

Decision Makers Guidance Introduction

Statutory Guidance - Issues to be considered in deciding statutory proposals.

■ INTRODUCTION

1. This guidance explains the procedures for deciding proposals for significant changes to schools, including opening new schools and closing schools. It is set within the context of the Government's overall objectives for educational reform and transformation. It is designed for those deciding proposals - School Organisation Committees (SOCs) and Schools Adjudicators. It is also designed for reference by those bringing forward proposals - Local Authorities (LAs), promoters of new schools and governing bodies so that they understand how their proposals will be considered and decided. This guidance excludes changes that will flow from the Government's White Paper - Higher Standards, Better Schools for All – which require primary legislation.

2. The term "Decision Maker" is used in this section to indicate both the SOC and Schools Adjudicator, who must both have regard to the statutory guidance when making their assessments and decisions. Where a point applies only to one or the other, they will be named.

■ Scope and purpose of this guidance

3. Significant changes in the organisation of schools may not be made without the publication and approval of statutory proposals. This guidance explains how proposals should be considered and decided. It should not be treated as exhaustive, nor as a complete and authoritative statement of the law. The guidance is in two parts: the Secretary of State's **statutory guidance**, to which those concerned are required by legislation to have regard, and **non-statutory guidance**, which is designed to inform people about any legal requirements and good practice. Further guidance on procedures and assistance is also available on the School Organisation Website at www.dfes.gov.uk/schoolorg.

■ Role of School Organisation Committees

4. A School Organisation Committee is an independent statutory body set up to decide statutory proposals for changes to schools. It consists of 5 groups: the Local Education Authority, Church of England and Roman Catholic dioceses for the area, schools, and the Learning and Skills Council. A sixth group can be added to cater for particular local interests. If the Committee cannot agree unanimously, proposals are decided by an independent Schools Adjudicator.

■ Local Authority Determinations

5. Proposals by the local authority must normally be decided by them if there are no objections, or the objections are withdrawn in writing within the representation period. If the proposals are related to proposals which must be decided by the SOC, or to proposals published by the LSC, the LA may not decide the proposals – see Section 3 of this guidance. In some cases it may be necessary to make the approval of proposals conditional (e.g. on the acquisition of a site for a new school), and local authorities cannot approve proposals conditionally. If a conditional approval is necessary, the local authority may refer proposals to the School Organisation Committee for decision.

■ STATUTORY GUIDANCE

6. Sections 1 to 4 give the Secretary of State's statutory guidance to local authorities, School Organisation Committees and Adjudicators. It is issued under section 28(5), 29(4) and 31(4) of and paragraphs 3(4)(a), 3(7)(b) and 4(4) of Schedule 6 to the School Standards and Framework Act 1998, section 70(7) of the Education Act 2002 and regulation 13 of the Education (Additional Secondary School Proposals) Regulations 2003 .

7. **Section 1** gives the policy background and general guidance on particular issues. **Section 2** lists factors which need to be taken into account in considering proposals for specific changes, bearing in mind the policy and general guidance. The weight to be given to particular factors in each case is for the Committee or Adjudicator to decide. This guidance is not exhaustive and all proposals should be decided on their individual merits. **Section 3** contains guidance on consideration by the LA of whether any statutory proposals made by them may be decided by them or must be decided by the School Organisation Committee; proposals that cannot be decided by the SOC as they are “related” to LSC proposals and on consultation including who must be consulted on proposals. **Section 4** gives additional statutory guidance on special educational needs provision.

8. **Section 5** provides supplementary non-statutory guidance on community cohesion. **Section 6** provides non-statutory procedural guidance for School Organisation Committees.

■ The changing context

9. The Five Year Strategy for Children and Learners and the White Paper - Higher Standards, Better Schools for All - set out the Government’s commitment to secure greater choice for parents and pupils. They reiterated the commitment to increase diversity of secondary school provision and encourage the expansion of successful and popular schools so that more parents may send their children to the best schools.

10. The Education Act 2002 introduced specific modifications to the statutory proposal system with a view to promoting greater diversity and choice, including the requirement for a competition when a local authority wished to publish proposals for an additional secondary school.

11. Regulations flowing from The Education Act 2005, effective from September 2006, extends the requirement for a competition for new secondary schools to all circumstances where proposals for a new secondary school are required, including amalgamations of schools and wider reorganisations. These include proposals for schools by promoters as well as local authorities. Upon application from an authority or promoter, however, the Secretary of State may agree that a competition need not take place. Further details are given in paragraph 20 of this Guidance and in the ‘Handbook for local authorities establishing new secondary schools’.

■ LSC Proposals

12. Proposals to reorganise school sixth forms may also be brought forward by the Learning and Skills Council. These proposals will be decided by the Secretary of State. Proposals by the LSC to close inadequate school sixth forms are decided by SOCs or the schools adjudicator.

