



Making ‘prescribed alterations’ to maintained schools

Statutory guidance for proposers and decision-makers

April 2016

Contents

1: Summary	5
About this guidance	5
Review date	5
Who is this guidance for?	5
Main points	6
2: Prescribed alteration changes	7
Enlargement of premises	7
Expansion onto an additional site ('or satellite sites')	8
Reducing pupil numbers in mainstream schools	10
Change of age range	11
Adding or removing a sixth-form	13
Closing an additional site	14
Transfer to a new site	15
Changes of category	16
Single sex school becoming co-educational (or vice versa)	17
Mainstream school: establish/remove/alter SEN provision	18
Change the types of need catered for by a special school	18
Boarding provision	19
Remove selective admission arrangements at a grammar school	21
3: Contentious / controversial proposals	22
4: Changes that can be made outside of the statutory process	23
5: Statutory process: prescribed alterations	25
Publication	26
Representation (formal consultation)	27

APPENDIX 5

Decision	28
Rights of appeal against a decision	29
Implementation	29
Modification post determination	29
Revocation of proposals	30
Land and buildings for foundation, foundation special or voluntary controlled schools	31
6: Statutory process: foundation proposals	32
Changing category to foundation, acquiring a Trust and/or acquiring a foundation majority	32
Initiation	33
Publication	33
Representation (formal consultation)	34
Decision	35
Implementation	36
Modification post determination	36
Revocation of proposals	36
Governance and staffing issues	36
Land transfer issues	37
Removing a Trust and/or removing a foundation majority	38
Initiation	39
Land and assets (when removing a Trust)	40
Consultation	40
Publication	41
Representation	41
Decision	42

APPENDIX 5

Implementation	42
Modification of proposals	43
Annex A: Information to be included in a prescribed alteration statutory proposal	44
Annex B: Information that must be included in foundation proposals	45
Annex C: Information to be included in proposals to remove a Trust	46
Annex D: Information to be included in proposal to reconstitute the governing body	47
Annex E: Further Information	48
Annex F: Contact details for RSC offices	49

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 functions relating to making 'prescribed alterations' to maintained schools.

The purpose of this guidance is to ensure that additional good quality school places can be provided quickly where they are needed; that local authorities and governing bodies do not take decisions that will have a negative impact on other schools in the area, and that changes can be implemented quickly and effectively where there is a strong case for doing so. In line with these aims it is expected that, where possible, additional new places will only be provided at schools that have an overall Ofsted rating of 'good' or 'outstanding'.

A governing body, LA or the [Schools Adjudicator](#) must have regard to this guidance when exercising functions under [The School Organisation \(Prescribed Alterations to Maintained Schools\) \(England\) Regulations 2013](#) ('the Prescribed Alterations Regulations') and [The School Organisation \(Establishment and Discontinuance of Schools\) Regulations 2013](#) ('the Establishment and Discontinuance Regulations'). It should be read in conjunction with Parts 2 and 3 and Schedule 3 of the [Education and Inspections Act \(EIA\) 2006](#) (as amended by the [Education Act \(EA\) 2011](#)) and *the Prescribed Alterations Regulations*. It also relates to *the Establishment and Discontinuance Regulations* and [The School Organisation \(Removal of Foundation, Reduction in the Number of Foundation Governors and Ability of Foundation to Pay Debts\) \(England\) Regulations \(2007\)](#).

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

Review date

This guidance will be reviewed in April 2017.

Who is this guidance for?

Those proposing to make changes to maintained schools (e.g. governing bodies and LAs), decision-makers (LAs, the Schools Adjudicator and governing bodies), and for information purposes for those affected by a proposal (dioceses, trustees, parents etc.)

This guidance is relevant to all categories of maintained schools (as defined in section 20 of the [School Standards and Framework Act \(SSFA\) 1998](#)), unless explicitly stated. It is not relevant to [Pupil Referral Units](#). Separate advice [on making significant changes to an academy](#), [opening and closing a maintained school](#) and the [guidance for decision-makers](#) is available.

Main points

- All proposals for prescribed alterations must follow the processes set out in this guidance.
- Where a LA proposes to expand a school that is eligible for intervention they should copy the proposal to the relevant [Regional Schools Commissioner](#)
- To enable the department to monitor potentially controversial proposals, the proposer should copy any proposal which falls within the definitions set out in part 3 to the School Organisation mailbox – schoolorganisation.notrifications@education.gsi.gov.uk.
- Where a LA is the decision maker, it must make a decision within a period of two months of the end of the representation period, taking into account the factors outlined in the [guidance for decision-makers](#). Where a decision is not made within this time frame, the proposal must be referred to the Schools' Adjudicator for a decision.
- It is not possible for any school to gain, lose or change religious character through a change of category. Information on the process to be followed is available in the opening and closing maintained school guidance.
- It is the department's view that governing bodies should convert to academy status rather than change category to a foundation. Governing bodies wishing to discuss this issue should email schoolorganisation.notifications@education.gsi.gov.uk and a member of the school organisation team will contact them to discuss the proposed change of category.
- **Once a decision** has been made the proposer (school governing body or LA) should make the necessary changes to the school's record in the department's [EduBase](#) system and MUST have done so by the date the change is implemented.

