school; and

(g) the estimated costs of providing the site and a statement about how the costs will be met.

### **Implementation of the proposals**

22. Confirmation that the proposals will be implemented in line with the timing in the competition notice or, if this is not the case, the date when it is planned that the proposals will be implemented, or where the proposals are to be implemented in stages, information about each stage and the date on which each stage is planned to be implemented.

23. Where the proposals are to establish a voluntary controlled or foundation school, a statement as to whether the proposals are to be implemented by the LA or by the proposers, and if the proposals are to be implemented by both—

(a) a statement as to the extent that they are to be implemented by each body, and

(b) a statement as to the extent to which the capital costs of implementation are to be met by each body.

### **Project Costs**

24. Confirmation that the proposers consider that the costs of establishing the new school can be met within the estimate of capital costs of providing the school outlined in the competition notice and, where they cannot be met within that estimate, an explanation of the reasons for the additional costs and how any shortfall will be met.

25. A copy of any confirmation from the Secretary of State or LA or the Learning and Skills Council for England (as the case may be) that funds will be made available (including costs to cover any necessary site purchase).

26. Details of how it is proposed to fund the proposer's share of the capital costs of implementing the proposals (if any).

### **Travel**

27. The proposed arrangements for travel of pupils to the school.

### **Federation**

28. Details of any proposals for the school to be federated with one or more schools (by virtue of section 24 of EA 2002 and section 12 of EIA 2006).

## **Curriculum**

29. Confirmation that the school will meet the general requirements in relation to curriculum contained in section 78 of EA 2002 and an outline of any provision that will be in addition to the basic curriculum required by section 80 of EA 2002, in particular any 14-19 vocational education.

## **Voluntary Aided Schools**

30. Where the school is to be a voluntary aided school—

(a) details of the trusts on which the site is to be held; and

(b) confirmation that the governing body will be able and willing to carry out their obligations under Schedule 3 to SSFA 1998.

## **Foundation Schools**

31. Where the school is to be a foundation school, confirmation as to whether the school—

(a) will have a foundation established otherwise than under SSFA 1998 and, if so, the identity of that foundation;

(b) will belong to a group of schools for which a foundation body acts under section 21 of SSFA 1998; or

(c) will not fall within paragraph (a) or (b).

32. Where the school is to be a foundation school which has a foundation—

(a) the name of the foundation where known;

(b) the rationale for the foundation and the particular ethos that it will bring to the school;

(c) the details of membership of the foundation, including the names of the members;

(d) the entitlement to appoint charity trustees and the number of trustees to be appointed;

(e) the proposed constitution of the governing body;

(f) details of the foundation's charitable objects;

(g) where the majority of governors are to be foundation governors, a statement that a parent council will be established in accordance with

section 23A of EA 2002;

(h) a statement that the requirements set out in the School Organisation (Requirements as to Foundations) (England) Regulations 2007 will be met;

(i) a statement of how the foundation will contribute to the advancement of education at the school and how it is envisaged it will help to raise standards; and

(j) a statement of how the foundation will contribute to the advancement of community cohesion and the impact the foundation will have on the diversity of school provision in the area.

### **Relevant experience of proposers**

33. Evidence of any relevant experience in education held by the proposer, or proposers (other than an LA), including details of any involvement in the improvement of standards in education.

### **Special educational needs**

34. Where proposals for the new school will include provision that would be recognised by the local education authority as reserved for children with special educational needs, details of the specific educational benefits that will flow from the proposals in terms of—

(a) improved access to education and associated services including the curriculum, wider school activities, facilities and equipment with reference to the local education authority's Accessibility Strategy;

(b) improved access to specialist staff, both education and other professionals, including any external support and, or, outreach services;

(c) improved access to suitable accommodation;

(d) improved supply of suitable places; and

(e) a statement that special educational needs provision will be in line with that specified in the competition notice, or, where not, the nature of any such provision and the proposed number of pupils for whom such provision is to be made.