■ School Organisation Planning

13. From March 2005 local authorities are no longer required to produce a statutory School Organisation Plan. They nonetheless continue to have a statutory responsibility for ensuring that there are sufficient schools to meet local population needs and will therefore continue detailed operational planning with their partners. From April 2006 authorities must have a Children and Young People’s Plan (CYPP) in place which will encompass all children’s services including school organisation. The Department expects that the CYPP will be supported by more detailed operation plans although these will be non-statutory.

Decision Makers Guidance Section 1

Statutory Guidance - Issues to be considered in deciding proposals.

■ Standards

1. The Secretary of State wishes to encourage changes to local school provision which will boost standards and opportunities for young people, while matching school place supply as closely as possible to pupils' and parents' needs and wishes. Decision Makers should assess proposals in the light of these overall criteria, and the specific further considerations set out in this guidance. The Decision Maker may wish to consider whether the proposals are consistent with the Children and Young People's Plan for the area, where such a plan is required, but if they are not consistent they should not reject the proposals solely on these grounds.
2. The Government aims to transform the opportunities open to pupils in secondary education, and greater diversity and innovation have a key role to play in this, with each school developing its own ethos and sense of mission and being encouraged to develop a centre of excellence or specialism. Every school should have an incentive to improve, have effective leadership and management, and collaborate with other schools.
3. The Government wants to use the best schools to lever up standards across the system. This may be by enabling successful and popular schools to expand, or by encouraging a range of collaborative arrangements by which successful schools can share their management and other expertise with less successful schools. Decisive action must be taken to deal with failing schools.
4. In considering standards issues, the Decision Maker should also take account of recent reports from Ofsted or other inspectorates, the autumn package of performance data, and any other performance data. The LAs and others bringing forward proposals should justify them specifically in terms of their impact on standards.

■ Curriculum

5. The Decision Maker must also be satisfied that the proposals are consistent with delivery of a broad and balanced curriculum to the pupils involved.

■ Proposals involving schools in special measures and those causing concern

Powers of Intervention

6. The categories of schools causing concern are defined in sections 14-19 of the Schools Standards and Framework Act 1998, as amended by sections 54-59 of and Schedule 5 to the Education Act 2002. Further information on these categories and the relevant follow-up procedures can be found in the DfES guidance on schools causing concern. This legislation is being consolidated and extended within the Education and Inspections Bill currently before Parliament. In addition the Department is currently consulting on new draft statutory guidance in this area, and details are available at <http://www.standards.dfes.gov.uk/sie/si/SCC/>
7. All maintained schools causing concern should receive intensive support from their LA.
8. The Education Act 2005 (section 44), changes the definition of a school in special measures and a new category - significant improvement - replaces previous Ofsted categories of serious weaknesses, inadequate sixth form or underachieving (a non-statutory category). Before reaching a judgement that a school requires special measures, Ofsted inspectors must now take into account a school's capacity to improve. A school that is not considered to need special measures but is nevertheless not performing as well as it should be, may be given a notice to improve. These changes came into force with new inspection arrangements in September 2005. Schools judged to require special measures, to have serious weaknesses, an inadequate sixth form or to be underachieving under the arrangements in place until the end of July 2005 will be re-inspected two years after their designation. Under the new arrangements schools that are made subject to special measures will continue to receive termly monitoring visits; those requiring significant improvement

will be re-inspected after one year. However, Ofsted will from September 2006 be trialling a system whereby schools requiring significant improvement will receive one monitoring visit, around 8 months after the initial inspection that made the judgement, to see what progress the school is making in advance of the re-inspection.

9. When considering the closure of any school causing concern and the expansion of other schools in the area, LAs should take into account the popularity with parents of alternative schools.

10. "Fresh start" proposals are normally designed to replace a school that is subject to special measures, needs significant improvement or is subject to a warning under section 15 of the School Standards and Framework Act 1998. The proposals for both the closure of the school and the opening of the new school on the same site should be submitted in parallel and should be considered together. In such cases there should be a presumption to approve both proposals. When considering the approval of a Fresh Start proposal, the Decision Maker should check that the places the new school will provide are needed.

11. DfES has put in place a programme to support Fresh Start schools. In order to qualify for support under this programme, the Fresh Start proposal will need to be endorsed by Ministers. Such endorsement will of course depend on approval of the statutory proposals relating to the Fresh Start. However, in exceptional circumstances Ministers may decide not to endorse a Fresh Start proposal after the associated statutory proposals have been approved. In such circumstances, the new school will neither qualify for support from the Fresh Start support programme, nor be recognised nationally as a "Fresh Start" school. "Collaborative restart" is a variant of Fresh Start and federation, involving closure/reopening of a failing school in a strong partnership with another local school. It therefore comes under exactly the same decision making regime as Fresh Start.

12. For all closure and Fresh Start proposals involving schools causing concern, copies of the Ofsted monitoring letters for the relevant schools should be made available. The Decision Maker should have regard to the length of time the school has been on special measures, needed significant improvement or otherwise caused concern, the progress it has made, the prognosis for improvement, and the provision of places at neighbouring schools. Where the Decision Maker is presented with proposals to close schools in special measures or otherwise causing concern, they should start from the presumption that these should be approved, subject only to checking that there will be sufficient accessible places of an acceptable standard available in the area to meet foreseeable demand and accommodate the displaced pupils.