2: Prescribed alteration changes

Enlargement of premises

Details of how [special schools can increase their intake](#) are covered below.

Local authorities are under a statutory duty to ensure the sufficiency of school places in their area. They can propose an enlargement of the premises of community foundation and voluntary schools. When doing so they must follow the statutory process as set out in the [Prescribed Alterations Regulations](#) (see [part 5](#)) if:

- the proposed enlargement of the premises of the school is permanent (longer than three years) and would increase the capacity of the school by:
 - more than 30 pupils; **and**
 - 25% or 200 pupils (whichever is the lesser).
- the proposal involves the making permanent of any temporary enlargement (that meets the above threshold).

Where a proposal seeks to increase the school's pupil number to over 2,000 or would result in an increase of over 50% of the school's current capacity, the LA should copy the proposal to schoolorganisation.notifications@education.gsi.gov.uk for monitoring purposes.

Governing bodies of all categories of mainstream schools and LAs can propose smaller expansions that do not meet the thresholds above without the need to follow the formal statutory process in [part 4](#). In many cases this can be achieved solely by increasing the school's published admissions number (PAN); please see [the School Admissions Code](#).

The table below sets out who can propose an enlargement of premises and what process must be followed:

Proposer	Type of proposal	Process	Decision-maker	Right of appeal to the adjudicator
LA for community	Enlargement of premises	Statutory process	LA	CofE Diocese RC Diocese
LA for voluntary or foundation	Enlargement of premises	Statutory process	LA	CofE Diocese RC Diocese GB / Trustees

Proposer	Type of proposal	Process	Decision-maker	Right of appeal to the adjudicator
LA for voluntary and foundation	Enlargement of premises (on small scale expansions)	Non statutory process	LA	N/A
GB of all categories mainstream	Enlargement of premises (on small scale expansions)	Non statutory process	GB	N/A

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](#).

Expansion onto an additional site ('or satellite sites')

Where proposers seek to expand onto an additional site they will need to ensure that the new provision is genuinely a change to an existing school and not in reality the establishment of a new school. Where a LA decides that a new school is need to meet basic need the free school presumption process must be followed. Other proposals seeking to establish a new school should follow the free school application process.

Decisions about whether a proposal represents a genuine expansion will need to be taken on a case-by-case basis, but proposers and decision makers will need to consider this non-exhaustive list of factors:

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?

The purpose of considering these factors is to determine the level of integration between the two sites; the more integration, the more likely the change will be considered as an expansion. Where a LA considers there is a need for a new school to address basic need for school places it must¹ seek proposals to establish a free school under the free school presumption.

LAs should copy any proposal to expand a school onto a satellite site to schoolorganisation.notifications@education.gsi.gov.uk for monitoring purposes.

Quality of new places created by expansions

Where schools are underperforming, the quality of new places provided may be compromised by expansion. The department expects that schools should not generally expand if they are eligible for intervention by the local Regional Schools Commissioner ('RSC'). There will be exceptional cases where there is no viable alternative to ensuring sufficient school places locally. In cases where there is a proposal for a school that is eligible for intervention to expand, we expect LAs to send a copy of the proposals to the [RSC](#) so that they can ensure appropriate intervention strategies are agreed or, where appropriate, that there is a robust improvement plan in place.

Change in number of pupils in a special school

Governing bodies of all categories of special school and LAs for community special schools may seek to increase the number of places by following the statutory process in [part 5](#), if the increase is by:

¹ Under section 6A of Education and Inspections Act 2006.

- 10%; or
- 20 pupils (five for all boarding special schools) (whichever is the lesser).

The exception to this is where a special school is established in a hospital.

Governing bodies of all categories of special school and LAs for community special schools may seek to decrease the number of pupils, by following the statutory process in [part 5](#).

The table below sets out who can propose a change in the number of pupils in a special school and what process must be followed:

Proposer	Type of proposal	Process	Decision-maker	Right of appeal to the adjudicator
GB foundation special	Increase by 10% or 20 pupils (5 for boarding special: or Decrease numbers	Statutory process	LA	CofE Diocese RC Diocese GB / Trustees
GB community special	Increase by 10% or 20 pupils (5 for boarding special: or Decrease numbers	Statutory process	LA	CofE Diocese RC Diocese
LA for community special	Increase by 10% or 20 pupils (5 for boarding special: or Decrease numbers	Statutory process	LA	CofE Diocese RC Diocese

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](#).

