



Department  
for Education

# **Opening and closing maintained schools**

**Statutory guidance for proposers and  
decision-makers**

**April 2016**

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# 1: Summary

## About this guidance

This is statutory guidance from the Department for Education. This means that recipients must have regard to it when carrying out duties relating to establishing (opening) a new school and / or the discontinuance (closing) of an existing school.

The purpose of this guidance is to ensure that good quality school places are provided where they are needed. It should be read in conjunction with Part 2 and Schedule 2 of the Education and Inspections Act (EIA) 2006 as amended by the Education Act (EA) 2011 and *The School Organisation (Establishment and Discontinuance of Schools) Regulations 2013*.

## Review date

This guidance will be review in April 2017.

## Who is this guidance for?

This guidance is relevant to all categories of maintained school, unless explicitly stated otherwise, and is for those proposing (e.g. governing bodies, dioceses and local authorities (LAs)) to open and / or close a school, decision-makers (LAs, the [Schools Adjudicator](#)), and for information purposes for those affected by a proposal (e.g. dioceses, trustees, parents etc.).

A governing body, LA or the Schools Adjudicator must have regard to this guidance when making decisions under Schedule 2 of [EIA 2006](#) (as amended by [EA 2011](#)) and the details set out in the [Establishment and Discontinuance Regulations](#).

Separate advice is available on making [prescribed alterations to maintained schools](#) and [significant changes to academies](#).

It is the responsibility of LAs and governing bodies to ensure that they act in accordance with the relevant legislation when making changes to or opening or closing a maintained school and they are advised to seek independent legal advice where appropriate.

## Main points

- Where a LA identifies the need for a new school, specifically to meet increased basic need in their area section 6A of EIA 2006 places the LA under a duty to seek proposals to establish an academy (free school) via the '[free school presumption](#)'.

The LA is responsible for providing the site for the new school and meeting all associated capital and pre-/post-opening costs.

- The final decision on all new /free school presumption proposals lies with the [Regional Schools Commissioner](#) (RSC) on behalf of the Secretary of State.
- Any persons ('proposer') for example LA or diocese may publish a proposal at any time for a new school outside of the free school presumption and section 7 competitions process under section 11 of EIA 2006. It is also possible to apply to the Secretary of State for consent to publish proposals to establish a new school under section 10 of EIA 2006.
- All decisions on proposals to open or close a maintained school must be based on the factors outlined in the [guidance for decision-makers](#), following the [statutory five stage process](#).
- Consultations should be carried out in term time to allow the maximum numbers of people to see and respond to statutory proposals.
- Within one week of the date of their publication the documents below **MUST** be sent to the Secretary of State (via [schoolorganisation.notifications@education.gsi.gov.uk](mailto:schoolorganisation.notifications@education.gsi.gov.uk)):
  - a copy of the statutory proposal
  - a copy of the statutory notice
  - a copy of the decision record on the proposal.
- The school organisation team will make the necessary updates to the EduBase system.

## 2: Establishment of new schools

The following information sets out details of the free school presumption process as well as well as the **other** circumstances in which the establishment of a new maintained school can be proposed.

### The free school presumption

Where a LA identifies the need for a new school, to meet basic need, section 6A of EIA 2006 places the LA under a duty to seek proposals to establish an academy (free school) via the '[free school presumption](#)'. The LA is responsible for providing the site for the new school and meeting all associated capital and pre-/post-opening revenue costs. All new free school presumption proposals require the RSC's approval (on behalf of the Secretary of State) as it is the Secretary of State who will enter into a funding agreement with the academy trust/sponsor.

### School competitions

If the free school presumption does not result in a suitable proposal, a statutory competition can be held under 'section 7' of EIA 2006. This will not require a separate application for approval, since the Secretary of State will inform the LA that approval to hold a competition is given at the same time as informing the LA that no suitable free school was identified.

Free school presumption proposals and proposals for foundation, foundation special and voluntary schools can be submitted into the competition. However the RSC will consider any free school proposals first when making a decision on the case.