13. Where a school is to be closed so that it may be amalgamated with a more successful and popular school, the Decision Maker should again normally approve these proposals, subject to evidence being provided by the LA and other interests that the development will have a positive impact on standards.

14. From September 2006, Fresh Start or Collaborative Restart proposals for secondary schools can only go forward without a competition if the Secretary of State has consented under section 28A (1) of the School Standards and Framework Act 1998, as inserted by section 65 of the Education Act 2005.

Secretary of State's power to direct closure

15. Section 19 of the School Standards and Framework Act 1998 as substituted by section 45 of the Education Act 2005, gives the Secretary of State the power to direct an LA to close a school requiring special measures. Such a direction would not be subject to the agreement of the School Organisation Committee or Schools Adjudicator. However, they may be required to consider proposals for the opening of a new school or for alterations as a consequence of the directed closure. There should be a presumption to approve the consequential proposals.

Proposals other than closure or Fresh Start

16. These should be dealt with as quickly as possible, and the Decision Maker should have regard to the impact the proposals may have on the school's ability to take forward its action for recovering from special measures, removing serious weaknesses or no longer requiring significant improvement.

■ Creating Additional Places (in existing schools or by new schools)

17. Where proposals will provide additional places, the Decision Maker should consider whether they are needed. In considering need, the Decision Maker should take into account not only the existence of spare capacity in neighbouring schools, but also the quality and popularity with parents of the schools in which spare capacity exists and evidence of parents' aspirations for a new school or their support for expansion of an existing school. The existence of surplus capacity in neighbouring less popular or successful schools should not in itself prevent the addition of new places. In considering proposals for additional places, the Decision Maker must take account of the impact which proposals will have on the standards of provision. Where proposals add to surplus capacity (either by adding places at existing schools or creating new schools) but there is a strong case for approval on parental preference and standards grounds, the presumption should be for approval. The LEA in these cases will need to consider parallel action to remove the surplus capacity thereby created.

■ School Size

18. Decision Makers should not make blanket assumptions that schools need to be of a certain size before they can be good schools (although the cost-effectiveness of proposals should continue to be one of the factors taken into account). All proposals should be considered on their individual merits.

■ New schools

19. Any organisation, association or individual willing to meet the conditions associated with being in the maintained sector, may publish proposals to set up a new maintained school. The Government wishes to encourage the widest possible range of promoters with a contribution to make to educational standards and diversity to come forward – including parent and community groups, private and charitable companies, voluntary groups including church and faith communities, those offering distinctive educational philosophies, existing schools or consortia of schools. All proposals, from whatever source, must be considered on the basis of their educational merits, the extent of parental demand for the places and what they have to offer the local community.

■ Establishing a new secondary school

20. With effect from 1 September 2006 a new statutory framework applies for the establishment of any new secondary school – whether it is to be a brand new school or to replace an existing school. Where a local authority wishes to see a new secondary school established it must either:

- a. invite proposals for such a school as provided for under section 66 of The Education Act 2005 and regulation 3-6 of The Education (New Secondary School Proposals) (England) Regulations 2006. The process is generally referred to as “secondary school competitions”. This is expected to be the route by which most new secondary schools will be established; OR
- b. apply to the Secretary of State for permission to publish proposals for a new secondary school, without running a “competition” as provided for in section 28A of the School Standards and Framework Act 1998, as inserted by section 65 of The Education Act 2005.

21. Where proposers – other than a local authority wish to establish a new secondary school, they must also apply to the Secretary of State for permission to publish proposals for a new secondary school, without running a “competition” as provided for in section 28A of the School Standards and Framework Act 1998. There is no provision for proposers other than LAs to hold competitions.

22. It is important to note that the Secretary of State may only give consent to **publish** proposals. Where consent is granted, the normal statutory process must be followed i.e. Consultation; Publication; Representations and Decision.

■ Proposed admission arrangements – new schools

22A. The Decision Maker should confirm that the admission arrangements proposed comply with the provisions of the School Admissions Code of Practice (Note: under the provisions in the Education and

Inspections Bill this is to be replaced by the School Admissions Code). Where the admissions arrangements are unsatisfactory the proposals should normally be rejected. However, where the Decision Maker would otherwise have been minded to approve the proposals, the Decision Maker should consult the proposer on a proposed modification to the proposals in order that the proposed admission arrangements comply with the Code of Practice.

■ Academies

23. Academies are publicly-funded independent schools established in partnership with business and voluntary sector sponsors. They normally replace one or more schools facing challenging circumstances or will be set up to meet a need for new school places. Academies may be established in rural as well as urban areas. All Academies should contribute to a strategic approach to diversity in their area. The involvement of business and other non-Government partners will enable Academies to develop and implement new approaches to teaching and learning in order to raise standards and promote innovation. All Academies will be required to share their facilities and expertise with other local schools and the wider community.