Reducing pupil numbers in mainstream schools

Reductions in pupil numbers at maintained mainstream schools which result in a decrease to the Published Admission Number (PAN) are not covered by the [Prescribed Alterations Regulations](#). Where this is proposed the admissions authority (the LA in the case of community and voluntary controlled (VC) schools or the

governing body in the case of voluntary aided (VA) and foundation schools) must consult on the proposed change in accordance with [the School Admissions Code](#). Community and VC schools have the right to object to the Schools' Adjudicator if the PAN proposed is lower than they would wish.

Change of age range

For changes that are expected to be in place for more than 2 years (as these are considered permanent increases):

Local authorities can propose:

- a change of age range of up to 2 years (except for adding or removing a sixth-form) for voluntary and foundation schools by following the non-statutory process, see [part 4](#).
- a change of age range of 1 year or more for community schools (including the adding or removal of sixth-form or nursery provision) and community special schools or alter the upper age limit of a foundation or voluntary school to add sixth-form provision by following the statutory process, see [part 5](#).

Governing bodies of foundation and voluntary schools can propose

- an age range change of up to 2 years (except for adding or removing a sixth-form) by following the non-statutory process, see [part 4](#).
- an age range change of 3 years or more or alter the upper age limit of the school to add or remove sixth form provision by following the statutory process, see [part 5](#).

Governing bodies of community schools can propose the alteration of their upper age limit to add sixth-form provision following the statutory process, see [part 5](#)

Governing bodies of community special and foundation special schools can propose a change of age range of 1 year or more following the statutory process, see [part 5](#).

Where a proposed age range change would also require an expansion of the school's premises, the LA or governing body must also ensure that they act in accordance with the requirements relating to proposals for the [enlargement of premises](#).

Where a proposal seeks to change the age range of a primary school to make it an all-through (cross phase) school the proposer (as set out below) should copy the

proposal to schoolorganisation.notifications@education.gov.uk for monitoring purposes.

The table below sets out who can propose a change of age range and what process must be followed:

Proposer	Type of proposal	Process	Decision-maker	Right of appeal to the adjudicator
LA for voluntary and foundation	Alteration of upper or lower age range of up to 2 years (excluding adding or removing a sixth form)	Non statutory process	LA	NA
GB of voluntary and foundation	Alteration of upper or lower age range by up to 2 years (excluding adding or removing a sixth-form)	Non statutory process	GB	N/A
GB of voluntary and foundation	Alteration of upper or lower age range by three years or more	Statutory process	LA	CofE Diocese RC Diocese GB / Trustees
LA for community and community special	Alteration of upper or lower age range by 1 year or more (for community school including the adding or removal of sixth form or nurse provision)	Statutory process	LA	CofE Diocese RC Diocese
GB foundation special	Alteration of upper or lower age range by one year or more	Statutory process	LA	CofE Diocese RC Diocese GB / Trustees

Proposer	Type of proposal	Process	Decision-maker	Right of appeal to the adjudicator
GB community special	Alteration of upper or lower age range by one year or more	Statutory process	LA	CofE Diocese RC Diocese
LA for community	Alteration of upper age range so as to add or remove sixth-form provision	Statutory process	LA	CofE Diocese RC Diocese
LA for voluntary and foundation	Alteration of upper age range so as to add sixth-form provision.	Statutory process	LA	CofE Diocese RC Diocese GB / Trustees
GB of voluntary and foundation	Alteration of upper age range so as to add sixth-form provision	Statutory process	LA	CofE Diocese RC Diocese GB / Trustees
GB of community	Alteration of upper age range so as to add sixth-form provision	Statutory process	LA	CofE Diocese RC Diocese
GB of voluntary and foundation	Alteration of upper age range so as to remove sixth-form provision	Statutory process	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](#).

Adding or removing a sixth-form

The department wants to ensure that all new provision is of the highest quality and provides genuine value for money. There is a departmental expectation that proposals for the addition of sixth-form provision will only be put forward for secondary schools that are rated as 'good' or 'outstanding' by Ofsted. Proposers should also consider the supply of other local post-16 provision in the area and assess if there is a genuine need for the proposal.

3: Contentious / controversial proposals

The department is keen to ensure that, when proposing:

- enlargement of premises;
- changes to a school's age range, and / or
- adding a sixth form.

LA's and governing bodies act reasonably, in line with the principles of public law, to ensure that the changes do not have a negative impact on the education of pupils in the area.