If a free school proposal is considered suitable, the competition ends and the proposer works with the department and LA to progress its proposal. If a free school presumption proposal is not considered suitable, or none are received, the competition continues and it is for the LA to decide on the most suitable maintained school proposal that should be approved. However, if the LA is involved<sup>1</sup> in the Trust of a proposed foundation school, the [Schools Adjudicator](#) will be the decision-maker.

Where approval is given to hold a section 7 competition, the LA must follow the statutory process set out in Schedule 2 to EIA 2006 and the [Establishment and Discontinuance Regulations](#).

For section 7 competitions there is no right of appeal.

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<sup>1</sup> As set out in para 10(2) of schedule 2 to EIA 2006

## Establishing new provision outside competitive arrangements

It is still possible to publish proposals for new maintained school outside of the competitive arrangements at any time.

### Section 11 proposals

Any persons ('proposer') e.g. LA or diocese may publish a proposal, at any time, for a new school outside of the free school presumption and competitions process under section 11 of EIA 2006.

The Secretary of States consent is not required in the case of proposals for:

- a new community or foundation primary school to replace a maintained infant and a maintained junior school;
- a new voluntary-aided school in order to meet demand for a specific type of place e.g. places to meet demand from those of a particular faith;
- a new foundation or voluntary school resulting from the reorganisation of existing faith schools in an area, including an existing faith school losing or changing its religious designation;
- a new foundation or community school, where there were no suitable free school proposals and a competition has been held but did not identify a suitable provider;
- a former independent school wishing to join the maintained sector; and
- a new LA maintained nursery school.

The proposer should be able to demonstrate to the decision-maker a clear demand for the places the new school will provide.

The statutory process in [part 4](#) must be followed to establish the new school. The [Schools Adjudicator](#) will decide LA proposals (and cases where the LA are involved in the Trust of a proposed foundation school). The LA will decide proposals from other proposers.

### Section 10 proposals

It is also possible to apply to the Secretary of State for 'consent to publish' proposals to establish a new school under section 10 of EIA 2006:

- to replace a community school; or
- for a brand new or replacement foundation or voluntary controlled school.

Each request for consent 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 a free school.

If consent is given the statutory process in [part 4](#) must be followed to establish the new school. The Schools Adjudicator will decide LA proposals (and cases where the LA are involved in the Trust of a proposed foundation school). The LA will decide proposals from other proposers.

The table below sets out a summary of the processes.

<b>Proposer</b>	<b>Type of proposal</b>	<b>Decision-maker</b>	<b>Right of appeal to the Adjudicator?</b>
Other proposers	Free school presumption	RSC	N/A
LA	Section 11	Schools Adjudicator	CofE Diocese RC Diocese
Other proposers	Section 11	LA (Schools Adjudicator if LA involved in Trust of foundation school)	CofE Diocese RC Diocese Proposers (if LA is decision-maker)
Other proposers	Section 7 (competition)		
	Stage 1. Free school proposals considered first. If a proposal is received and considered suitable completion ends and proposer / LA / department take forward the free school proposal.	RSC	N/A
	Stage 2. Where no suitable free school bid received proposals for new foundation, foundation special or voluntary school submitted will be considered.	LA (Schools Adjudicator)	N/A
LA	Section 10	Schools Adjudicator.	CofE Diocese RC Diocese
Other proposers	Section 10	LA (Schools Adjudicator if LA involved in Trust of foundation school)	CofE Diocese RC Diocese Proposers (if LA is decision-maker)

### 3: School closures

All decisions related to school closures are taken locally following a statutory process to allow those directly affected by the proposals to feed in their comments.

All decisions on proposals to close a school must be made in accordance with the factors outlined in the [guidance for decision-makers](#).

#### Who can close a school?

An LA can propose the closure of **ALL** categories of maintained school, following the five-stage statutory process in [part 4](#).

The governing body of a voluntary, foundation, or foundation special school may also publish proposals to close its own school following the statutory process. Alternatively, it may give [at least two years' notice of its intention to close](#) the school to the Secretary of State and the LA.