24. Statutory proposals are not required for the establishment of an Academy – an Academy may be proposed to replace an existing school or schools or may be proposed in response to a secondary school competition. The legal basis for Academies is section 482 of the Education Act 1996, which provides for the Secretary of State to enter into funding agreements with persons undertaking to establish and maintain specific types of independent school. Where an Academy is to replace an existing school or schools, however, the proposals for the closure of those schools should indicate whether pupils currently attending the schools will transfer to the Academy and, if appropriate, what arrangements will be made for pupils who are not expected to transfer.

25. All proposals in response to a secondary school competition will be considered together on their merits. The SOC must consult the Secretary of State to seek a written statement on whether he would be willing to commence negotiations with a view to entering into an agreement for the establishment of an Academy before taking a decision on a competition which includes any proposals for an Academy. All other statutory proposals for changes to maintained schools relating to the establishment of an Academy should be considered together. If provision for pupils at a school proposed for closure is dependent on the establishment of an Academy, any approval of the closure proposals should be conditional upon the making of an agreement for an Academy, but there should be a general presumption in favour of approval.

26. It should be noted that the SOC must consider proposals made by an LA where there are no objections, as the LA do not have the power to make their determination conditional on the making of an agreement for a new Academy.

■ Expansion of Successful and Popular Schools

Secondary Schools

27. The Government is committed to ensuring that every parent can choose an excellent secondary school for their child. The DfES Five Year Strategy document accordingly laid out a range of proposals for increasing the supply of successful secondary schools. One proposal was to support and make easier the expansion of successful and popular secondary schools.

28. The process for the expansion of secondary schools has now been shortened to less than twelve weeks (for proposals which are not referred to the school adjudicator). Governors of all categories of secondary school have the power to publish proposals to increase their intake and the size of their school. And up to two representatives of any governing body that is the subject of expansion proposals are entitled to attend the School Organisation Committee (SOC) meeting which is considering the proposals in order to make their case. In addition, where proposals by a governing body to expand are rejected by the SOC, that governing body now has the right to refer those proposals to the Adjudicator to decide.

29. LAs and school governing bodies may apply to the Department for capital assistance with the work needed for the expansion of secondary schools (other than grammar schools) – more information is available at <http://www.teachernet.gov.uk/management/resourcesfinanceandbuilding/funding/capitalinvestment/typesoffu>

nding/successfulandpopular/. Funding will only finally be made available if the proposals are approved by the SOC or the Adjudicator.

General

30. When there is a need or demand to expand school provision, LAs and Governing Bodies should take account of the wishes of parents in deciding which schools should expand. The Secretary of State also wishes to encourage LAs to reorganise provision in order to ensure that places are located where parents want them. For the purposes of this guidance, the Secretary of State is not proposing any single definition of a successful and popular school. It is for the Decision Maker to decide whether a school is successful and popular, however, the following indicators should all be taken into account:

The school's performance

- in terms of absolute results in key stage assessments and public examinations
- by comparison with other schools in similar circumstances (both in the same LA and other LAs)
- in terms of value added
- in terms of improvement over time in key stage results and public examinations.

The numbers of applications for places

- the Decision Maker should also take account of any other relevant evidence put forward by schools.

31. The strong presumption is that proposals to expand successful and popular schools should be approved. In line with the Government's long-standing policy that there should be no increase in selection by academic ability, this presumption does not apply to grammar schools.

32. The existence of surplus capacity in neighbouring less-popular schools should not in itself be sufficient to prevent this expansion, but if appropriate, in the light of local concerns, the Decision Makers should ask the LA how they plan to tackle any consequences for other schools. The Decision Maker should only turn down proposals for successful and popular schools to expand if there is compelling objective evidence that expansion would have a damaging effect on standards overall in an area, which cannot be avoided by LA action.

33. Before approving proposals the Decision Maker should confirm that the admission arrangements of schools proposed for expansion fully meet the provisions of the School Admissions Code of Practice (Note: under the provisions in the Education and Inspections Bill this is to be replaced by the School Admissions Code). Although the Decision Maker may not modify proposed admission arrangements, the proposer should be informed that proposals with unsatisfactory admissions arrangements are unlikely to be approved, and given the opportunity to revise them in line with the Code of Practice. Where the local authority, rather than the governing body, is the admissions authority, we will expect the authority to take action to bring the admission arrangements into line with the School Admissions Code.

■ Balance of denominational provision

34. In deciding proposals to close or reduce the capacity of a Church of England or Roman Catholic school, the decision maker should consider the effect that this will have on the balance of denominational provision in the area. Parental demand and the standards of the school must be taken into account.

35. The Adjudicator should not normally approve proposals for the closure of a Church of England or Roman Catholic school where the relevant church SOC group has voted against its closure and it is clear that the closure, together with any related changes, will reduce the proportion of such denominational places

within the authority's area. The exception would be where the school is severely undersubscribed or standards are low.

