



Department  
for Education

# Free school presumption

**Annex D: Pre-opening expectations**

**January 2023**

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## Pre-opening expectations

There are a number of requirements (some of which are statutory, as indicated) to be fulfilled during the pre-opening phase, which follow a similar process as central route free school projects. This annex summarises the requirements. Please refer to the relevant section of the [pre-opening proposer guidance](#)<sup>1</sup> for further information. Differences between presumption projects and central free school projects are also explained below.

## Articles of Association

We expect the successful sponsor to adopt the department's latest model of [Articles of Association](#)<sup>2</sup> and send this to the departmental delivery officer.

Information on the sponsor can be added within the model articles of association where prompted. No new clauses or revisions to clauses may be added to the articles except for where this is explicitly indicated.

## Admissions policy

Admissions arrangements should be drafted by the successful sponsor and will be reviewed by the department before the statutory section 10 consultation can commence.

The successful sponsor should produce admissions arrangements which are compliant with the statutory [School Admissions Code](#)<sup>3</sup>, and which will apply in the first year of opening. Changes can be made after this within the normal statutory admissions timeframe set out in the [School Admissions Code](#) or by seeking a variation from the department.

To ensure admission arrangements comply with the statutory School Admissions Code and other legal requirements, the department expects sponsors to draft their arrangements using the relevant [template](#)<sup>4</sup>. The completed template should be sent, along with any catchment area maps and application forms (if required), to the departmental delivery officer for assessment.

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<sup>1</sup> <https://www.gov.uk/government/publications/free-school-pre-opening-guide>

<sup>2</sup> <https://www.gov.uk/government/publications/academy-model-memorandum-and-articles-of-association>

<sup>3</sup> <https://www.gov.uk/government/publications/school-admissions-code--2>

<sup>4</sup> <https://www.gov.uk/government/publications/free-schools-admissions>

## Other information

The admission authority for a free school is the academy trust. Sponsors may adopt oversubscription criteria and definitions which are the same as those used by the local authority for community and voluntary controlled schools – however, once the funding agreement has been signed the sponsor will be responsible for the admission arrangements. The sponsor will also be responsible for dealing with admission appeals.

Presumption schools are more likely to be part of the local authority's co-ordinated admissions process, though this will be dependent on the timing of the project. The sponsor and the local authority should decide jointly whether this will be appropriate. If not part of the local authority's co-ordinated admissions process, any offers of places will be conditional and will be confirmed once the funding agreement is signed.

## Section 10 consultation

Under section 10 of the Academies Act 2010, the successful sponsor has a statutory duty to consult on whether it should enter into a funding agreement for the new free school. This formal consultation should take place in the pre-opening phase, after the sponsor has been approved by the Secretary of State but before the signing of the funding agreement. There is no specified length of time for the consultation but, as a guide, the department suggests 6 weeks as a minimum timeframe.

The consultation document should include the following question: **“Should [the trust] enter into a funding agreement to run the new free school?”**. [Section 5](#)<sup>5</sup> of the free schools pre-opening guidance provides detailed guidance on how to conduct a Section 10 consultation.

The successful sponsor should produce a report following the end of the consultation period, which will need to be submitted to the department as soon as it is available.

Sponsors should ensure that:

- the consultation is robust and uses a variety of methods to consult stakeholders
- allowances are made for the availability of stakeholders
- the report, as a minimum, includes a summary of the results from the consultation; detail of the timescale of the consultation; the methods used (meetings/media/social media) and details of all those responses received

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<sup>5</sup> <https://www.gov.uk/government/publications/free-school-pre-opening-guide/free-school-pre-opening-guide#statutory>

Successful sponsors should escalate to the local authority if they experience significant opposition by local residents during or following their consultation.

## Disclosure and Barring Service (DBS) checks

The successful sponsor should send the department confirmation that enhanced DBS checks have been carried out on all members and trustees (including the chair of trustees).

The chair of trustees should [apply for a suitability check](#)<sup>6</sup>, to include:

- an identity check
- a new enhanced DBS check (to include barred list checks if the chair of trustees is engaged in regulated activity with children or adults)
- confirmation of their right to work in the United Kingdom
- the provision of suitability evidence about any time spent living outside of the United Kingdom

The chair is additionally responsible for ensuring that DBS checks are carried out on other governors, staff and volunteers as set out in the [Keeping children safe in education guidance](#)<sup>7</sup>.

## Impact and equalities assessment

As prescribed by section 9 of the Academies Act 2010 and section 149 of the Equality Act 2010, the local authority must assess the potential impact of any new school on existing educational provision in the area. The local authority must also consider whether the new school would impact on any groups with protected characteristics.

This is usually undertaken when the specification is being drawn up. The local authority should provide the departmental delivery officer with a copy of the assessment once it is completed. The department will seek reassurance from the local authority that the new free school will not impact negatively on other local schools.

