

Directors of Childrens' Services, Local Diocesan
Authorities in England, School Organisation Committees
and the Office of the Schools Adjudicator

Direct Line: 01325 391275

Our Ref:SP06_20

31 August 2006

Dear Colleague

- 1. Establishment of New Secondary Schools - New Competition Provisions Effective From 1 September;**
- 2. Nursery School Closures – presumption against closure;**
- 3. Change of School Category to Foundation – Streamlined Process for Community and Voluntary Controlled Primary Schools;**
- 4. Establishment of schools on opposite side of the Welsh Border; and**
- 5. The Education and Inspections Bill**

Secondary School Competitions

Following the consultation on draft regulations and guidance, which closed on 8 May, The Education (New Secondary School Proposals)(England) Regulations 2006 (SI: 2006 No 2139) have been signed and will come into force on 1 September. This follows the Education Act 2005 (Commencement No 2 and Transitional Provisions and Savings) Order 2006 (SI: 2006 No 2129(C70)).

With effect from 1 September 2006 local authorities will be required to hold a competition for any new secondary school, unless the Secretary of State has given his consent to the publication of proposals by a local authority, or other school proposer, under Section 28A of the School Standards and Framework Act 1998 (as amended). Where a local authority is working with sponsors to establish a new Academy they will not have to run a competition – the normal Academy process will apply.

Competitions can be decided by the local authority if theirs is the only proposal published, there are no objections and the proposals are not related to other specified types of proposals. In all other cases the local SOC will decide or, if the SOC cannot reach a unanimous decision, the Schools Adjudicator. A new handbook has been prepared for local authorities, which explains the processes to be followed when establishing a new secondary school. This can be found on the Department's School Organisation website at <http://www.dfes.gov.uk/schoolorg/guidance-view.cfm?ld=60> .

Registered members of the website's Forum will be able to build the first statutory

notice to invite proposals for a competition and will also be able to access standard proformas for the second statutory notice and proposals in response to a competition. A handbook for proposers, who wish to respond to a competition, is currently being finalised. The Guidance to Decision Makers is also being revised to include the factors to be considered by School Organisation Committees (SOCs) and the Schools Adjudicator when deciding competitions. We expect the revised guidance and notice-builder facilities etc to be available on the website by Monday 4 September.

Nursery Schools – Presumption against closure

Following the consultation which closed in May, we are implementing the revised presumption against the closure of nursery schools, for the Decision Makers' Guidance, with effect from 1 September. The revised presumption is at Annex A.

Streamlined Process Foundation Category – Primary Schools

The Education (Change of Category of Maintained Schools)(Amendment)(No.2)(England Regulations 2006 (SI:2006 No. 1507) came into force on 1 August 2006. This extends the streamlined arrangements that apply to community and voluntary controlled secondary schools, to primary schools. This will also enable the governing body to take the final decision on the proposals. The process is as follows:

- a) Consultation;
- b) Publication of statutory proposals;
- c) A four week period for representations;
- d) Decision by the governing body on change of category;
- e) An implementation period to secure a new instrument of governance and a reconstituted governing body if the governing body decide to proceed.

Guidance to school governors on changing category has been amended and is available on the School Organisation website www.dfes.gov.uk/schoolorg - "Streamlined Route to Foundation Status".

Establishment of schools on opposite side of the Welsh Border

Section 69 of the Education Act 2005 is now in force and it is no longer possible for an English local authority to publish proposals to establish a school, which the authority intend to maintain, across the border in Wales. This provision also prevents a Welsh local authority from proposing a new school in England.

The Education and Inspections Bill

We are receiving a number of calls about the current Bill. This will introduce new provisions for school organisation and local decision making, including:

- a requirement to run a competition for a new primary school;
- the abolition of SOCs;
- decisions on statutory proposals to be taken by local authorities but with a power to appeal to the adjudicator in some specific cases;

- the power to publish proposals for a new community school, in response to a competition, to be subject to regulations; and
- provisions relating to Trust schools (i.e. foundation schools with foundations), in particular a new process for existing schools to acquire a Trust.

We currently expect the Bill to get royal assent in November. Following this we intend to consult fully on the detailed draft regulations and guidance. At this stage we cannot predict when the measures might come into force - much will depend upon the outcome of the consultation. However, we recognise that some local authorities are engaged in long term planning activities and would welcome some indication of timing. Ultimately this will be for Ministers to decide but we estimate that the school organisation provisions could come into force from May 2007 and authorities may therefore like to plan accordingly.

Yours faithfully

A handwritten signature in black ink, appearing to read 'C Crathorne', with a long horizontal line drawn through it.

Mrs Chris Crathorne
Team Leader
School Organisation Unit

DECISION MAKERS' GUIDANCE SECTION 1 - REVISED PRESUMPTION AGAINST THE CLOSURE OF A NURSERY SCHOOL

70. In deciding whether to approve any proposals to close a nursery school, the Decision Maker should be aware that nursery schools generally offer high quality provision, and have considerable potential as the basis for developing integrated services for young children and families. There should be a presumption against the closure of a nursery school unless the case for closure can demonstrate that:

- full consideration has been given to developing the school into a children's centre and there are clear, justifiable grounds for not doing so, for example, unsuitable accommodation, poor quality provision and low demand for places;
- plans to develop alternative provision clearly demonstrate that it will be at least as equal to the quantity and quality of early years provision provided by the nursery school with no loss of expertise and specialism; and that
- replacement provision is more accessible and more convenient for local parents.