It is the department's expectation that, in the majority of cases, it would not be appropriate for a primary school to change its age range to meet the need for new secondary provision. Where the level of basic need is such that a new secondary school is needed, this will trigger the free school presumption process.

To enable the department to monitor potentially controversial proposals, LAs and governing bodies should notify

schoolorganisation.notifications@education.gsi.gov.uk of the publication of, any proposals which would:

- result in an [existing primary school becoming an all-through school / cross phase school](#);
- result in an [increase of over 50% in the school's capacity](#);
- [increase the school's pupil numbers to over 2,000](#);
- propose [expansion onto a separate 'satellite' site](#); or
- have received objections from the LA and / or neighbouring school that the proposed change will undermine the quality of education.

4: Changes that can be made outside of the statutory process

Local authorities and governing bodies of mainstream maintained schools can make limited changes (see [section 2](#) for the exact detail) to their schools without following a statutory process; they are nevertheless required to adhere to the usual principles of public law. They **MUST**:

- act rationally;
- take into account all relevant and no irrelevant considerations; and
- follow a fair procedure.

The department **expects** that in making these changes LA's and governing bodies will:

- liaise with the LA and trustees/diocese (as appropriate) to ensure that, a proposal is aligned with wider place planning/organisational arrangements, and that any necessary consents have been gained;
- not undermine the quality of education provided or the financial viability of other 'good' and 'outstanding' schools in the local area; or
- not create additional places in a local planning area where there is already surplus capacity in schools rated as 'good' or 'outstanding' and
- ensure open and fair consultation with parents and other interested parties to gauge demand for their proposed changes and to provide them with sufficient opportunity to give their views. The [consultation principles guidance](#) can be referenced for examples of good practice.

Before making any changes governing bodies should ensure that:

- they have consulted with the LA to ensure the proposal is aligned with local place planning arrangements
- they have secured any necessary funding;
- they have identified suitable accommodation and sites;

- they have secured planning permission and/or agreement on the transfer of land where necessary³;
- they have the consent of the site trustees or other land owner where the land is not owned by the governing body;
- they have the consent of the relevant religious authority (as required); and
- the admissions authority is content for the published admissions number (PAN) to be changed where this forms part of expansion plans, in accordance with the School Admissions Code.

Once a decision on the change has been made the proposer (i.e. LA or governing body) is responsible for making arrangements for the necessary changes to be made to the school's record in the department's [EduBase](#) system. These changes must be made no later than the date of implementation for the change.

³ Including, where necessary, approval from the Secretary of State for change to the use of playing field land under Section 77(1) of the SSFA 1998.

5: Statutory process: prescribed alterations

The statutory process for making prescribed alterations to schools has four stages:

Stage	Description	Timescale	Comments
Stage 1	Publication (statutory proposal / notice)		
Stage 2	Representation (formal consultation)	Must be at least 4 weeks	As prescribed in the 'Prescribed Alteration' regulations.
Stage 3	Decision	LA should decide a proposal within 2 months otherwise it will fall to the Schools Adjudicator.	Any appeal to the adjudicator must be made within 4 weeks of the decision.
Stage 4	Implementation	No prescribed timescale	However it must be as specified in the published statutory notice, subject to any modifications agreed by the decision-maker.

Although there is no longer a statutory 'pre-publication' consultation period for prescribed alteration changes, there is a strong expectation that schools and LAs will consult interested parties, in developing their proposal prior to publication, as part of their duty under public law to act rationally and take into account all relevant considerations. Schools will also need to ensure that they have the consent of the site trustees and other relevant religious authorities⁴ (where necessary).

When considering making a prescribed alteration change, it is best practice to take timing into account, for example:

- by holding consultations and public meetings – either formal or informal – during term time, rather than school holidays;
- plan where any public and stakeholder meetings are held to maximise response: and

⁴ Including under the CofE Diocesan Board of Education (DBE) Measure 1991.

- take into account the admissions cycle for changes that will impact on the school's admission arrangements.

A number of changes can impact on admissions, necessitating reductions in PAN, new relevant age groups for admission or the adoption of revised admission criteria. Changes to admission arrangements can be made by the admission authority in one of two ways:

- the consultation on changing the admission arrangements (as set out in the [School Admissions Code](#)) takes place sufficiently in advance of a decision on the prescribed alteration so that the change to admissions can be implemented at the same time as the proposals; or
- a variation is sought, where necessary in view of a major change in circumstances, from the [Schools Adjudicator](#) so that the changes to the admission policy can be implemented at the same time as the prescribed alteration is implemented.

Decision-makers should, so far as is possible, co-ordinate with the admission authority, if different, to ensure they avoid taking decisions that will reduce a PAN or remove a relevant age group for admission after parents have submitted an application for the following September (e.g. 31 October for secondary admissions or 15 January for primary admissions).

