



Department
for Education

The free school presumption

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

July 2015

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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. It sets out for LAs and new school proposers the department's expectations of how the free school presumption process should operate in practice and the characteristics and qualities that new school proposers must demonstrate. This advice applies to all new schools established under the free school presumption.

2. New schools established through this process will be classified as free schools with effect from May 2015. This reflects the fact that "free school" is the department's policy term for a new provision academy. "Academy" is a legal term for state-funded schools that are independent of LA control and receive their funding directly from the government. Schools established through this process are not required to use the term "free school" in their name; this follows practice within the department's centrally administered free school programme.

3. The Education Act 2011 changed the arrangements for establishing new schools and introduced section 6A (the free school presumption) to the Education and Inspections Act 2006. Where a LA thinks there is a need for a new school in its area it must seek proposals to establish an academy (free school). Section 6A came into effect on:

- 1 February 2012 for new schools other than pupil referral units; and
- 1 September 2012 for new pupil referral units.

Effective date

4. This advice applies from July 2015, or where a LA has sought to establish a new school after the 7th May (post election). The requirements set out in this advice supersede those of the previous version. What legislation does this advice relate to?

What legislation does this advice relate to?

- 5.
- The Education Act 2011 (EA 2011).
 - The Education and Inspections Act 2006 (EIA 2006).
 - The Academies Act 2010 (AA 2010).

Who is this advice for?

6. This advice is for:
- Local authorities; and
 - New school proposers. Proposers should note that they can also apply directly to the department to establish a free school. Guidance on how to do so can be found at: [Free School Application Guide](#)

Key points

7. “Proposer” and “sponsor” in this document refer to the body or group that is proposing the new school.
8. This guidance relates to new schools established under section 6A which is known as the free school presumption. Find the [guidance on establishing new maintained schools](#) (including voluntary aided schools) on the gov.uk website.
9. The presumption arrangements require LAs to seek proposals to establish a free school where they have identified the need for a new school in their area. The LA is responsible for providing the site for the new school and meeting all associated capital and pre-/post-opening costs.
10. The decision on all new free school proposals lies with the Secretary of State. Her approval is required as it is the Secretary of State who will enter into a funding agreement with the proposer.
11. LAs must notify the Secretary of State of their plans to seek proposals for a new school as soon as the need for a new school has been agreed. Notifications should be sent to academy.presumption@education.gsi.gov.uk.
12. Once the LA has received all formal proposals, they must provide the Secretary of State with details of all proposers using the email address in paragraph 11. The Secretary of State will then notify the LA if she has any concerns about a proposer’s capability or capacity to deliver the proposal and particularly where she is minded not to enter into a funding agreement with a particular proposer. Please see paragraph 23 for more advice on sponsor approval.
13. The LA may assess all proposals received and can, if they wish, recommend their preferred proposal (see advice in paragraph 24). As this is a two stage assessment process the LA should await the Secretary of State’s decision before formally making public the outcome of their assessment. The LA should send the outcome of any assessment to the Secretary of State with all the proposals. Before making her decision on with whom she wishes to enter into a funding agreement, the Secretary of State will take the LA’s assessment into account, along with any additional factors of which she is aware (see paragraph 24 for advice on assessment criteria). The Secretary of State’s

decision is delegated to the Regional Schools Commissioner for the area in which the school will be located. The Secretary of State reserves the right to agree a sponsor of her own choice (from the department's list of approved sponsors) on the basis that she may have further evidence about a proposer, or proposers, which mean that none of those put forward is suitable. The intention is to ensure that the school is always established by the best proposer possible.

Free school presumption process

Overview

14. Where a LA thinks a new school needs to be established in their area, section 6A of EIA 2006 places the LA under a duty to seek proposals to establish an academy (free school) and to specify a date by which proposals must be submitted to the LA. In considering the need for a new school, LAs should factor in any other free school projects that the department has approved and are due to open. They should also refer to [published guidance on the process for establishing new maintained schools](#) (including voluntary aided schools) and new [published guidance on expanding and closing schools](#).

Local authority consultation

15. It will be for LAs to decide how to consult on the proposed new school and with whom (e.g. potential providers, other schools, academies, the wider community, diocese and any others affected by the proposals). LAs should be clear from their school place planning about the type (e.g. mainstream, faith, special educational needs, pupil referral unit), age range, gender and capacity of the free school they wish to see established, and the expected cost. This clarity is particularly important as potential proposers will be submitting bids on the basis of the specification set out by the LA.