## Governance plans

Successful sponsors should develop their own governance plan during pre-opening in preparation for the school opening. This should include the structure (including the

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<sup>6</sup> <https://www.gov.uk/government/publications/academy-trust-chair-suitability-checks>

<sup>7</sup> <https://www.gov.uk/government/publications/keeping-children-safe-in-education--2>

committees), the financial accountability arrangements, and pen portraits of all members and trustees.

The basic governance details needed ahead of entering into a funding agreement will be obtained by the department during the assessment phase, as part of the sponsor's original proposal. The successful sponsor should inform the department of any major governance changes and send short biographies of any new members or trustees.

## **Principal designate (PD) (or headteacher) and/or executive head recruitment**

The PD should be appointed and in post with enough time to enable them to write policies, procedures, systems, timetable and schemes of work, and to take part in recruitment of other staff and supervise preparations for the opening of the school.

The department is not usually involved in the recruitment of the PD or other staff. This is for the sponsor to manage, including any risks associated with not recruiting on time. It is good practice for the local authority to attend PD interviews.

The successful sponsor will be expected to provide a pen portrait for the PD (and executive head where appropriate) to the departmental delivery officer.

## **Finance and pupil recruitment**

The local authority should provide the departmental delivery officer with written assurance, via email, of pupil numbers/commissioned places/applications (pre-national offer day) and confirm the number of accepted offers (post-national offer day).

Local authorities will be expected to complete a place build-up table. The departmental delivery officer will send the template to the successful sponsor once the project enters pre-opening phase. If pupil numbers are below the school's break-even number, the local authority and successful sponsor will need to provide reassurance to the department as to how the school will be educationally and financially viable – i.e. confirm that the underwriting agreement will be activated.

Local authorities are expected to meet the per-pupil revenue costs and post-opening costs to cover diseconomies of scale – this is for the local authority and successful sponsor to agree.

The department does not routinely request or assess financial plans for presumption projects, although can do so if they feel this is relevant. However, financial plans on the department template are required in order for indicative funding letters to be generated prior to opening but minimal information is required. The departmental delivery officer will provide more information at the appropriate time.

## Financial plans

The successful sponsor should develop their own financial plans, together with the local authority, during pre-opening in preparation for the school opening. This should consist of a 3-year financial plan, in a format of the sponsor's choosing, to demonstrate that the new free school will be financially viable with sustainable contingencies and surpluses each year.

It is the responsibility of the successful sponsor to manage any associated risks, and to ensure the ongoing financial (and educational) viability of the school.

The departmental finance templates can be used for presumption free schools. The delivery officer can provide the mainstream, special or alternative provision template as appropriate.

## Education policies

The school's education vision should be as per the sponsor proposal agreed by the regional director during the assessment phase. The successful sponsor should develop their own curriculum plans, schemes of work and education policies in preparation for the school opening, and provide confirmation to the department's delivery officer that the following are in place:

- finalised educational development plan (3-5 years)
- staff appointment procedures and equal opportunities policy
- special educational needs policies

For presumption projects the department does not usually request an education brief or policies.

The sponsor should check whether the local authority wishes them to submit the education policies to them for approval or for information.

## Funding agreement

Before the funding agreement can be signed the department will require the above key requirements to be in place. The department will also need to be assured that the school will be educationally and financially viable.

The funding agreement can be signed at any point up to the date of opening in a presumption project, however this should be done as early as practically possible in order to provide greater clarity for pupils and parents, and to enable the successful sponsor to recruit staff with confidence that the school will open on the preferred date.

In addition to the key requirements above, the department will also require:

- a copy of the written agreement between the local authority and the approved sponsor setting out what development funding will be provided by the local authority following opening (should be completed prior to ‘kick-off’ meeting)
- completed land questionnaire
- completed Heads of Terms where these are used
- completed equalities process record

## Ofsted pre-registration inspection

By law, free schools must be named on the register of independent educational institutions in England and Wales before they can open. This is currently kept as part of the Get Information about Schools ([GIAS](#)<sup>8</sup>) database.

In order to be added to GIAS, the Secretary of State must decide whether or not the school is likely to meet the relevant [Independent School Standards \(ISS\)](#)<sup>9</sup> when it opens. To enable the Secretary of State to make this decision, Ofsted carries out a pre-registration inspection around 3 months before the opening date and on the basis of that inspection provides the Secretary of State with advice on whether the proposed school is likely to meet the relevant ISS.

Ofsted will contact the sponsor directly to notify them of the actual date of inspection, giving at least 5 working days’ notice, and will provide the sponsor with information about how to upload the following documents (which they need to see in advance) to the Ofsted portal:

- plan showing layout of premises and buildings
- preventing bullying policy
- safeguarding and promoting welfare of pupils policy
- safeguarding and health and safety of pupils on visits policy
- behaviour policy
- school complaints procedure
- evidence that the school has appropriate procedures in place for undertaking DBS checks of staff and recording the results

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<sup>8</sup> <https://get-information-schools.service.gov.uk/>

<sup>9</sup> <https://www.gov.uk/government/publications/regulating-independent-schools>





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