## **Annex C**

### **APPLICATION BY LOCAL AUTHORITIES, TO THE SECRETARY OF STATE, FOR AGREEMENT TO PUBLISH PROPOSALS FOR A NEW COMMUNITY SCHOOL UNDER SECTION 7 OF THE EDUCATION AND INSPECTIONS ACT 2006**

Please complete all sections and submit to School Organisation Unit mailbox at [school.organisation@dcf.gov.uk](mailto:school.organisation@dcf.gov.uk) (or post: School Organisation Unit, DCSF, Mowden Hall, Darlington DL3 9BG)

**Details of proposed school including:**

**Local Authority:**

**Site details (e.g. single/split site, freehold/leasehold tenure, accessibility):**

**Postal address:**

**Number of Pupils:**

**Age range:**

**Category:**

**Proposed specialism, if any: (secondary schools only)**

**Ethos:**

**Proposed opening date:**

**Will the school replace an existing school or schools? If so provide details of closing school(s) as above with proposed date for closures:**

**How will the school increase local diversity and increase parental choice:**

**Views of local parents/community: including evidence of consultation, copies of consultation documents and notes of meetings ( please list any documents attached):**

**Statement on how the school will contribute to raising standards, including how it is proposed it will network with other schools in the**

**area:**

**Whether there is a commitment to develop access to the core range of extended services that will meet the needs of pupils, their families and others in the wider local community:**

**Why is a community school preferred to a foundation school?**

**Contact details:**

**Name:**

**Tel No:**

**E-mail:**

## Annex D

### APPLICATION FORM FOR A Local Authority TO APPLY TO THE SECRETARY OF STATE, FOR AGREEMENT TO PUBLISH PROPOSALS FOR A NEW COMMUNITY OR FOUNDATION SCHOOL UNDER SECTION 10 OF THE EDUCATION AND INSPECTIONS ACT 2006

Please complete all sections and submit to School Organisation Unit mailbox at [school.organisation@dcf.gov.uk](mailto:school.organisation@dcf.gov.uk) (or post: School Organisation Unit, DCSF, 2F Area A, Mowden Hall, Darlington DL3 9BG)

<b>1. Details of proposed school including:</b>
Local Authority:
Site details (e.g. single/split site, freehold/leasehold tenure):
Postal address:
Age range:
Number of Pupils to be provided for, including details of any nursery (full-time equivalent places), SEN, Boarding or Sixth Form provision:
Category (Community/Foundation):
Proposed opening date:
Ethos:
Secondary Schools only - Proposed specialism (if any):
<b>2. If the proposed school is to be a foundation school with a foundation (ie. Trust School), information on the proposed foundation and current plans for membership:</b>
<b>3. Reason for the proposed new school (eg. amalgamation/reorganisation due to falling roles, new housing development or population growth)</b>
<b>4. Will the school replace an existing school or schools? If so, provide details of the closing school(s) (eg. Postal address; Number of Pupils; Age range; Category) and proposed date for closure:</b>
<b>5. Statement on how the school will contribute to raising standards:</b>
<b>6. Views of local community: evidence of consultation, copies of</b>

<b>consultation documents and notes of meetings (please list any documents attached):</b>		
<b>7. Statement on any consultation carried out to ascertain interest by other potential proposers or justification for not carrying out such consultation:</b>		
<b>8. Statement of case on why proposals will be more beneficial to education provision in the area, at this time, than offering an opportunity for other providers to submit other proposals through a 'Competition':</b>		
<b>9. Contact details:</b>		
<b>Name:</b>	<b>Tel No:</b>	<b>E-mail:</b>
<b>Address:</b>		
<b>Date:</b>		

## **Annex E**

### **Part 1 - Details to be published in a statutory notice for section 10 and 11 proposals to establish a new mainstream school**

#### **Contact Details**

1. The name of the proposer or proposers and a contact address.

2. Whether the proposals are being submitted independently or jointly with another proposer or proposers.

#### **Category**

3. The type of school that it is proposed is established (a foundation school and, if so, whether it is to have a foundation, a voluntary school, community school or a maintained nursery school) and, if required by section 10 of EIA 2006, a statement that the Secretary of State's consent has been obtained to the publication of the proposals.

#### **Extended Services**

4. Information on the extended services which it is envisaged will be provided on the site of the school.

#### **Pupil numbers and admissions**

5. Information on—
  - (a) the number of pupil places the school should provide;

(b) the upper and lower age limits of the school;

(c) where it is intended that it should provide sixth form education, the number of pupils for whom it is intended that such education should be provided;

(d) where it is intended that it should provide nursery education, the number of pupils for whom it is intended that such education should be provided;

(e) where it is intended that the school should provide for boarding pupils, the number of pupils for whom it is intended such facilities should be provided;

(f) the number of pupils to be admitted to the school in each relevant age group in the first school year in which the proposals will be implemented or, where it is intended that the proposals should be implemented in stages, the number of pupils to be admitted to the proposed school in each stage that the proposals will be implemented;

(g) whether it is proposed that the school should admit pupils of both sexes or boys or girls only and, in the case of a single sex school where it is intended to provide sixth form education, whether both sexes or boys or girls only are to be admitted to the sixth form.