Reasons for closing a maintained school include where:

- it is surplus to requirements (e.g. result of an area-wide reorganisation and/or neighbouring schools have sufficient places to accommodate displaced pupils);
- it is to be [‘amalgamated’ with another school](#);
- it is failing and there is no viable sponsored academy solution;
- it is to [acquire, lose or change religious character](#); or
- it is being replaced by a new school.

#### Closure of rural schools

There is a presumption against the closure of rural schools. This does not mean that a rural school will never close, but the case for closure should be strong and a proposal must be clearly in the best interests of educational provision in the area.

When producing a proposal, the proposer must carefully consider:

- the likely effect of the closure of the school on the local community;
- educational standards at the school and the likely effect on standards at neighbouring schools;
- the availability, and likely cost to the LA, of transport to other schools;
- any increase in the use of motor vehicles which is likely to result from the closure of the school, and the likely effects of any such increase; and
- any alternatives to the closure of the school.



When deciding a proposal for the closure of a rural primary school, there is a legal requirement<sup>2</sup> that the decision-maker must refer to the [Designation of Rural Primary Schools \(England\) Order](#) to confirm that the school is a rural primary school.

Secondary schools are identified on the EduBase system using the Office for National Statistics' [Rural and Urban Area Classification](#). Decision-makers should consider this indicator when deciding a proposal for the closure of a rural secondary school.

The [free school presumption](#) will not apply in cases where a rural infant and junior school on the same site are being closed to establish a new primary school.

In order to assist the decision-maker, the proposer of a rural school closure should provide evidence to show that it has carefully considered:

- alternatives to closure including: federation with another local school; conversion to academy status and joining a multi-academy trust; the scope for an extended school to provide local community services and facilities e.g. child care facilities, family and adult learning, healthcare, community internet access etc.;
- transport implications i.e. the availability, and likely cost of transport to other schools and sustainability issues; and
- the overall and long term impact on local people and the community of the closure of the village school and of the loss of the building as a community facility.

## Amalgamations

There are two ways to amalgamate two (or more) existing maintained schools:

- The LA or governing body (depending on school category) can publish a proposal to close two, or more, schools and the LA or a proposer other than the LA (e.g. diocese, faith or parent group, Trust) depending on category, can publish a proposal to open a new school or presumption free school (see [part 2](#)). This results in a new school number being issued.
- The LA and / or governing body (depending on school category) can publish a proposal to close one school (or more) and enlarge / change the age range / transfer site (following the statutory process as / when necessary) of an existing school, to accommodate the displaced pupils. The remaining school would retain its original school number, as it is not a new school, even if its phase has changed.

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<sup>2</sup> Section 15(7)(b) of EIA 2006

## Existing schools wishing to acquire, change or lose a religious character

It is not possible for an existing school to make any change to its religious character. Instead the LA or governing body must publish a proposal to close the existing school, and a faith organisation, as proposer, must issue a 'related' proposal to establish a new voluntary or foundation school, with a religious character. This can be done by either gaining the Secretary of State's consent under section 10 or as a special case under section 11 of EIA 2006.

In **ALL** cases before the religious designation flexibilities can be utilised, the proposer will need to [apply separately, to the Secretary of State, for the new school to be designated with a religious character](#). This would normally be done once the decision on the new school has been approved. Schools that have been designated with a religious character that close will automatically have the designation revoked.

Upon gaining a religious designation a school can not automatically change its admissions policy to include faith-based criteria. It will need to consult in accordance with the [School Admissions Code](#) and determine revised admission arrangements.

The table below sets out a summary of the process for closing a maintained school.

Proposer	Type of proposal	Decision-maker	Right of appeal to the Adjudicator?
LA	Following a statutory process to close a community, community special or maintained nursery school	LA	CofE Diocese RC Diocese
LA	Following a statutory process to close a foundation, foundation special or voluntary school	LA	CofE Diocese RC Diocese GB Trustees
Governing Body	Following a statutory process to close a voluntary, foundation or foundation special school	LA	CofE Diocese RC Diocese GB Trustees

NB: the LA must make a decision within a period of two months of the end of the representation period or they must be referred to the [Schools Adjudicator](#).