■ Surplus Places

36. It continues to be important that education is provided as cost-effectively as possible. Empty places can represent a poor use of resources. LAs with high levels of surplus are encouraged to take action to remove surplus places where schools have a quarter or more of their places unfilled and at least 30 surplus places. However, standards at the schools also need to be taken into account, as well as geographical and social factors, such as population sparsity in rural areas, and the effect on any community use of the premises (see paragraph 60).

37. As noted in paragraphs 17, 30 and 32 above, the Secretary of State wishes to encourage LAs to organise provision in order to ensure that places are located where parents want them. LAs should take action to remove empty places at schools that are unpopular with parents and which do little to raise standards. The removal of surplus places must always support the core agenda of raising standards and respect parents' wishes by seeking to match school places with parental choices.

■ Finance

38. The Decision Maker must be satisfied that any capital required to implement the proposals will be available (paragraph 3(4) of Schedule 6 to the SSFA 1998). Normally, this will be some form of written confirmation from the source of funding on which the promoters rely. In the case of a local authority, this may be from an authorised officer within the Authority.

39. There can be no assumption that the approval of proposals 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 that any allocation "in principle" can be increased. In such circumstances the proposals should be rejected, or consideration of them deferred until it is clear that the capital necessary to implement the proposals will be provided.

40. Proposals must not be approved "conditionally" upon funding being made available but with two specific exceptions – those being funded under the Private Finance Initiative (PFI) or the Building Schools for the Future programme (BSF). For proposals being funded under PFI and BSF schemes the Decision Maker must be satisfied that funding has been agreed "in principle" but it should set a condition of its approval (see Decision Maker's Guidance Section 6 - paragraph 28 (e) and (f)). This protects proposers so that they are not under a statutory duty to implement the proposals until the relevant contracts have been signed and/or funding is finally released.

41. The Decision Maker will need to be satisfied that the proposals represent a cost-effective use of public funds. The proposed areas and costs should be in line with the Department's guidelines. Decision Makers should confirm that promoters/proposers have referred to the Department's school building design guidance - area guidelines for schools is available in Building Bulletin 98 (Briefing Framework for Secondary School Projects), Building Bulletin 99 (Briefing Framework for Primary School Projects) and BB77 for special schools. Cost information is available in 'Education Building Projects: Information on Costs and Performance Data'. Where costs/areas are not in line with the guidelines the promoters/proposers should provide a satisfactory explanation and in cases of doubt Decision Makers could seek specialist advice from professional building consultants.

42. Implementation of proposals may depend on capital receipts from the disposal of land previously used for the purposes of a community school. Those bringing forward proposals and the Decision Maker should therefore assure themselves that any necessary consent for disposal of the land under paragraph 2 of Schedule 35A to the Education Act 1996 has been received from the Secretary of State. Consent is also necessary for the disposal by foundation or voluntary schools of any publicly funded land and buildings under Schedule 22 of the SSFA 1998.

43. The prior agreement of the Secretary of State will also be needed where it is proposed that capital should be raised from the disposal of school playing fields (details are given in DfES Guidance 1017 - 2004 The Protection of School Playing Fields and Land for Academies published in November 2004). Proposals

dependent on disposal of land for their implementation may not receive full approval until consent for their disposal has been received. Proposals may, however, be approved conditionally under Regulation 9 of the Education (School Organisation Proposals) (England) Regulations 1999 conditional upon the acquisition of a site or playing fields.

■ **New Voluntary Aided School – Promoter liabilities**

44. For proposals for a new voluntary aided school the Decision Maker must have a statement (Form 18), signed by the promoters, that provides evidence that the Governing Body will be able to meet their financial responsibilities for all future building work.

■ **Views of Interested parties**

45. The Decision Maker must consider the views of all those affected by the proposals or who have an interest in them including parents, residents, pupils, staff, other schools and colleges, diocesan bodies and other providers, LAs, the LSC (where proposals affect 14-19 provision) and the Early Years Development and Childcare Partnership or any local partnership that exists in place of an EYDCP (where proposals affect early years provision). This includes statutory objections and comments submitted during the representation period (and before proposals are accepted as valid the Decision Maker will need to be satisfied that the legal requirement to consult has been met).

■ **Community cohesion and race equality**

46. The Government wants to promote ethnic, religious and cultural tolerance and respect between different groups of people living and working together. Tensions can grow where ethnic groups have segregated themselves from each other - whether by choice or circumstance - in housing, work, leisure and education. The Government is therefore committed to improving community cohesion: the uniting of people of different races, cultures and faiths in a common sense of belonging and pride in a shared civic identity. The areas which appear to be most successful in uniting different communities are those which combine an emphasis on shared values and common citizenship with a positive approach to celebrating diversity.

47. To realise the benefits of our multi-cultural society there is a need for positive action to promote community cohesion. Schools have a key part to play in this by providing opportunities for young people from different backgrounds to learn from each other; by encouraging, through their teaching, an understanding of, and respect for, other cultures and faiths; and by activities in the community which help to build bridges between different ethnic groups.