**Ethos/Religious Character**

6. A short statement suitable for publication setting out the proposed ethos of the school, including details of any educational philosophy, which it is proposed that the school will adhere to.

7.If the school is to have a religious character, confirmation of the religion or religious denomination in accordance with whose tenets religious education will, or may be required to be provided at the school; and a statement that the proposers intend to ask the Secretary of State to designate the school as a school with such a religious character.

**Area or community that school serves**

8.The area or particular community or communities the school is expected to serve.

**Admission Arrangements**

9. An indication of the proposed admission arrangements and over-subscription criteria for the new school including, where the school is proposed to be a foundation or voluntary school or Academy which is to have a religious character—

(a) the extent to which priority for places is proposed to be given to children of the school’s religion or religious denomination; and

(b) the extent if any to which priority is to be given to children of other religions or religious denominations or to children having no religion or religious denomination.

**Specialisms**

10. Whether the school will have any specialisms on implementation and whether the promoter intends to apply to the Secretary of State for the new school to be a specialist school from implementation.

**Location**

11. A statement about—

(a) the location of the site (including where appropriate the postal address or addresses if the school is to occupy a split site); and

(b) whether the school will occupy a single or split site.

**Implementation**

12. The date when it is planned that the proposals will be implemented, or where the proposals are to be implemented in stages, information about each stage and the date on which each stage is planned to be implemented.

**Travel**

13. The proposed arrangements for travel of pupils to the school.

**Federation**

14. Details of any proposals for the school to be federated with one or more schools (by virtue of sections 24 of EA 2002 and section 12 of EIA 2006).

**Foundation Schools**

15. Where the school is to be a foundation school with a foundation—

- (a) the name of the foundation where known;
- (b) a summary of the rationale for the foundation and the particular ethos that it will bring to the school; and
- (c) the details of membership of the foundation, including the names of the members.

**Special educational provision**

16. Information as to whether the school will have provision that is recognised by the LA as reserved for children with special educational needs and, if so, the nature of such provision and the proposed number of pupils for whom such provision is to be made.

## Annex E

### Part 2 – Complete Proposal for section 10 and 11 proposals to establish a new mainstream school

*Insert the information asked for in the expandable box below each section.*

#### Contact Details

1. The name of the proposer or proposers and a contact address.

2. Whether the proposals are being submitted independently or jointly with another proposer or proposers.

#### Category

3. The type of school that it is proposed be established (a foundation school and, if so, whether it is to have a foundation, a voluntary school or a community school) and, if required by section 10 of the EIA 2006, a statement that the Secretary of State's consent has been obtained to publication of the proposals.

#### Consultation

4. A statement to the effect that all applicable statutory requirements to consult in relation to the proposals have been complied with.

5. Evidence of the consultation before the proposals were published including—
  - (a) a list of persons and/or parties who were consulted;
  - (b) minutes of all public consultation meetings;
  - (c) the views of the persons consulted; and
  - (d) copies of all consultation documents and a statement of how these were made available.

**Objectives**

6. The objectives of the proposal.

**Extended Services**

7. Information on the extended services which it is envisaged will be provided on the site of the school.

**Pupil numbers and admissions**

8. Information on—

- (a) the number of pupil places the school should provide;
- (b) the upper and lower age limits of the school;
- (c) where it is intended that it should provide sixth form education, the number of pupils for whom it is intended that such education should be provided;
- (d) where it is intended that it should provide nursery education, the number of pupils for whom it is intended that such education should be provided;
- (e) where it is intended that the school should provide for boarding pupils, the number of pupils for whom it is intended such facilities should be provided;
- (f) the number of pupils to be admitted to the school in each relevant age group in the first school year in which the proposals will be implemented or, where it is intended that the proposals should be implemented in stages, the number of pupils to be admitted to the proposed school in each stage that the proposals will be implemented;
- (g) whether it is proposed that the school should admit pupils of both sexes or boys or girls only and, in the case of a single sex school where it is intended to provide sixth form education, whether both sexes or boys or girls only are to be admitted to the sixth form.

**Ethos/Religious Character**

9. A short statement suitable for publication setting out the proposed ethos of the school, including details of any educational philosophy, which it is proposed that the school will adhere to.