Publication

A statutory proposal must contain sufficient information for interested parties to make a decision on whether to support or challenge the proposed change. [Annex A](#) sets out the minimum that this should include. The proposal should be accessible to all interested parties and should therefore use 'plain English'.

Where the proposal for one change is linked to another, this should be made clear in any notices published. Where a proposal by a LA is 'related' to a proposal by other proposers (e.g. where one school is to be enlarged because another is being closed) a single notice could be published.

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, 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. If the proposal is published by a governing body then notification must also be posted 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 on the website, the proposer must send a copy of the proposal and the information set out in the paragraph above to:

- the governing body/LA (as appropriate);
- the parents of every registered pupil at the school - where the school is a special school;
- if it involves or is likely to affect a school which has a religious character:
 - the local Church of England diocese;
 - the local Roman Catholic diocese; or
 - the relevant faith group in relation to the school; and
- any other body or person that the proposer thinks is appropriate.

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

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.

Representation (formal consultation)

The representation period starts on the date of the publication of the proposal and must last 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 in all cases except where a proposal is 'related' to another proposal that must be decided by the [Schools Adjudicator](#)⁵.

Decisions must be made within a period of two months of the end of the representation period or they must be referred to the Schools Adjudicator.

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

When issuing a decision, the decision-maker can:

- reject the proposal;
- approve the proposal without modification;
- approve the proposal with modifications, having consulted the LA and/or governing body (as appropriate); or
- approve the proposal – with or without modification – subject to certain conditions⁶ (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 or the governing body (as appropriate); or 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 decision the LA must publish their decision and the reasons for it, on the website where the original proposal was published and send copies to:

- the LA (where the Schools Adjudicator is the decision-maker);
- the Schools Adjudicator (where the LA is the decision-maker);
- the governing body/proposers (as appropriate);
- the trustees of the school (if any);
- the local Church of England diocese;

⁵ For example where a change is conditional on the establishment of a new school under section 10 or 11 of EIA 2006 (where the Schools Adjudicator may be the default decision maker).

⁶ The prescribed events are those listed in paragraph 8 of Schedule 3 to the Prescribed Alterations Regulations.

- the local Roman Catholic diocese;
- the parents of every registered pupil at the school – where the school is a special school; and
- any other body that they think is appropriate (e.g. other relevant faith organisation).

If the [Schools Adjudicator](#) is the decision-maker they must notify the persons above of their decision, together with the reasons, within one week of making the decision. Within one week of receiving this notification the LA must publish the decision, with reasons, on the website where the original proposal was published.

Within one week of the decision being made the proposer (i.e. governing body or LA) should make the necessary changes to the school's record in the department's [EduBase](#) system and must make the change by the date of implementation.

Rights of appeal against a decision

The following bodies may appeal to the Schools Adjudicator against a decision made by a LA decision-maker, within four weeks of the decision being made:

- the local Church of England diocese;
- the local Roman Catholic diocese; and
- the governors and trustees of a foundation, foundation special or voluntary school that is subject to the proposal.

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

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

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 seek modifications

(e.g. to the implementation date) from 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.

Details of the modification must be published on the website where the original proposals were published.

Revocation of proposals

If the proposer cannot implement an approved proposal because circumstances have changed so that implementation would be inappropriate or implementation of the proposal would be unreasonably difficult, the proposer must publish a revocation proposal, to be determined by the decision-maker, 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 and a brief notice of the proposal, including the website address where the proposal is published in a local newspaper. The proposal must contain details of how copies can be obtained; details of where to send comments to; and the date by which comments must be sent.

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 determination to be published on the website where the original proposal and revocation proposal were published. The LA decision-maker must also arrange for the following persons to be notified of the revocation decision together with reasons:

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

Annex A: Information to be included in a prescribed alteration statutory proposal

A statutory proposal for making a prescribed alteration to a school must contain sufficient information for interested parties to make a decision on whether to support the proposed change. A proposal should be accessible to all interested parties and therefore use 'plain English'.

Proposers will need to be mindful of the factors that will inform the decision-makers assessment when determining the proposal.

As a minimum, the department would expect a proposal to include:

- School and LA details;
- Description of alteration and evidence of demand;
- Objectives (including how the proposal would increase educational standards and parental choice);
- The effect on other schools, academies and educational institutions within the area;
- Project costs and indication of how these will be met, including how long term value for money will be achieved;
- Implementation and any proposed stages for implementation; and
- A statement explaining the procedure for responses: support; objections and comments.

Annex B: Information that must be included in foundation proposals

- a) name, address and category of the school for which the proposals are being published;
- b) implementation date;
- c) a statement of which one of, or combinations of, the prescribed alterations in regulation 3 comprise the proposals.