48. When considering proposals for new schools the Decision Maker must consider whether the proposals will help to promote community cohesion. This will need to be considered on a case by case basis, taking account of the community that the new school will serve and the views of different sections within the community. There is no single model of school inclusiveness which can be applied to all circumstances - prime consideration should be the needs of the particular local community. Examples of matters which the Decision Makers might consider are: how the school proposes to meet its statutory duty to promote racial equality, how it will encourage good citizenship, if the school is to have a religious character how it will deliver RE both in its own faith and other faiths, how it will address ethnic minority achievement issues and the needs of bi-lingual learners, if it has a religious character whether it will give priority to pupils of other faiths/denominations or to a specified group of applicants regardless of faith/denomination and its plans for partnership working with other schools. Some examples of partnership working are set out in Section 5

49. Promoters of new schools must include in their proposals information about how the school will tackle religious, racial and cultural division, and contribute to well-being across the community. Where proposed new maintained schools already exist as independent schools, information about what they are already doing and contributing will also be relevant.

50. The Decision Maker will need to consider the views of the local community, the commitment of the new school promoters and their own assessment of the robustness of the proposed means for achieving inclusiveness. Proposals for new faith schools should be judged on the same basis as proposals for other schools. The Local Government Association's Guidance on Community Cohesion should also be referred to by those drawing up proposals for changes in school organisation. Proposals should be prepared against

the background of the initiatives and documents referred to in that guidance, including the Local Strategic Partnership's community strategy.

51. The Decision Maker must ensure that a proposed school does not intend an admission policy which would disadvantage pupils such as Gypsy and Traveller pupils and asylum seeker pupils where the need to provide for such pupils is likely to arise.

■ Accessibility

52. Difficulties with transport can prevent people participating in learning or restrict their choice of the quality, subject matter or type of learning they attend. In considering proposals for the reorganisation of schools, Decision Makers should satisfy themselves accessibility planning has been properly taken into account that e.g. in cases such as school closures and the location of new schools. Facilities are to be accessible by those concerned and disadvantaged groups not disadvantaged further, particularly by the cost or availability of transport to places of learning

■ Equal opportunity issues

53. The Decision Maker must 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. In considering proposals for an existing independent school to become maintained the Decision Maker must be satisfied that if the school is co-educational it will provide equal opportunities for boys and girls.

■ Rural schools and sites

54. In considering statutory proposals to close a rural school, the Decision Maker should have regard to the need to preserve access to a local school for rural communities. There is therefore a presumption against the closure of rural schools. This does not mean that no rural school should ever close, but the case for closure should be strong and the proposals clearly in the best interests of educational provision in the area. In order to assist the SOC, those proposing closure must provide evidence to the SOC to show that they have carefully considered:

- The transport implications of rural school closures, including the welfare and safety of the children, the recurrent cost to the LA of transporting pupils to a school further away, the quality and availability of transport links to the alternative provision, the effects on road traffic congestion, and the environmental costs of pupils travelling further to schools.
- The overall and long term impact on local people and the community of closure of the village school and of the loss of the building as a community facility.
- Alternatives to closure including the potential for federation with another local school to increase the school's viability; the scope for Extended School or children's centre status to provide local community services and facilities e.g. child care facilities, family and adult learning, healthcare, community internet access etc.

55. It is the responsibility of the Decision Maker to decide whether a school is to be regarded as rural for the purpose of considering proposals for closure under this guidance and in particular the presumption against closure. The Department's register of schools - Edubase - includes a rural/urban indicator for each school in England based on an assessment by the Office for National Statistics. The Decision Maker should have regard to this indicator. Where a school is not recorded as rural on Edubase, the SOC may nonetheless wish to consider evidence provided by interested parties that a particular school should be regarded as rural. The Office for National Statistics have introduced new rural/urban indicators, and may be prepared to advise in cases of doubt, as may the Countryside Agency.

56. Where a school is situated on more than one site, proposals are required to close one of the sites if any of the other sites is a mile or more away from it. The Decision Maker should take into account the same sort

of factors in deciding whether to approve the closure of one of the sites of a rural school, and there is a presumption against their closure also, particularly where schools have recently been amalgamated and there has been an understanding that education would continue on the site.

■ **Travel to School**

57. In deciding statutory proposals, the Decision Maker should bear in mind that proposals should not have the effect of unreasonably extending journey times or increasing transport costs, or result in children having to negotiate significant barriers such as railway lines or major roads. Proposals should also be considered against Government objectives to reduce traffic congestion and promote alternatives to the car through the School Travel Planning process

58. When considering proposals to close a school in a deprived area, Decision Makers should have particular regard to the transport arrangements proposed by those bringing forward proposals, the quality of the transport links between the communities served by the school and the site of the alternative provision, and the possible effect of the proposed arrangements on pupil unauthorised absence and staying-on post-16.