## Two years notice of closure – voluntary and foundation schools

Instead of following the statutory process for closure, the governing body of a voluntary or foundation school may, subject to specified provisions<sup>3</sup>, give the Secretary of State and the LA at least two years' notice of their intention to close the school.

The trustees of a foundation or voluntary school must give their governing body at least two years notice if they intend to terminate the school's occupation of its site. The minimum two years' notice allows the LA and / or governing body time to make alternative arrangements for pupils.

## Closure of a community or foundation special school in the interests of pupils

The Secretary of State may direct<sup>4</sup> a LA to close a community special or foundation special school if she considers it is in the interests of the health, safety or welfare of the pupils. Prior to making the direction, the Secretary of State, must consult: the LA, any other LA who would be affected by the closure of the school; for a foundation special school with a foundation, the person who appoints the foundation governors; and any other persons the Secretary of State considers appropriate.

The Secretary of State must give notice in writing, of the direction, to both the governing body and head teacher of the school. The school must be closed on the date specified by the Secretary of State.

## Temporary school closures

A proposal to close a school is not required where a school will temporarily cease to operate due to a rebuild. Where a school operating over multiple sites proposes to cease operations on one (or more) of its sites the proposal will be for a [prescribed alteration](#) and not a school closure.

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<sup>3</sup> As outlined in section 30 of the SSFA 1998, and including those in the DBE Measure 1991.

<sup>4</sup> Section.17 of EIA 2006

## 4: The statutory process

The statutory process for opening<sup>5</sup> and closing<sup>6</sup> a maintained school has five stages:

Stage	Description	Timescale	Comments
Stage 1	Consultation	No prescribed timescale.	Informal / pre consultation. Recommended to last a minimum of 6 weeks. School holidays should be taken into consideration and avoided where possible. Likely to be no longer than 12 months.
Stage 2	Publication		Publication of the statutory notice and proposal
Stage 3	Representation	Must be 4 weeks, at least, from date of publication.	Formal consultation. As prescribed in the Establishment and Discontinuance of Schools Regulations and cannot be shortened or lengthened.
Stage 4	Decision	LA should decide a proposal within 2 months otherwise it will fall to the Schools Adjudicator.	Where permitted appeals must be made within 4 weeks of notification of the decision.
Stage 5	Implementation	No prescribed timescale.	However the date must be as specified in the published notice, subject to any modifications agreed by the decision-maker.

<sup>5</sup> Under sections 10 and 11 of EIA 2006

<sup>6</sup> Under section 15 of EIA 2006

## Consultation

Except where the school is a rural school or a special school where there are prescribed consultees (see [Annex A](#)), proposers of a school closure must consult organisations, groups and individuals they feel to be appropriate (the information in Annex A can be used for examples). The information that **MUST** be included in a closure proposal is set out at [Annex B](#). The information that **MUST** be included in a proposal to establish a new school under the section 10 or 11 processes is set out in [Annex C](#).

Where a LA or governing body carries out a preliminary (informal/ stage one) consultation to consider a range of options for a possible reorganisation, this would not be regarded as a statutory consultation as set out in legislation. The statutory consultation would need to cover the specific opening or closure proposal of the school in question.

How the stage one consultation is carried out is not prescribed in regulations and it is for the proposer to determine the nature of the consultation and its length (although a minimum of six weeks is recommended). It is best practice for consultations to be carried out in term time to allow the maximum number of people to respond. The Cabinet Office guidance on [Consultation principles](#) can be used for other examples of best practice.

## Publication

A statutory proposal should be published within 12 months of the stage one consultation period being completed. This is so that it can be informed by up-to-date feedback. A proposal must contain the information specified in either Schedule 1 for establishing a new school (see [Annex C](#)) or Schedule 2 for closing a school (see [Annex B](#)) of the Establishment and Discontinuance Regulations.

The full proposal must be published on a website (e.g. the school or LA's website) along with a statement setting out:

- how copies of the proposal may be obtained;
- that anybody can object to, support, or comment on, the proposal;
- the date that the representation period ends; and
- the address to which objections or comments should be submitted.

