



School Organisation

Maintained Schools

Annex B: Guidance for Decision-makers

January 2014

Summary

Key points

1. This Annex is for local authorities, the Schools Adjudicator and governing bodies in their roles as decision-makers. It is relevant to the 2013 School Organisation Regulations¹. Decisions on proposals published before 28 January 2014 must be made with regard to the previous Decision-makers Guidance.
2. The table in [Annex A.5](#) sets out the decision-maker for each type of school organisation proposal. The department does not prescribe the exact process by which a decision-maker carries out their decision-making function; however, decision-makers must have regard² to this guidance when making a decision.
3. The decision-maker should consider the views of those affected by a proposal or who have an interest in it, including cross-LA border interests. The decision-maker should not simply take account of the numbers of people expressing a particular view. Instead, they should give the greatest weight to responses from those stakeholders likely to be most directly affected by a proposal – especially parents of children at the affected school(s).

Related proposals

4. Any proposal that is 'related' to another proposal must be considered together. A proposal should be regarded as 'related' if its implementation (or non-implementation) would prevent or undermine the effective implementation of another proposal. Where proposals are 'related', the decisions should be compatible.
5. Where a proposal is 'related' to another proposal to be decided by the Secretary of State (e.g. for the establishment of a new academy) the decision-maker should defer taking a decision until the Secretary of State has taken a decision on the proposal, or where appropriate, grant a conditional approval for the proposal.

Conditional approval

6. Decision-makers may give conditional approval for a proposal subject to certain prescribed events³. The decision-maker must set a date by which the condition should be met but can modify the date if the proposer confirms, before the date expires, that the condition will be met later than originally thought.

¹ In the case of the removal of a Foundation or Foundation majority this guidance is relevant to The School Organisation (Removal of Foundation, Reduction in Number of Foundation Governors and Ability of Foundation to Pay Debts) (England) Regulations 2007.

² Under paragraphs 8(5) and 17 of Schedule 2 to the EIA 2006 and regulation 7 of the Prescribed Alterations Regulations.

³ The prescribed events are those listed under paragraph 8 of Schedule 3 to the Prescribed Alterations Regulations (for prescribed alterations), regulation 16 of the Establishment and Discontinuance Regulations (for closures and new schools) and paragraph 16 of Schedule 1 to the Prescribed Alterations Regulations (for foundation and trust proposals).

7. The proposer should inform the decision-maker (and the Secretary of State via schoolorganisation.notifications@education.gsi.gov.uk in the case of school closures) when a condition is modified or met. If a condition is not met by the date specified, the proposal should be referred back to the decision-maker for fresh consideration.

Publishing decisions

8. All determinations (rejected and approved – with or without modifications) must give reasons for such a decision being made. Within one week of making a determination the decision-maker must arrange (via the proposer as necessary) for the decision and the reasons behind it to be published on the website where the original proposal was published. The decision-maker must also arrange for the bodies below to be notified of the decision and reasons⁴:

- the LA (where the Schools Adjudicator or governing body 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;
- the parents of every registered pupil at the school – where the school is a special school;
- any other body that they think is appropriate; and
- the Secretary of State via schoolorganisation.notifications@education.gsi.gov.uk (in school opening and closure cases only).

Factors to consider

9. Paragraphs 10 to 78 of this annex set out some the factors that decision-makers should consider when deciding a proposal. Paragraphs 10 to 29 are relevant to all types of proposals. Paragraphs 30 to 78 are more relevant to certain types of proposals (as specified). These factors are not exhaustive and the importance of each will vary depending on the type and circumstances of the proposal. All proposals must be considered on their individual merits.

⁴ In the case of proposals to change category to foundation, acquire/remove a Trust and/or acquire/remove a Foundation majority the only bodies the decision-maker must notify are the LA and the governing body (where the Schools Adjudicator is the decision-maker).