■ **Extended schools**

59. As part of the Every Child Matters agenda to improve outcomes for all children the Government wants all schools to provide access to a core offer of extended services by 2010, with half of all secondary schools and a third of all primary schools doing so by 2008. The Government's vision for extended schools is set out clearly in the Extended Schools Prospectus available at www.teachernet.gov.uk/extendedschools. The core offer will comprise of: 8am-6pm childcare/varied menu of interesting activities all year round; parenting support including family learning; swift and easy referral to a range of specialist support services; and community access to the school's sports, arts and ICT facilities including adult learning. Where the provision of extended services are a feature of proposals (e.g for a new school) this should strengthen the case for their approval.

■ **Impact on Community**

60. In some areas, a school may already be a focal point for family and community activity, and its closure may have wider social ramifications. It may also provide extended services for a range of users. In considering proposals for the closure of such schools, the effect on families and the community should be considered. The information presented by those bringing forward proposals to close such schools, particularly when they are in receipt of funding as part of regeneration activity, should therefore show evidence that options for maintaining community facilities in the area have been considered. The views of other relevant agencies and partnerships with responsibility for community and family services should be taken into account, alongside those of the local police, Government Offices and Regional Development Agencies having responsibility for the New Deal for Communities.

■ **Foundation body**

61. Foundation and Voluntary schools may establish foundation bodies to be responsible for the land and assets of a group of schools. Proposals may therefore include a reference to plans to establish a new foundation body or join an existing body. Where the proposals include a reference to the need to establish a new foundation body, an approval should be conditional upon the Secretary of State approving the establishment of that body by a certain date.

■ **Federation of schools**

62. Schools may become federated under a single governing body. Where proposals for a new school include plans for a new federation, or to join an existing federation, any approval should be conditional upon the school being accepted into the federation or the federation coming into being by a certain date.

■ **School playing field issues**

63. The Education (School Premises) Regulations 1999 set out the standards for school premises, including minimum areas of team game playing fields to which schools must have access. Decision Makers should satisfy themselves that the proposals include provision that ensures that these standards are met unless the Secretary of State has agreed exceptionally to a relaxation in their case.

■ Land tenure arrangements

64. For new voluntary aided schools it is desirable that a trust holds the freehold interest in the site. Sites of certain voluntary schools are held on diocesan general trusts, or by religious orders on their general trusts and these arrangements may apply to new schools. Other arrangements can provide for sites to be held on specific trust for the purposes of the school. Where there are no existing established arrangements, promoters of new schools should consider creating a specific trust.

65. Where the trustees of the proposed VA school hold or will hold a leasehold interest in the site, the Decision Maker will need to be assured that the arrangements provide sufficient security for the school. A leasehold interest under a specific trust would do so where the lease is for a substantial period - normally at least 50 years - and where it avoids clauses which would allow the leaseholder to evict the school before the termination of the lease. The lease should also avoid provisions which would obstruct the governing body or the headteacher in the exercise of their functions under the Education Acts, or place indirect pressures upon the funding bodies.

66. The Department will consider the land tenure arrangements in deciding whether grant-aid can be offered in principle for the establishment of a new VA school. The Department will offer advice as necessary to the promoters on how far the proposed arrangements are acceptable and this advice can be made available to the Decision Maker. For proposals to change a school's category to VA the SOC will need to refer to details of proposed land tenure in the prescribed information to satisfy itself that proposed arrangements are satisfactory.

67. Promoters of new foundation or voluntary controlled schools, and any governors seeking a change of category to such, should discuss their land tenure arrangements with the LA. The LA should provide assurance to the SOC that land tenure arrangements will be satisfactory.

■ Independent schools

68. If the proposal is from an existing independent school the Decision Maker will need to consider whether the school has, or would have, a range of suitable staff to meet the school's needs, including teachers with qualified teacher status, and whether the premises will be suitable for the purpose of a maintained school.

■ Early Years provision

69. In considering any proposals involving changes in early years provision, the Decision Maker should consider whether the proposals will integrate pre-school education with childcare services and/or with other services for young children and their families; and should have particular regard to the views of the Early Years Development and Childcare Partnership.

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.

71. In deciding whether to approve any proposals to close a nursery class, the Decision Maker should consider whether the alternative provision will maintain or enhance the standard of education provision. Alternative provision could be with providers in the private or voluntary sectors.

■ Infant class sizes

72. Local education authorities and schools have a legal duty to ensure that no infant class of 5, 6 and 7 year olds with a single teacher contains more than 30 pupils (apart from a few very limited exceptions, which relate to children with special needs or those offered places outside the normal admissions round). Before approving any statutory proposal affecting infant classes, the Decision Maker should ensure that its implementation will not compromise the Authority's ability to meet the class size limit.

■ 14-19 provision and collaboration

73. The Government has published proposals to develop 14-19 as a coherent phase of education in which young people remain committed to continuing learning after the age of 16. To that end, it wants young people to be able to choose from a broad range of general and vocational options from the age of 14 and to be able to progress through learning at a pace that is right for them. Where necessary, it expects that this should be achieved through increased collaborative working between local providers, including schools, colleges, training providers and employers.