Where the prescribed alteration is a change of category to foundation, the proposals must contain the following information:

- a) a statement whether the school will have a foundation and if so, the name or proposed name of the foundation;
- b) where it is a change of category to foundation from a VA or VC school, a statement that, in accordance with section 20, the consent of the trustees and the persons by whom the foundation governors are appointed has been obtained; and
- c) the rationale for the change and the particular ethos that the foundation will bring to the school.

Where the prescribed alteration is the acquisition of a foundation or a relevant change at a school for which a foundation already acts, the proposals must contain the following information:

- a) name or proposed name of the foundation;
- b) details of membership of the foundation, including members names;
- c) proposed constitution of the school's governing body;
- d) foundation's charitable objects; and
- e) rationale for the alteration and the particular ethos that the foundation will bring to the school.

In addition where the relevant change relates to:

- a) a foundation school which, immediately before 25th May 2007, was a foundation school having a foundation; or
- b) a foundation school which, having been a voluntary school immediately before 25th May 2007, changed category to a foundation school on or after that date,

the proposal must include a statement that in accordance with section 20 the consent of the trustees and the persons by whom the foundation governors are appointed has been obtained.

Annex C: Information to be included in proposals to remove a Trust

All proposals must include the following information—

- The name, address and category of the school for which the governing body are publishing the proposals,
- The proposed implementation date,
- A statement explaining that any person may object to, or comment on, the proposals and the procedure for making such representations, including—
 - (i) the date pursuant to regulation 10 by which objections or comments should be sent to the governing body, and
 - (ii) the address to which objections or comments should be sent.
- Whether proposals are to be published as required by regulation 4 or under regulation 5(2).
- Information on why it is proposed to remove the school's foundation.
- Where proposals are to be published pursuant to a decision of the governing body under regulation 4, a summary of any responses to the consultation on removing the school's foundation.
- Information about the transfer of land held on trust for the purposes of the school should the proposals be approved (with or without modification), including—
 - (a) the proposed terms of any transfer agreement to be entered into in relation to the land, and
 - (b) details of any payments which will fall to be made in relation to the land—
 - (i) by the governing body or the local education authority to the trustees, or
 - (ii) by the trustees to the governing body or the local education authority.
- Confirmation that after any land transfer, the requirements of the School Premises Regulations 1999 will continue to be satisfied.
- The proposed constitution of the governing body after the foundation is removed (as will be set out in a revised draft instrument of government for the school), including an outline of the expected size and composition of the governing body after the removal of the foundation, and, where the school has a religious character, the body who it is proposed will nominate the partnership governors.

Annex D: Information to be included in proposal to reconstitute the governing body

- All proposals must include the following information—
- The name, address and category of the school for which the governing body are publishing the proposals,
- The proposed implementation date,
- A statement explaining that any person may object to, or comment on, the proposals and the procedure for making such representations, including—
 - (i) the date pursuant to regulation 10 by which objections or comments should be sent to the governing body, and
 - (ii) the address to which objections or comments should be sent.
- Whether proposals are to be published as required by regulation 4 or under regulation 5(2).
- Information on why it is proposed to alter the instrument of government so that the foundation governors cease to constitute the majority of governors.
- Where proposals are to be published pursuant to a decision of the governing body under regulation 4, a summary of any responses to the consultation on altering the instrument of government so that the foundation governors will cease to constitute the majority.
- The proposed constitution of the governing body following the reduction of the foundation governor majority, (as will be set out in a revised draft instrument of government for the school), including an outline of the expected size and composition of the governing body.

Annex E: Further Information

This guidance primarily relates to:

- [The School Organisation \(Prescribed Alterations to Maintained Schools\) \(England\) Regulations 2013](#)
- [The School Organisation \(Removal of Foundation, Reduction in Number of Foundation Governors and Ability of Foundation to Pay Debts\) \(England\) Regulations 2007](#)
- [The School Organisation \(Requirements as to Foundations\) \(England\) Regulations 2007](#)
- [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](#)

It also relates to:

- [The School Organisation \(Establishment and Discontinuance of Schools\) Regulations 2013](#) .
- [School Governance \(Constitution\) \(England\) Regulations 2012](#)
- [The School Governance \(Constitution and Federations \(England\) \(Amendment\) Regulations 2014](#)
- [The School Governance \(Miscellaneous Amendments\) \(England\) Regulations 2015](#)
- [The School Governance \(New Schools\) England Regulations 2007](#)
- [School Governance \(Roles, Procedures and Allowances\) \(England\) Regulations 2013](#)
- [Childcare Act 2006](#)
- [School Premises \(England\) Regulations 2012](#) .
- [Making Significant Changes to an Existing Academy \(2014\)](#);
- [Academy/Free School Presumption – departmental advice \(2013\)](#); and
- [Establishing New Maintained Schools – departmental advice for local authorities and new school proposers \(2013\)](#).
- [The Schools Admissions Code](#)

