



Department
for Education

Establishing new maintained schools

**Departmental advice for local authorities
and new school proposers**

June 2013

Summary

About this departmental advice

1. This advice is non-statutory. It is part of the department's guidance to local authorities (LAs) on the establishment of new schools. On 1 February 2011 the Education Act 2011 (EA 2011) amended the Education an Inspections Act 2006 (EIA 2006) to change the arrangements for establishing new schools. Most new schools will now be established via the academy/free school presumption and the related departmental advice describes the department's expectations of how that process should operate. This advice sets out for local authorities and other new school proposers the now limited circumstances in which the establishment of a new maintained school can be proposed.

School Competitions (under section 7 of EIA 2006)

2. If the academy presumption does not result in suitable academy/free school proposals, a statutory competition can be held with the consent of the Secretary of State (section 7(1)). This will not require a separate application for consent, since the Secretary of State will indicate to the local authority that a competition can be held, if he is satisfied that there is no suitable academy/free school proposal.

3. Where consent to hold a competition is given, the local authority must follow the statutory process set out in Schedule 2 to the EIA 2006 (as amended by EA 2011) and the Establishment and Discontinuance Regulations.

4. Significant changes made to section 7 competitions by EA 2011 are:

- The removal of section 8 EIA 2006, which means that local authorities can no longer submit their own community or foundation school proposals in a competition); and
- a new section 7A EIA 2006, which means that at any time before the date specified for the return of proposals, the Secretary of State may direct a local authority to withdraw a competition notice; or, a local authority may withdraw a competition notice with the Secretary of State's consent. This allows a competition to be ended where circumstances have changed e.g. where the new school is no longer needed or an alternative option is found, such as the enlargement of one or more existing schools instead.

5. Academy/free school proposals and proposals for foundation (by proposers other than a local authority), voluntary controlled and voluntary aided schools, can be submitted into the competition by the deadline specified in the first notice.

Decision making – section 7 competitions

6. The arrangements for deciding a competition have also changed. Since local authorities cannot enter their own school proposals, the Schools Adjudicator will no

longer have a role in deciding competitions (unless the local authority is involved in the foundation of a proposed foundation school – paragraph 10 of Schedule 2 EIA 2006).

7. Important changes arising from EA 2011 are:

- Where an academy/free school proposal is entered into a competition by the specified deadline, the Secretary of State must consider these proposals first to decide whether he is willing, in principle, to enter into a Funding Agreement with the academy/free school proposer (paragraph 7A of Schedule 2 EIA 2006);
- if an academy/free school proposal is deemed suitable, the competition ends and the proposer works with the Department and local authority to progress its proposal;
- if an academy/free school proposal is not considered suitable, or no academy/free school proposal is received, the competition continues and it is for the local authority to decide which maintained school proposal wins (paragraph 8 of Schedule 2 EIA 2006, subject to the local authority's involvement in any foundation school's foundation); there is no right of appeal; and
- where a competition does not identify a suitable academy/free school or maintained school, the local authority may publish its own community or foundation school proposal under amended section 11 of EIA 2006; the Schools Adjudicator will be the decision maker in such cases.

Establishing a new maintained school outside the competitive arrangements (under section 10 or section 11 of EIA 2006)

8. It is still possible to publish proposals for maintained schools outside the competitive arrangements in certain circumstances, as set out below.

Other new maintained school proposals (section 10 EIA 2006)

9. Where an academy/free school approach is not considered to be appropriate and the proposal does not fall under section 11 special cases, it is still possible to apply to the Secretary of State for consent to publish proposals for replacement community schools, or brand new or replacement foundation or voluntary controlled maintained schools. Each application will be considered on its merits and the particular circumstances of the case, including whether the need for a new school might be better met by an academy/Free School. Where consent is given to publish new maintained school proposals, a statutory process must be followed, as set out in Schedule 2 to EIA 2006 and the Establishment and Discontinuance Regulations.

Special cases (section 11 of EIA 2006)

10. In the interests of reducing bureaucracy, the consent of the Secretary of State is no longer required to publish maintained school proposals in certain circumstances. Section 11 EIA 2006, as amended by EA 2011 provides for the following:

- proposals for a new voluntary aided school;

- proposals for a new community or foundation primary school that is to replace a maintained infant and a maintained junior school;
- proposals for a new school resulting from the reorganisation of existing faith schools in an area, including an existing faith school losing or changing its religious designation; or
- local authority proposals for a new foundation or community school, where suitable academy/Free School proposals have not been identified and a competition has been held but did not identify a suitable provider.

11. Proposals for former independent schools wishing to join the maintained sector and new local authority maintained nursery schools can still be published under section 11, as before.

12. In each case a statutory process, as set out in Schedule 2 to EIA 2006 and the Establishment and Discontinuance Regulations, must be undertaken. The Schools Adjudicator will decide local authority proposals, and local authorities will decide proposals from other proposers (except foundation school proposals where the local authority is involved as a member of the foundation (Trust), in which case the Adjudicator will be the decision maker).



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