10. If the school is to have a religious character, confirmation of the religion or religious denomination in accordance with whose tenets religious education will, or may be required to be provided at the school; and a statement that the proposers intend to ask

the Secretary of State to designate the school as a school with such a religious character.

**Area or community that school serves**

11. The area or particular community or communities which the new school is expected to serve.

**Admission Arrangements**

12. An indication of the proposed admission arrangements and over-subscription criteria for the new school including, where the school is proposed to be a foundation or voluntary school or Academy which is to have a religious character—

- (a) the extent to which priority for places is proposed to be given to children of the school's religion or religious denomination; and
- (b) the extent, if any, to which priority is to be given to children of other religions or religious denominations or to children having no religion or religious denomination.

**Grammar schools**

13. Where the school is to be established in substitution for one or more discontinued grammar schools, a statement to this effect and a statement that the school may be designated as a grammar school for the purpose of Chapter 2 of Part 3 of SSFA 1998.

**Schools with a religious character or particular educational philosophy – parental demand**

14. Where the school is—

- (a) proposed to have a religious character, evidence of the demand in the area for education in accordance with the tenets of the religion; or
- (b) proposed to adhere to a particular philosophy, evidence of the demand for education in accordance with the philosophy in question that is not already met in other maintained schools or Academies in the area.

### **Sixth Form Education**

**15.** Where it is proposed that the school will provide sixth form education, how the proposals will—

- (a) improve the educational or training achievements;
- (b) increase participation in education or training; and
- (c) expand the range of educational or training opportunities,

for 16-19 year olds in the area.

### **Early Years Provision**

**16.** Where the proposals are to include provision for pupils aged between 2 and 5, the following information must be provided—

- (a) details of how the early years provision will be organised, including the number of full-time and part-time pupils, the number of places, the number and length of sessions in each week, and the services for disabled children that will be offered;
- (b) how the school will integrate the early years provision with childcare services, and how the proposals for the establishment of the school are consistent with the integration of early years provision with childcare;
- (c) evidence of parental demand for additional provision of early years provision;
- (d) assessment of capacity, quality and sustainability of provision in schools, and in settings outside of the maintained school sector who deliver the Early Years Foundation Stage within 3 miles of the school; and
- (e) the reasons why schools and settings outside the maintained school sector who deliver the Early Years Foundation Stage within 3 miles of the school and who have spare capacity, cannot make provision for any forecast increase in the numbers of such children.

### **Specialisms**

**17.** Whether the school will have any specialisms on implementation and whether the promoter intends to apply to the Secretary of State for the school to be a specialist school from implementation.

### **Effects on Standards and Contributions to School Improvement**

**18.** Information and supporting evidence on:

- (a) how the school will contribute to enhancing the diversity and quality of education in the area; and
- (b) how the school will help to raise the standard of education in the area and contribute to school improvement.

**19.** Information and supporting evidence on how the proposals will contribute to enabling children and young people to be healthy, stay safe, enjoy and achieve, make a positive contribution to the community and society, and achieve economic well-being.

**Community Cohesion**

- 20.** The following information relating to the proposals—
- (a) how the school will promote and contribute to community cohesion;
  - (b) how the school will increase inclusion and equality of access for all social groups; and
  - (c) how the school will collaborate with other schools, and in relation to secondary school proposals how the new school will collaborate with colleges and training providers.
- 

**Single sex or co-educational school**

- 21.** Where the school is to admit pupils of a single sex—
- (a) evidence of local demand for single sex education and how this will be met if the proposals are approved; and
  - (b) A statement giving details of the likely effect the alteration will have on the balance of provision of single sex education in the area.
- 

**Location**

- 22.** A statement about—
- (a) the location of the site (including, where appropriate, the postal address or addresses if the school is to occupy a split site);
  - (b) whether the school will occupy a single or split site;
  - (c) the accessibility of the site (or if the school is to occupy a split site the accessibility of the accommodation);
  - (d) the current ownership and tenure (freehold or leasehold) of the site and the proposed use of any buildings already on the site;
  - (e) details of the tenure (freehold or leasehold) on which the site of the school will be held, and if the site is to be held on a lease, details of the proposed lease including details of any provisions which could obstruct the governing body or the head teacher in the exercise of any of their functions under any of the Education Acts or place indirect pressures upon funding bodies;

- (f) whether the site is currently used for the purposes of another school which will no longer be required for the purposes of that school. If so, provide details as to why the site will no longer be required for the purposes of that school; and
- (g) the estimated costs of providing the site and a statement about how the costs will be met.

