



Department  
for Education

# **The academy/free school presumption**

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

**February 2014**

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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 academy/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 academy/free school presumption.

2. The Education Act 2011 changed the arrangements for establishing new schools and introduced section 6A (the academy/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
- on 1 September 2012 for new pupil referral units.

## Effective date

3. This advice applies from February 2014. The requirements set out in this advice supersede those of the previous version. This advice applies to any proposed new schools where LAs seek academy/free school proposals on or after the date of its publication. For new schools where LAs are seeking proposals prior to this date, the previous version of the guidance will apply and a copy can be found [here](#).

## What legislation does this advice relate to?

- 4.
- 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?

5. This advice is for:
- Local authorities; and
  - New school proposers.

## Key points

6. “Academy” is the legal term which also covers free schools of all types, including university technical colleges and some studio schools, 16-19 and alternative provision (pupil referral unit) academies. This document uses “academy/free school” as the collective term for these types of educational institutions.
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 academy/free school presumption. Guidance on establishing new maintained schools (including voluntary aided schools) can be found [here](#).
9. The presumption arrangements require LAs to seek proposals to establish an academy/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. All new academy/free school proposals require the Secretary of State’s approval 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.
12. Once the LA has received all formal proposals, they must provide the Secretary of State with details of all proposers. The Secretary of State will then notify the LA if he has any concerns about a proposer’s capability or capacity to deliver the proposal and particularly where he 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 recommend their preferred proposal (see advice in paragraphs 24-26). The LA should send the outcome of any assessment to the Secretary of State with all the proposals. Before deciding whom he wishes to enter into a funding agreement with, he will take the LA’s assessment into account, along with any additional factors of which he is aware (see paragraph 25 for advice on assessment criteria). The Secretary of State reserves the right to agree a sponsor of his own choice (from the department’s list of approved sponsors) on the basis that he 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.

## Academy/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 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) which can be found [here](#) and new published guidance on expanding and closing schools which can be found [here](#).

### Local authority consultation

15. It will be for LAs to decide how to consult on the proposed new school and with whom (e.g. other schools, academies, the wider community, diocese and any others affected by the proposals). They should be clear from their school place planning about the type (e.g. mainstream, special educational needs, PRU), age range, gender and capacity of the academy/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 other 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 his 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, he reserves the right to ask a LA to undertake further work on their 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, including any local 'outstanding' schools or other potential proposers that might be interested in applying to run the school. 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. LAs can access the department's list of approved sponsors [here](#). The department will also play a role in generating interest from high quality proposers – by posting details of new academy/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 academy or 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. Further information can be obtained [here](#).

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 academy/free school. Upon opening, the school will be funded by the EFA 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:

- a copy of the new school specification, including confirmation:
  - o that the LA has identified the required capital to establish the new school, the amount and its source (e.g. LAs basic need funding);
  - o that the LA will meet all pre- and post-opening costs associated with establishing the new school (paragraphs 18-20);
  - o that the LA will provide the site for the new school;

- o of the address of the site for the new school, or all sites where a school will operate from split sites;
- o 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 academy/free school proposals to the LA has passed, the LA must provide details of all proposers that have submitted formal proposals to the Secretary of State for initial consideration.

## Sponsor approval

23. The Secretary of State will only consider entering into a funding agreement with an approved sponsor. (The department's approved sponsor list can be accessed [here](#). Consequently, new proposers will need to be assessed by the department through the normal sponsor approval route. Information on the department's sponsor approval process can be found [here](#)). 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, they should immediately advise the proposer to apply to become a sponsor.

## Completing the assessment

24. The LA may complete an assessment of proposals and recommend their preferred proposal to the Secretary of State. LAs must provide the Secretary of State at the earliest opportunity with any assessment including their scoring of the proposals, alongside a written notification setting out the steps the authority has taken to seek proposals for an academy/free school.

25. An assessment should be based on the following criteria:

- the capacity and quality of the proposer. The LA should bear in mind that when considering a LA's assessment, the department will particularly focus on strategic vision, educational capacity and performance, financial planning and operational capacity and governance. For existing sponsors, the department will focus on the credibility and track record of the proposer

(which will be informed by the latest results and Ofsted inspections), their capacity to take on new projects and the local infrastructure that will support the proposal;

- the capability and capacity of the proposer to deliver the project on time, to secure best value for money, and to maintain financial viability. The proposer's financial plans should be consistent with the rest of their application, for example, in terms of staffing, pupil numbers and the education plan. They should be based on realistic assumptions about income and expenditure, and demonstrate that allowance has been made for unforeseen contingencies; and
- the extent to which proposals demonstrate the proposers' capability to promote high standards, and to innovate to drive system change. For example, demonstrating a focussed and coherent education plan that sets out the key innovations of the school, including the proposed curriculum; the approach to teaching and any particular ethos; how these will combine to achieve improved performance; how the anticipated needs of pupils with differing abilities will be met; and the proposer's aspirations for pupil achievement and measures of success. The proposal should give strong, credible evidence that the new school will raise the overall standard of education available in the local area, adding very high-quality places to the system.

26. The LA may state its preferred proposer or ranking of proposers, which the Secretary of State will take into consideration when deciding whether or not to enter into a funding agreement with any of the proposers.

## **Funding agreement**

27. 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 an academy/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.

28. 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 academy/free 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 he is content that the school is prepared to open.

29. Once the LA has been notified of the successful proposer, it is their responsibility to inform other applicants that they have not been successful and provide them with feedback if requested.

## Sponsor consultation

30. 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.

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

## Communication

32. All documentation should be submitted electronically to the department for education at: [academy.presumption@education.gsi.gov.uk](mailto:academy.presumption@education.gsi.gov.uk).

33. The department will publish on its website at: <https://www.gov.uk/government/publications/new-school-proposals> details of those LAs that are seeking to establish new schools, including links to their websites. The department will also inform the Independent Academies Association and New Schools Network, to alert potential proposers to the need for a new school.

## Other useful information

34. LA's 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.

35. Where the new provision academy/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.

36. 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 a free school), then the presumption process could be halted and the specification withdrawn on these grounds.

## Further sources of information

### Associated resources (external links)

- 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/>
- Independent Academies Association <http://www.iaa.uk.net>

### You may also be interested in (internal links)

New School Proposals – information and links seeking proposers to establish a new academy or free school

<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-00061-2014