Impact assessment

16. As part of the planning process for new schools, LAs must also undertake an assessment of the impact of the proposal, both on existing educational institutions locally and in terms of impact on particular groups of pupils from an equalities perspective. This is to enable the Secretary of State to meet her duties under section 9 of the Academies Act 2010 and under section 149 of the Equality Act 2010. Most LAs will already do this, so in practice it will just be a matter of providing the Secretary of State with a copy of their assessment. However, in the unlikely event that the Secretary of State has concerns about the level of analysis, she reserves the right to ask a LA to undertake further work on their impact assessment.

Seeking proposals

17. The LA should take all necessary steps to ensure that the widest possible range of groups or organisations that might be interested in establishing the new school are aware of the opportunity to do so and have sufficient time to develop proposals. Local good or outstanding schools that are interested in submitting a proposal to run a new school will need to have or acquire both academy status and sponsor approval. The [department's list of approved sponsors](#) can be accessed on the internet. The department will also play

a role in generating interest from high quality proposers – by posting details of new free school proposals on its own website, encouraging key stakeholders to do the same and by sign-posting proposals to existing sponsors or potential sponsors who we are aware are keen to operate in that region. Details of the sponsor application process can be found in paragraph 23.

Funding arrangements

18. As under the previous new school competition arrangements, the LA is responsible for providing the site for the new school, and meeting all associated capital costs.

19. Local authorities are also required to meet the revenue costs of the new provision. They must make provision in their growth funds to support increases in pupil numbers relating to basic need. This relates to the per-pupil revenue funding in addition to all funding for pre-opening development costs and post-opening funding required to address diseconomies of scale until a school reaches full capacity. This is because the new free school will be funded on a recoupment basis. School funding arrangements allow LAs to retain funding centrally to cover these costs. This is detailed in the [2014 to 2015 revenue funding guide for local authorities](#).

20. Local authorities are expected to work with selected proposers to agree a reasonable and mutually acceptable funding allocation for the LA to cover pre- and post-opening costs. The department will provide a one-off payment of £25,000 to the successful proposer for the legal costs associated with establishing a new free school through this route. Upon opening, the school will be funded by the Education Funding Agency on the same basis as other academies and free schools in the same LA area.

Notifying the department – school specification

21. The LA must notify the department as soon as the need for a new school has been agreed, forwarding to the department at academy.presumption@education.gsi.gov.uk:

- a copy of the new school specification, including confirmation:
 - i) that the LA has identified the required capital to establish the new school, the amount and its source (e.g. LAs basic need funding);
 - ii) that the LA will meet all pre- and post-opening costs associated with establishing the new school (paragraphs 18-20);
 - iii) that the LA will provide the site for the new school;
 - iv) of the address of the site for the new school, or all sites where a school will operate from split sites;
 - v) of site ownership or tenure arrangements and how these will operate for the new school;

- their impact assessment (paragraph 16);
- a link to the LA's website page where the relevant information will be available to interested parties.

Notifying the department – proposals

22. Once the specified date for submitting the proposals to the LA has passed, the LA must provide the Secretary of State with details of the steps the authority has taken to seek proposals for a free school and any proposals submitted to them.

Sponsor approval

23. The Secretary of State will only consider entering into a funding agreement with an approved sponsor. (See [the department's approved sponsor list](#). Consequently, new proposers will need to be assessed by the department through the normal sponsor approval route. See [information on the department's sponsor approval process](#)). We recommend that LAs make it clear when publishing their invitation for proposals that proposers that are not approved by the department will have to go through this approval process and should contact the department at the outset, and certainly before submitting a formal proposal to the LA. If a non-approved sponsor does submit a proposal, the LA should immediately advise the proposer to apply to become a sponsor.

Assessing proposals

24. LAs may assess proposals using the assessment criteria for free schools [[Free Schools Assessment Criteria](#)] as a guide. There is no requirement for LAs to assess the capacity and capability of proposers as this will form part of the department's assessment. If the LA chooses to carry out an assessment of the proposer, it should be based on criteria set out in their published specification and a clear and transparent process should be followed. The LA should then put forward a recommendation together with their reasons for the recommendation. Any recommended proposal should give strong, credible evidence that the new free school will raise the overall standard of education available in the local area, adding very high quality places to the system. LAs should be mindful that the final decision on the choice of proposer rests with the Secretary of State. She reserves the right to put in place a proposer of her own choice, particularly where there is further evidence about the suitability of a proposer, or the availability of a better proposer. LAs should await the Secretary of State's decision before making any public announcements.

25. All proposals received will undergo a two stage assessment process as detailed below.

- Stage one:
Local authorities may assess proposals against their specification for the new school and can, if they wish, recommend their preferred proposer.