Annex F: Contact details for RSC offices

- East and North East London - RSC.EASTNELONDON@education.gsi.gov.uk
- North - RSC.NORTH@education.gsi.gov.uk
- East Midlands and Humber - EMH.RSC@education.gsi.gov.uk
- Lancashire and West Yorkshire - LWY.RSC@education.gsi.gov.uk
- South Central England and North West London - RSC.SCNWLON@education.gsi.gov.uk
- South East and South London - RSC.SESL@education.gsi.gov.uk
- South West - RSC.SW@education.gsi.gov.uk
- West Midlands - RSC.WM@education.gsi.gov.uk



Department
for Education

Guidance for decision-makers

**Statutory guidance for decision-makers
deciding prescribed alteration and
establishment and discontinuance
proposals**

April 2016

Contents

1: Summary	4
About this guidance	4
Review date	4
Who is this guidance for?	4
Main points	4
2: Factors relevant to all types of proposals	6
Related proposals	6
Conditional approval	6
Publishing decisions	6
Consideration of consultation and representation period	7
Education standards and diversity of provision	7
A school-led system with every school an academy,	7
Demand v need	7
School size	8
Proposed admission arrangements	8
National Curriculum	8
Equal opportunity issues	8
Community cohesion	9
Travel and accessibility	9
Funding	9
School premises and playing fields	10
3: Factors relevant to prescribed alteration proposals:	11
Enlargement of premises	11
Expansion of existing grammar schools	12
Changes to boarding provision	12

APPENDIX 5

Addition of post-16 provision	12
Changes of category to voluntary-aided	13
Changes to special educational need provision	13
4: Factors relevant to establishment proposals	15
Suitability	15
The free school presumption	15
New schools through a competition	15
New schools outside competition	16
Independent faith schools joining the maintained sector	16
5: Factors relevant to discontinuance (closure) proposals	17
Closure proposals (under s15 EIA 2006)	17
Schools to be replaced by a more successful/popular school	17
Schools causing concern	17
Rural schools and the presumption against closure	17
Early years provision	18
Nursery schools and the presumption against closure	18
Balance of denominational provision	18
Community Services	19
6: Factors relevant to proposals to change category to foundation	20
Standards	20
Community Cohesion	21
New Trust schools Acquiring a Trust	21
Adding or removing a Trust	21
Suitability of partners	22
Removing a Trust / foundation majority	22
Annex A: Further Information	24

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 making decisions about prescribed alteration proposals and establishment (opening) and discontinuance (closure) proposals.

This guidance should be read in conjunction with; the Education and Inspections Act (EIA) 2006 as amended by the Education Act (EA) 2011; the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013; the School Organisation (Establishment and Discontinuance of Schools) Regulations 2013 and the School Organisation (Removal of Foundation, Reduction in the Number of Foundation Governors and Ability of Foundation to Pay Debts) (England) Regulations (2007).

Review date

This guidance will be reviewed in April 2017.

Who is this guidance for?

This guidance is for those making decisions about prescribed alteration proposals (LAs, the Schools Adjudicator and governing bodies), and opening and closing maintained schools (LAs, the Schools Adjudicator) and for information purposes for those affected by such proposals (dioceses, trustees, parents etc.)

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

- The decision-maker will need to be satisfied that the appropriate fair and open local consultation and/or representation period has been carried out and that the proposer has given full consideration to all the responses received. The decision-maker must 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).

- 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.
- When deciding on a proposal, 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 should have triggered the free school presumption.
- The 2016 White Paper [*Education Excellence Everywhere*](#), sets out the department's aim that by the end of 2020, all schools will be academies or in the process of becoming academies. The decision-maker should, therefore, take into account the extent to which the proposal is consistent with this policy.
- In determining proposals decision-makers must ensure that the guidance on [schools causing concern](#) (Intervening in falling, underperforming and coasting schools) has been followed where necessary.
- All decisions in relation to the opening and closing of a maintained school should be copied to the Secretary of State, within one week of the decision being made. The notification must be sent to schoolorganisation.notifications@education.gsi.gov.uk. The necessary amendments will then be made to the EduBase system.

2: Factors relevant to all types of proposals

Related proposals

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. Decisions for 'related' proposals should be compatible.

Where a proposal is 'related' to another proposal to be decided by the [Regional Schools Commissioner](#) (RSC) (e.g. for the [establishment of a new free school established under the presumption route](#)) the decision-maker should defer taking a decision until the RSC has taken a decision on the proposal, or where appropriate, grant a conditional approval for the proposal.