A brief notice (including details on how the full proposal can be accessed e.g. the website address) must be published in a local newspaper and in a conspicuous place on the school premises and at all of the entrances to the school.

Within one week of the date of publication of a section 10 or 11 proposal to open a new school, the proposer **MUST** send a copy of the proposal to the LA which it is proposed would maintain the school.

On the day of publication of a proposal to close a school the proposer **MUST** send a copy of the proposal to the governing body/LA (as appropriate).

In all cases, within one week of the date of publication on the website, the proposer **MUST** send a copy of the proposal and the information set above to:

- the Secretary of State ([schoolorganisation.notifications@education.gsi.gov.uk](mailto:schoolorganisation.notifications@education.gsi.gov.uk));
- the parents of every registered pupil at the school - where the school is a special school;
- the local Church of England diocese;
- the local Roman Catholic diocese; and
- any other body or person that the proposer thinks is appropriate (e.g. relevant faith group).

Within one week of receiving a request for a copy of the proposal the proposer must send a copy to the person requesting it.

## Related proposals

A proposal for one change can be linked to another proposal(s) for example such an amalgamation where two schools are closing and are to be replaced by a completely new school or if the need for the closure arises from an area-wide reorganisation such as a result of long-term LA planning.

In these cases this should be made clear in any informal or formal consultation processes, in published notices and proposals. All notices should be published together / or as one notice (e.g. where one school is to be enlarged because another is being closed a single notice could be published) and specified as 'related'.

Decisions on 'related' proposals should also be made at the same time.

## Representation

The representation period starts on the date of publication of the statutory proposal and must last for at least four weeks. During this period, any person or organisation can submit comments on the proposal, to the LA, to be taken into account by the decision-maker. It is also good practice for representations to be forwarded to the proposer to ensure that they are aware of local opinion.

## Decision

The LA will be the decision-maker on a school closure proposal, unless the closure proposal is 'related' to another proposal that is to be decided by the [Schools Adjudicator](#).

The Schools Adjudicator will decide LA proposals for new schools (and cases where the LA are involved in the Trust of a proposed foundation school). The LA will decide proposals for new schools from other proposers.

If the LA does not make a decision within a period of two months of the end of the representation period, they must, within a week of the end of the two month period, refer the case to the Schools Adjudicator.

However, the body or individual that takes the decision must have regard to the statutory '[Decision-makers Guidance](#)'.

When issuing a decision, the decision-maker can:

- reject the proposal;
- approve the proposal without modification;
- approve the proposal with such modifications, as the LA think desirable, after consulting the LA and/or governing body (as appropriate); or
- approve the proposal – with or without modification – subject to certain conditions<sup>7</sup> (such as the granting of planning permission) being met.

A proposal can be withdrawn by the proposer at any point before a decision is taken. When doing so the proposer must send written notice to the LA and the [Schools Adjudicator](#) (if the proposal has been sent to them). A notice must also be placed on the website where the original proposal was published.

Within one week of making a determination the decision-maker must arrange (via the proposer as necessary) for their decision and the reasons for it to be published on the website where the original proposal was published. They must arrange for notification of the decision and reasons for it to be sent to:

- The Secretary of State (via [schoolorganisation.notifications@education.gsi.gov.uk](mailto:schoolorganisation.notifications@education.gsi.gov.uk))
- the LA (where the Schools Adjudicator is the decision-maker);
- the governing body/proposers (as appropriate);
- the trustees of the school (if any);
- the local Church of England diocese;
- the local Roman Catholic diocese;
- for a special school, the parents of every registered pupil at the school; and
- any other body considered appropriate (e.g. other relevant faith organisation).