LAs should provide the Secretary of State at the earliest opportunity with any assessment including their scoring of the proposals.

- Stage two:
Department officials will assess the capacity, capability and performance of all proposers, taking into consideration any assessment and/or recommendation made by the LA. The purpose of the DfE assessment of proposals is to ensure that the department's data on individual sponsor capacity, capability and track record is taken into account in rating the suitability of those sponsors who have submitted a proposal.

The department's assessment will focus, in particular, on strategic vision, educational capacity and performance, financial planning and operational capacity and governance. For existing sponsors, the department will also focus on the credibility and track record of the proposer (which will be informed by their latest results and Ofsted inspections), their capacity to take on new projects and the local infrastructure that will support the proposal. For new sponsors, the department will also focus on the information supplied through the sponsor application process.

This assessment will enable the Regional Schools Commissioner (RSC), on behalf of the Secretary of State, to choose the best proposer possible to take forward the new free school. If none of the proposers is assessed as suitable, the Secretary of State reserves the right to put in place any proposer of her own choice.

Funding agreement

26. Before deciding whether or not to enter into a funding agreement with any proposer, the Secretary of State will need to be satisfied about their suitability to set up and run a free school. The LA should therefore undertake due diligence checks on new proposers. Any proposals put forward by organisations which advocate violence or other illegal activity will be rejected. In order to be approved, proposals should demonstrate that they would support UK democratic values including respect for the basis on which UK laws are made and applied; respect for democracy; support for individual liberties within the law; and mutual tolerance and respect. In order to enable the Secretary of State to take an informed decision, the department may ask proposers to provide additional information about themselves and to consent to checks being carried out.

27. As soon as a suitable proposer is agreed "in principle" by the Secretary of State, the department will notify the LA, the successful proposer and the local MP. It will then be for the successful proposer to work towards establishing the new school with support from the LA and the department, as required. The Secretary of State will consider signing

a funding agreement with the sponsor once she is content that the school is prepared to open.

28. Once the LA has been notified of the successful proposer, it is their responsibility to inform other applicants that they have not been successful.

Sponsor consultation

29. The successful proposer is under a duty, as required by section 10 of the AA 2010, to consult such persons as they think appropriate on whether they should enter into a funding agreement for the new school with the Secretary of State.

30. The LA will continue to have an interest because of its duties to secure sufficient suitable schools.

Communication

31. All documentation should be submitted electronically to the Department for Education at: academy.presumption@education.gsi.gov.uk.

32. The department will [publish on its website](#) details of those LAs that are seeking to establish new schools, including links to their websites. The department will also inform SSAT (The Schools Network), Freedom and Autonomy for Schools - National Association and New Schools Network, to alert potential proposers to the need for a new school.

Other useful information

33. LAs must continue to plan for and secure sufficient schools and places for their area in line with their duties under section 14 of the EA 1996.

34. Where the new provision free school is designated as a faith school the admission arrangements must provide for at least 50% of the intake to be given priority, when the school is oversubscribed, without reference to faith.

35. Once the LA has identified a need and has published a specification for a new school, the LA must follow through the presumption process until any proposals received have been submitted to the Secretary of State along with the LA's assessment. However, if the local authority decides, prior to proposals being submitted, that circumstances change such that it is no longer satisfied that there is any need for a school (for example, where a housing project has been cancelled or agreement has been reached for another free school), then the presumption process could be halted and the specification withdrawn on these grounds.

Further sources of information

Associated resources

- Education Act 2011 <http://www.legislation.gov.uk/ukpga/2011/21/contents/enacted>
- Education and Inspections Act 2006
<http://www.legislation.gov.uk/ukpga/2006/40/contents>
- Academies Act 2010 <http://www.legislation.gov.uk/ukpga/2010/32/contents>
- New Schools Network <http://www.newschoolsnetwork.org/>
- Freedom and Autonomy for Schools National Association <http://www.fasna.org.uk/>
- SSAT(The Schools Network) <http://www.ssatuk.co.uk/>

You may also be interested in

- New School Proposals – information and links seeking proposers to establish a new free school under the free school presumption
<https://www.gov.uk/government/publications/new-school-proposals>
- Free Schools
<https://www.gov.uk/types-of-school/free-schools>
- Sponsored Academies
<https://www.gov.uk/types-of-school/academies>
- University Technical Colleges
<https://www.gov.uk/government/publications/university-technical-colleges-from-2014-how-to-apply>
- Studio Schools
<https://www.gov.uk/government/publications/studio-schools-in-2014-how-to-apply>
- Alternative Provision Units
<https://www.gov.uk/government/collections/alternative-provision-academies>



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Reference: DFE-00220-2015



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