**Implementation**

**23.** The date when it is planned that the proposals will be implemented, or where the proposals are to be implemented in stages, information about each stage and the date on which each stage is planned to be implemented.

**24.** Where the proposals are to establish a voluntary controlled or foundation school, a statement as to whether the proposals are to be implemented by the local education authority or by the proposers, and if the proposals are to be implemented by both,

- (a) a statement as to the extent that they are to be implemented by each body, and
- (b) a statement as to the extent to which the capital costs of implementation are to be met by each body.

**Project Costs**

**25.** A statement of the estimated capital cost of the proposals and the extent to which the costs are to be met by the proposers and/or the local education authority.

**26.** A copy of a confirmation from the Secretary of State or local education authority or the Learning and Skills Council for England (as the case may be) that funds will be made available (including costs to cover any necessary site purchase).

**27.** Details of how it is proposed to fund the proposer's share of the capital costs of implementing the proposals (if any).

## Travel

28. The proposed arrangements for travel of pupils to the school.

## Federation

29. Details of any proposals for the school to be federated with one or more schools (by virtue of section 24 of EA 2002 and section 12).

## Curriculum

30. Confirmation that the school will meet the general requirements in relation to curriculum contained in section 78 of EA 2002 and an outline of any provision that will be in addition to the basic curriculum required by section 80 of EA 2002, in particular any 14-19 vocational education.

## Voluntary aided schools

31. In addition, where the school is to be a voluntary aided school—

- (a) details of the trusts on which the site is to be held; and
- (b) confirmation that governing body will be able and willing to carry out their obligations under Schedule 3 to SSFA 1998.

## Foundation Schools

32. Where the school is to be a foundation school, confirmation as to whether the new school—

- (a) will have a foundation established otherwise than under SSFA 1998 and, if so, the identity of that foundation;
- (b) will belong to a group of schools for which a foundation body acts under section 21 of SSFA 1998; or
- (c) will not fall within sub-paragraph (a) or (b).

33. Where the school is to be a foundation school which has a foundation—

- (a) the name of the foundation where known;

- (b) the rationale for the foundation and the particular ethos that it will bring to the school;
- (c) the details of membership of the foundation, including the names of the members;
- (d) the entitlement to appoint charity trustees and the number of trustees to be appointed;
- (e) the proposed constitution of the governing body;
- (f) details of the foundation's charitable objects;
- (g) where the majority of governors are to be foundation governors, a statement that a parent council will be established in accordance with section 23A of EA 2002;
- (h) a statement that the requirements set out in the School Organisation (Requirements as to Foundations) (England ) Regulations will be met;
- (i) a statement of how the foundation will contribute to the advancement of education at the school and how it is envisaged it will help to raise standards; and
- (j) a statement of how the foundation will contribute to the advancement of community cohesion and the impact the foundation will have on the diversity of school provision in the area.

**Special educational needs**

**34.** Information as to whether the school will have provision that is recognised by the local education authority as reserved for children with special educational needs and, if so, the nature of such provision and the proposed number of pupils for whom such provision is to be made.

**35.** Details of the proposed policy of the school relating to the education of pupils with special educational needs.

**36.** Where the school will replace existing educational provision for children with special educational needs

- (a) a statement on how the proposer believes the proposal is likely to lead to improvements in the standard, quality and/or range of educational provision for these children;
- (b) Details of the specific educational benefits that will flow from the proposals in terms of—
  - (i) improved access to education and associated services including the curriculum, wider school activities, facilities and equipment with reference to the local education authority's Accessibility Strategy;
  - (ii) improved access to specialist staff, both education and other professionals, including any external support and/or outreach services;
  - (iii) improved access to suitable accommodation; and

(iv) improved supply of suitable places.

**Relevant experience of proposers**

**37.** Evidence of any relevant experience in education held by the proposer, or proposers (other than a local authority) including details of any involvement in the improvement of standards in education.

**Planning permission**

**38.** Where the establishment of the new school involves development for the purpose of the Town and Country Planning Act 1990, a statement as to whether planning permission has been obtained and, if it has not been obtained, details of when it is anticipated that it will be obtained.

**Independent schools entering the maintained sector**

**39.** A statement that the requirements of section 11 (3) of the EIA 2006 are met.

**40.** A statement as to whether the premises will meet the requirements of the Education (School Premises) Regulations 1999 and, if not,

- (a) details of how the premises are deficient; and
- (b) details of how it is intended to remedy the deficiency.