Conditional approval

Decision-makers may give conditional approval for a proposal subject to certain prescribed events¹. 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.

The proposer should inform the decision-maker (and the Secretary of State via schoolorganisation.notifications@education.gsi.gov.uk for school opening or closure cases) 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

All decisions (rejected and approved – with or without modifications) must give reasons for such a decision being made. **Within one week** of making a decision the decision-maker should 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 organisations below to be notified of the decision and reasons²:

- the LA (where the [Schools Adjudicator](#) or governing body is the decision-maker);
- the governing body/proposers (as appropriate);

¹ 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).

² 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).

- 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;
- any other organisation that they think is appropriate; and
- the Secretary of State via schoolorganisation.notifications@education.gsi.gov.uk (in school opening and closure cases only).

Consideration of consultation and representation period

The decision-maker will need to be satisfied that the appropriate fair and open local consultation and/or representation period has been carried out and that the proposer has given full consideration to all 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

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

A school-led system with every school an academy,

The 2016 White Paper [Education Excellence Everywhere](#), sets out the department's aim that by the end of 2020, all schools will be academies or in the process of becoming academies. The decision-maker should, therefore, take into account the extent to which the proposal is consistent with this policy.

Demand v need

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 a free school via the '[free school presumption](#)'. However it is still possible to publish proposals for new maintained school outside of the competitive arrangements, at any time, in order to meet demand for a specific type of place e.g. places to meet demand from those of a particular faith.

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).

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.

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

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

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.

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

All maintained schools must follow the [National Curriculum](#) unless they have secured an exemption for groups of pupils or the school community³.

Equal opportunity issues

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:

³ Under sections: 90, 91, 92 and 93 of the Education Act 2002.

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

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.

Community cohesion

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

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.

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.

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.

Further information is available in the statutory [Home to school travel and transport guidance](#) for LAs.

Funding

The decision-maker should be satisfied that any land, premises or necessary funding 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.

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

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.

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

- the quality of pre-16 education must be good or outstanding;
- the proposed sixth-form will provide places for a minimum of 200 students;
- the proposed sixth-form will, either directly or through partnership, offer a minimum of 15 A level subjects:
- there is a clear demand for the new sixth-form (including evidence of a shortage of post-16 places and a consideration of the quality of L3 provision in the area);
- the proposed sixth-form is financially viable (there is evidence of financial resilience should student numbers fall and the proposal will not impact negatively on 11-16 education or cross subsidisation of funding).

Changes of category to voluntary-aided

For a proposal to change the category of a school to voluntary-aided, the decision-maker must be satisfied that the governing body and/or the foundation are able and willing to meet their financial responsibilities for building work. The decision-maker may wish to consider whether the governing body has access to sufficient funds to enable it to meet 10% of its capital expenditure for at least five years from the date of implementation, taking into account anticipated building projects.

Changes to special educational need provision

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;

APPENDIX 5

- 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.

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.

Annex A: Further Information

- [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 \(Prescribed Alterations to Maintained Schools\) \(England\) Regulations 2013](#)
- [The School Organisation \(Removal of Foundation, Reduction in Number of Foundation Governors and Ability of Foundation to Pay Debts\) \(England\) Regulations 2007](#)
- [The School Organisation \(Requirements as to Foundations\) \(England\) Regulations 2007](#)
- [Academy/Free School Presumption – departmental advice \(2013\)](#)
- [Establishing New Maintained Schools – departmental advice for local authorities and new school proposers \(2013\).](#)
- [The Schools Admissions Code](#)
- [Education Excellence Everywhere](#)
- [White paper - Education Excellence Everywhere](#)
- [Schools Adjudicator](#)
- [Free school presumption](#)
- [School Admissions Code](#)
- [National Curriculum](#)
- [Home to school travel and transport guidance](#)
- [School land and property: protection, transfer and disposal](#)
- [Promoting fundamental British values through SMSC.](#)
- [Religious designation](#)
- [Schools causing concern](#)
- [Presumption against the closure of rural schools.](#)
- [The Health and Safety Executive Public Register of Convictions](#)
- [The Charity Commission's Register of Charities](#); and
- [The Companies House web check service.](#)



Department
for Education

© Crown copyright 2016

This publication (not including logos) is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

To view this licence:

visit www.nationalarchives.gov.uk/doc/open-government-licence/version/3

email psi@nationalarchives.gsi.gov.uk

write to Information Policy Team, The National Archives, Kew, London, TW9 4DU

About this publication:

enquiries www.education.gov.uk/contactus

download www.gov.uk/government/publications

Reference: DFE-00105-2016



Follow us on Twitter:
[@educationgovuk](https://twitter.com/educationgovuk)



Like us on Facebook:
facebook.com/educationgovuk