## **Rights of appeal against a decision**

Within four weeks of the decision being made the following bodies may appeal to the Schools Adjudicator against a decision made by a LA:

- the local Church of England diocese;
- the local Roman Catholic diocese;

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<sup>7</sup> As specified in Part 5 (20) of the Establishment and Discontinuance Regulations

- the proposers of section 10 and 11 proposals where the LA is the decision-maker; and
- the governors and trustees of a foundation, foundation special or voluntary school that is subject to a proposal for closure

On receipt of an appeal, an LA decision-maker must then send the proposal, representations received and the reasons for their decision to the [Schools Adjudicator](#) within one week of receipt.

There is no right of appeal on determinations made by the Schools Adjudicator.

## Implementation

There is no maximum limit on the time between the publication of a proposal and its proposed date of implementation. However, proposers will be expected to show good reason (for example an authority-wide reorganisation) if they propose a timescale longer than three years.

The proposer must implement a proposal in the form approved, taking into account any modifications made by the decision-maker.

The school organisation team will make the necessary changes to the school(s) EduBase record(s).

## Modification post determination

If it proves necessary, due to a major change in circumstance, or unreasonably difficult to implement a proposal as approved, the proposer can propose modifications (for example to the implementation date) to the decision-maker before the approved implementation date. However, proposals cannot be modified to the extent that new proposals are substituted for those that have been published.

## Revocation

If the proposer cannot implement an approved proposal because circumstances have changed (so that implementation would be inappropriate or unreasonably difficult) the proposer must publish a revocation proposal, to be relieved of the duty to implement. A revocation proposal must contain:

- a description of the original proposal as published;
- the date of the publication of the original proposal; and
- a statement as to why the duty to implement the original proposal should not apply.

The proposer must publish the revocation proposal on the website (where the original proposal was published) and a brief notice of the proposal in a local newspaper. Details of what must be included in this notice are the same as in the [publication section](#).



Where the proposer is the governing body it must send the revocation proposal to the LA within one week of the date of publication on the website. Where the original proposal was decided by the [Schools Adjudicator](#) the LA must refer the revocation proposal together with any comments or objections within two weeks of the end of the representation period to the Schools Adjudicator.

The LA decision-maker, who must determine the revocation proposal within two months of the end of the representation period, must arrange for the revocation decision to be published on the website where the original proposal and revocation proposal were published. The LA decision-maker must notify those with a [right of appeal](#) of the revocation and their reasons for doing so.

## Annex A: School closure consultations

In the case of the closure of a rural primary school or a community or foundation special school proposers **must**, under section 16(1) of EIA 2006 consult:

- The LA (as appropriate);
- The registered parents of registered pupils at the school;
- where the LA is a county council the local district or parish council where the school that is the subject to the proposal is situated; and
- in the case of a special school – any LA which maintains an EHC plan or statement of special educational needs in respect of a registered pupil at the school.

The Secretary of State considers that these bodies, along with those listed below should be consulted in the case of the proposed closure of all schools:

- the governing body (as appropriate);
- pupils at the school<sup>8</sup>;
- (if a proposal involves, or is likely to affect a school which has a particular religious character) the appropriate diocese or relevant faith group<sup>9</sup>;
- the trustees of the school (if any);
- teachers and other staff at the school;
- any LA likely to be affected by the proposal, 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;
- parents of any pupils at other schools who may be affected by the proposal 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 staff at other schools who may be affected by the proposal;
- MPs whose constituencies include the school that is the subject of the proposal or whose constituents are likely to be affected by the proposal; and
- any other interested organisation / person that the proposer thinks are appropriate.

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<sup>8</sup> Under section 176 of the Education Act 2002.

<sup>9</sup> Under the DBE Measure 1991 Church of England schools must consult with their diocese before making closure proposals.

## **Annex B: Statutory proposals for school closures**

As set out in Schedule 2 to the Establishment and Discontinuance Regulations the information below **must** be included in a proposal to close a school:

### **Contact details**

The name and contact address of the local authority or governing body publishing the proposals and the name, address and category of the school it is proposed that should be discontinued.

### **Implementation**

The date on which it is proposed to close the school or, where it is proposed that the closure be implemented in stages, the dates of and information about each stage.

### **Reason for closure**

A statement explaining the reason why closure of the school is considered necessary.