Factors relevant to all types of proposals

Consideration of consultation and representation period

10. The decision-maker will need to be satisfied that the appropriate consultation and/or representation period has been carried out and that the proposer has had regard to the responses received. If the proposer has failed to meet the statutory requirements, a proposal may be deemed invalid and therefore should be rejected. The decision-maker must consider all the views submitted, including all support for, objections to and comments on the proposal.

Education standards and diversity of provision

11. Decision-makers should consider the quality and diversity of schools in the relevant area and whether the proposal will meet or affect the aspirations of parents, raise local standards and narrow attainment gaps.

12. The decision-maker should also take into account the extent to which the proposal is consistent with the government's policy on academies as set out on the department's website.

Demand

13. In assessing the demand for new school places the decision-maker should consider the evidence presented for any projected increase in pupil population (such as planned housing developments) and any new provision opening in the area (including free schools).

14. The decision-maker should take into account the quality and popularity of the schools in which spare capacity exists and evidence of parents' aspirations for a new school or for places in a school proposed for expansion. The existence of surplus capacity in neighbouring less popular schools should not in itself prevent the addition of new places.

15. Reducing surplus places is not a priority (unless running at very high levels). For parental choice to work effectively there may be some surplus capacity in the system as a whole. Competition from additional schools and places in the system will lead to pressure on existing schools to improve standards.

School size

16. Decision-makers should not make blanket assumptions that schools should be of a certain size to be good schools, although the viability and cost-effectiveness of a proposal is an important factor for consideration. The decision-maker should also

consider the impact on the LA's budget of the need to provide additional funding to a small school to compensate for its size.

Proposed admission arrangements (including post-16 provision)

17. In assessing demand the decision-maker should consider all expected admission applications, not only those from the area of the LA in which the school is situated.

18. Before approving a proposal that is likely to affect admissions to the school the decision-maker should confirm that the admission arrangements of the school are compliant with the School Admissions Code. Although the decision-maker cannot modify proposed admission arrangements, the decision-maker should inform the proposer where arrangements seem unsatisfactory and the admission authority should be given the opportunity to revise them.

National Curriculum

19. All maintained schools must follow the National Curriculum unless they have secured an exemption for groups of pupils or the school community⁵.

Equal opportunity issues

20. The decision-maker must have regard to the Public Sector Equality Duty (PSED) of LAs/governing bodies, which requires them to have 'due regard' to the need to:

- eliminate discrimination;
- advance equality of opportunity; and
- foster good relations.

21. The decision-maker should consider whether there are any sex, race or disability discrimination issues that arise from the changes being proposed, for example that where there is a proposed change to single sex provision in an area, there is equal access to single sex provision for the other sex to meet parental demand. Similarly there should be a commitment to provide access to a range of opportunities which reflect the ethnic and cultural mix of the area, while ensuring that such opportunities are open to all.

⁵ Under sections: 90, 91, 92 and 93 of the Education Act 2002.

Community cohesion

22. Schools have a key part to play in providing opportunities for young people from different backgrounds to learn with, from and about each other; by encouraging, through their teaching, an understanding of, and respect for, other cultures, faiths and communities. When considering a proposal, the decision-maker must consider its impact on community cohesion. This will need to be considered on a case-by-case basis, taking account of the community served by the school and the views of different sections within the community.

Travel and accessibility

23. Decision-makers should satisfy themselves that accessibility planning has been properly taken into account and the proposed changes should not adversely impact on disadvantaged groups.

24. The decision-maker should bear in mind that a proposal should not unreasonably extend journey times or increase transport costs, or result in too many children being prevented from travelling sustainably due to unsuitable walking or cycling routes.

25. A proposal should also be considered on the basis of how it will support and contribute to the LA's duty to promote the use of sustainable travel and transport to school.

Capital

26. The decision-maker should be satisfied that any land, premises or capital required to implement the proposal will be available and that all relevant local parties (e.g. trustees or religious authority) have given their agreement. A proposal cannot be approved conditionally upon funding being made available.