### **Pupil numbers and admissions**

The numbers (distinguishing between compulsory and non-compulsory school age pupils), age range, sex, and special educational needs of pupils (distinguishing between boarding and day pupils) for whom provision is currently made at the school.

### **Displaced pupils**

A statement and supporting evidence about the need for school places in the area including whether there is sufficient capacity to accommodate displaced pupils.

Details of the schools or further education colleges at which pupils at the school to be discontinued will be offered places, including—

- a) any interim arrangements;
- b) the provision that is to be made for those pupils who receive educational provision recognised by the local authority as reserved for children with special educational needs; and
- c) in the case of special schools, the alternative provision made by local authorities other than the local authority which maintain the school.

Details of any other measures proposed to be taken to increase the number of school or further education college places available in consequence of the proposed discontinuance.

## **Impact on the community**

A statement and supporting evidence about the impact on the community of the closure of the school and any measures proposed to mitigate any adverse impact.

## **Rural primary schools**

Where proposals relate to a rural primary school designated as such by an order made for the purposes of section 15, a statement that the local authority or the governing body (as the case may be) considered section 15(4).

## **Balance of denominational provision**

Where the school has a religious character, a statement about the impact of the proposed closure on the balance of denominational provision in the area and the impact on parental choice.

## **Maintained nursery schools**

Where proposals relate to the discontinuance of a maintained nursery school, a statement setting out—

- d) the local authority's assessment of the quality and quantity of the alternative provision compared to the school proposed to be discontinued and the proposed arrangements to ensure the expertise and specialism continues to be available; and
- e) the accessibility and convenience of replacement provision for local parents.

## **Sixth form provision**

Where the school proposed to be discontinued provides sixth form education, the effect for 16 to 19 year olds in the area that the closure will have in respect of—

- a) their educational or training achievements;
- b) their participation in education or training; and
- c) the range of educational or training opportunities available to them.

## **Special educational needs provision**

Where existing provision that is recognised by the local authority as reserved for pupils with special educational needs is being discontinued, a statement as to how the local authority or the governing body (as the case may be) believe the proposals are likely to lead to improvements in the standard, quality and/or range of the educational provision for these children.

## Travel

Details of length and journeys to alternative provision.

The proposed arrangements for travel of displaced pupils to other schools including how the proposed arrangements will mitigate against increased car use.

## **Annex C: Statutory proposals for establishing a new school.**

As set out in the Establishment and Discontinuance Regulations the information below must be included in section 10 and 11 proposals to establish a new school:

### **Contact details**

The name and contact address of the LA or the proposers (as the case may be).

### **Implementation**

The date on which it is proposed that the school be opened or, where it is proposed that the opening be implemented in stages, the dates of and information about each stage.

Where the proposals are to establish a voluntary, foundation or foundation special school, a statement as to whether the proposals are to be implemented by the local 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.

### **Reason for the new school**

A statement explaining the reason why the new school is considered necessary and whether it is to replace an existing school or schools.

### **Category**

The category of school that it is proposed be established (a foundation or foundation special school and, if so, whether it is to have a foundation, a voluntary school, a community or community special school, or a local authority maintained nursery school) and, if required by section 10, a statement that the Secretary of State's consent has been obtained to publish the proposals.

### **Ethos and religious character**

A short statement 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 it is proposed that 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.

Where it is proposed that the school—

(a) has a religious character, evidence of the demand in the area for education in accordance with the tenets of the religion; or

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

## **Pupil numbers and admissions**

The numbers (distinguishing between compulsory and non-compulsory school age pupils), age range, sex, and special educational needs of pupils (distinguishing between boarding and day pupils) for whom provision is to be made at the school.

## **Admission arrangements**

Except in relation to proposals for special schools, 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 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.

## **Early years provision**

Where the proposals are to include provision for pupils aged two to five—

(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 which deliver the Early Years Foundation Stage within three miles of the school; and

(e) the reasons why schools and settings outside the maintained school sector which deliver the Early Years Foundation Stage within three miles of the school

and which have spare capacity, cannot make provision for any forecast increase in the numbers of such children.

## **Sixth form provision**

Where it is proposed that the school will provide sixth form education, how for 16 to 19 year olds in the area 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 available to them.

## **Special educational needs provision**

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.

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

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 range of educational provision for these children;
- (b) details of the improvements that the proposals will bring in respect of—
  - (i) access to education and associated services including the curriculum, wider school activities, facilities and equipment with reference to the local authority's Accessibility Strategy;
  - (ii) access to specialist staff, both education and other professionals, including any external support or outreach services;
  - (iii) access to suitable accommodation; and
  - (iv) supply of suitable places.

## **Single sex school**

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 provision of single sex education in the area.



## **Curriculum**

Confirmation that the school will meet the general requirements in relation to the 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.

## **Relevant experience of proposers**

Evidence of any relevant experience in education held by the proposers including details of any involvement in the improvement of standards in education.

## **Effects on standards and contributions to school improvement**

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 contribute to school improvement.

## **Location and costs**

A statement about—

- (a) the area or particular community or communities which the new school is expected to serve;
- (b) the location of the site or sites including, where appropriate, the postal address or addresses;
- (c) the current ownership and 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;
- (d) whether the site is currently used for the purposes of another school and if so why the site will no longer be required by the other school;
- (e) the estimated capital costs of providing the site and how those costs will be met (including the extent to which the costs are to be met by the proposers and the local authority) and how the proposers intend to fund their share of the costs of implementing the proposals (if any);
- (f) whether planning permission is needed under the Town and Country Planning Act 1990, and when it is anticipated that it will be obtained;
- (g) confirmation from the Secretary of State or LA (as the case may be) that funds will be made available (including costs to cover any necessary site purchase).

## Travel

The proposed arrangements for travel of pupils to the school.

## Federation

Details of any proposals for the school to be established as a federated school.

## Voluntary aided schools

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

Where the school is to be a foundation or foundation special school, confirmation as to—

- (a) whether it will have a foundation and if so, the name or proposed name of the foundation;
- (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 proposed constitution of the governing body; and
- (e) details of the foundation's charitable objects.

## Independent schools entering the maintained sector

Where a school is an independent school entering the maintained sector—

- (a) a statement that the requirements of section 11(3) are met;
- (b) a statement as to whether the premises will meet the requirements of the School Premises (England) Regulations 2012(4) and, if not,
  - (i) details of how the premises are deficient; and
  - (ii) details of how it is intended to remedy the deficiency.

## Annex D: Further Information

This guidance primarily relates to:

- [The Education and Inspections Act 2006](#), as amended by the [Education Act 2011](#)
- [The School Standards and Framework Act 1998](#), as amended by the [Education Act 2002](#)
- [The School Organisation \(Establishment and Discontinuance of Schools\) Regulations 2013](#)
- [The School Organisation \(Prescribed Alterations to Maintained Schools\) \(England\) Regulations 2013](#)
- [The free school presumption – Departmental advice for local authorities and new school proposers \(July 2015\)](#)
- [Establishing New Maintained Schools – departmental advice for local authorities and new school proposers \(2013\)](#).
- [Presumption against the closure of primary schools](#)
- [Rural and Urban Area Classification](#)
- [The Religious Character of Schools \(Designation Procedure\) Regulations 1998](#)
- [How to apply for religious designation](#)
- [Guidance for decision-makers](#)
- [Schools Adjudicator](#)
- [School Admissions Code](#)

It also relates to:

- [School Governance \(Constitution\) \(England\) Regulations 2012](#)
- [School Governance \(Roles, Procedures and Allowances\) \(England\) Regulations 2013](#)
- [Governors handbook](#).
- [School Premises \(England\) Regulations 2012](#)
- [The School Companies Regulations 2002](#) as amended by the [2003 Regulations](#) and the [2014 Regulations](#)
- [Change your charity's governing document](#)
- [Academies Act 2010](#)
- [Making Significant Changes to an Existing Academy \(2014\)](#);
- [Regional Schools Commissioner](#)
- [Consultation principles](#)



Department  
for Education

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