27. Where proposers are relying on the department as the source of capital funding, there can be no assumption that the approval of a proposal will trigger the release of capital funds from the department, unless the department has previously confirmed in writing that such resources will be available; nor can any allocation 'in principle' be increased. In such circumstances the proposal should be rejected, or consideration deferred until it is clear that the capital necessary to implement the proposal will be provided.

School premises and playing fields

28. Under the School Premises Regulations all schools are required to provide suitable outdoor space in order to enable physical education to be provided to pupils in accordance with the school curriculum; and for pupils to play outside safely.

29. [Guidelines](#) setting out suggested areas for pitches and games courts are in place although the department has been clear that these are non-statutory.

Factors relevant to certain types of proposals:

Expansion

30. When deciding on a proposal for an expansion on an additional site (a 'satellite school'), decision-makers will need to consider whether the new provision is genuinely a change to an existing school or is in effect a new school (which would trigger the academy presumption in circumstances where there is a need for a new school in the area⁶). Decisions will need to be taken on a case-by-case basis, but decision-makers will need to consider the following non-exhaustive list of factors which are intended to expose the extent to which the new site is integrated with the existing site, and to ensure that it will serve the same community as the existing site:

- The reasons for the expansion
 - What is the rationale for this approach and this particular site?
- Admission and curriculum arrangements
 - How will the new site be used (e.g. which age groups/pupils will it serve)?
 - What will the admission arrangements be?
 - Will there be movement of pupils between sites?
- Governance and administration
 - How will whole school activities be managed?
 - Will staff be employed on contracts to work on both sites? How frequently will they do so?
 - What governance, leadership and management arrangements will be put in place to oversee the new site (e.g. will the new site be governed by the same governing body and the same school leadership team)?
- Physical characteristics of the school
 - How will facilities across the two sites be used (e.g. sharing of the facilities and resources available at the two sites, such as playing fields)?
 - Is the new site in an area that is easily accessible to the community that the current school serves?

⁶ Or require an proposal under section 11 of the EIA, 2006 for a new maintained school.

Changes to special educational need provision – the SEN improvement test

39. In planning and commissioning SEN provision or considering a proposal for change, LAs should aim for a flexible range of provision and support that can respond to the needs of individual pupils and parental preferences. This is favourable to establishing broad categories of provision according to special educational need or disability.

Decision-makers should ensure that proposals:

- take account of parental preferences for particular styles of provision or education settings;
- take account of any relevant local offer for children and young people with SEN and disabilities and the views expressed on it;
- offer a range of provision to respond to the needs of individual children and young people, taking account of collaborative arrangements (including between special and mainstream), extended school and Children's Centre provision; regional centres (of expertise) and regional and sub-regional provision; out of LA day and residential special provision;
- take full account of educational considerations, in particular the need to ensure a broad and balanced curriculum, within a learning environment where children can be healthy and stay safe;
- support the LA's strategy for making schools and settings more accessible to disabled children and young people and their scheme for promoting equality of opportunity for disabled people;
- provide access to appropriately trained staff and access to specialist support and advice, so that individual pupils can have the fullest possible opportunities to make progress in their learning and participate in their school and community;
- ensure appropriate provision for 14-19 year-olds; and
- ensure that appropriate full-time education will be available to all displaced pupils. Their statements of special educational needs must be amended and all parental rights must be ensured. Other interested partners, such as the Health Authority

should be involved. Pupils should not be placed long-term or permanently in a Pupil Referral Unit (PRU) if a special school place is what they need.

40. When considering any reorganisation of provision that the LA considers to be reserved for pupils with special educational needs, including that which might lead to children being displaced, proposers will need to demonstrate how the proposed alternative arrangements are likely to lead to improvements in the standard, quality and/or range of educational provision for those children. Decision-makers should make clear how they are satisfied that this SEN improvement test has been met, including how they have taken account of parental or independent representations which question the proposer's assessment.