74. Where a proposal relates to provision for 14-16 year-olds, the Decision Maker should consider the extent to which it will extend the range of options available to students in this age group and enhance the opportunities for collaboration between relevant local providers.

■ 16-19 schools

75. The Learning and Skills Act 2000 allowed the establishment of maintained schools which provide full-time education suitable for the requirements of pupils over compulsory school age but do not provide education suitable for the requirements of pupils of compulsory school age. Arrangements for the publication of proposals for the establishment of 16-19 schools are broadly as for other maintained schools.

■ 16-19 Provision - General

76. The Learning and Skills Act 2000 entitles all 16-19 year olds to further education and training. Schools and colleges must offer high quality provision that meets the diverse needs of all young people, their communities and employers. 16-19 provision should be organised to ensure that, in every area, young people have access, within reasonable travelling distance, to high-quality learning opportunities across schools, colleges and work-based training routes.

77. In September 2003 Ministers set out their **five key principles** for the reorganisation of 16-19 provision, following requests from partners (including LSC and LAs) for more clarity on Government expectations. Decision Makers should therefore consider all proposals for changes to 16-19 provision in the context of these principles.

78. Details of the five key principles can be found in 'Principles underpinning the organisation of 16-19 provision' booklet - <http://www.teachernet.gov.uk/docbank/index.cfm?id=5233>. Briefly they are:

- quality - all provision for all learners should be high quality, whatever their chosen pathway;
- distinct 16-19 provision - all young people should be attached to a 16-19 base which will meet the particular pastoral, management and learning needs of this age group;
- diversity to ensure curriculum breadth – well-managed collaboration between popular and successful small providers will enable them to remain viable and to share and build on their particular areas of expertise;

- learner choice – all learners should normally have local access to high quality 16-19 provision in a range of settings and any proposals for change to this provision should take into account the views of all stakeholders;
- affordability, value for money and cost effectiveness - proposals for change should include how any capital and recurrent costs and savings will lead to improved educational opportunities.

■ ADDITION OF SIXTH FORMS BY “HIGH-PERFORMING” SCHOOLS

79. There should be a strong presumption in favour of the approval of proposals for a new sixth form where:

- The school is a high-performing specialist school that has opted for a vocational specialism; or
- The school, whether specialist or not, meets the criteria for “high performing”, and does not require capital support.

80. Where a new sixth form is proposed by a specialist school that has met the “high performing” criteria and which has opted for a vocational specialism, capital funding will be made available from the new 16-19 Capital Fund. Specialist schools wishing to apply to the 16-19 Capital fund should contact the Learning and Skills Council.

81. There should also be a strong presumption in favour of proposals for a new sixth form where the school, whether specialist or not, is assessed as meeting the DfES criteria for “high performing” and does not require additional capital resources.

82. The presumption will apply to proposals submitted to the SOC within:

- 12 months from the date a school commences operation with vocational specialist status; or
- 12 months from the date a school is informed that it meets the DfES criteria for “high performing”;

whichever is the latest. [NOTE: “submitted to the SOC” above refers to when proposals and representations are with the SOC, following the end of the representation period.]

83. Schools wishing to open a sixth form under these circumstances should consult and publish its proposals as soon as possible. The school should ensure that, in forwarding its proposals to the local school organisation committee, it provides a copy of the notification from the DfES that it meets one of the criterion in paragraph 79 above.

84. It is important that any new school sixth form works in partnership with other providers to ensure young people have access to a wide range of learning opportunities. In assessing proposals from “high performing” schools to add a sixth form, decision-makers should have regard to the importance of collaborative working.

85. “High performing” schools seeking to add sixth forms are subject to the same special procedures as secondary schools seeking to expand. The following timetable will therefore apply.

Stage of process	New timeframe
Period for objections and comments	4 weeks
Period by which the LEA must pass comments to SOC together with its own comments and views on the comments of others.	2 weeks
Period after which the governing body of the school concerned can ask for the proposal to be referred to the school adjudicator	6 weeks

86. In addition, the governing bodies of all secondary schools bringing forward proposals to add sixth forms will be able to attend the School Organisation Committee meeting at which their proposals are to be discussed and make representations. They will also be able to appeal to the Adjudicator if their proposals are rejected by the SOC.

■ LSC proposals to close inadequate 16-19 provision

87. The Learning and Skills Act 2000 (as amended by the Education Act 2005) gives the Learning and Skills Council (LSC) powers to propose the closure of sixth forms requiring significant improvement at all categories of school (by proposing to change the school's age range to stop at 16); and to propose the closure of a 16-19 school placed in special measures or requiring significant improvement of whatever category, including special schools.

88. A sixth form is deemed to require significant improvement if Ofsted judges that it is failing to give students an acceptable standard of education, or in relation to its provision for pupils over compulsory school age the school is performing significantly less well than it might in all circumstances reasonably be expected to perform. A 16-19 school may require special measures if the school is failing to give its pupils an acceptable standard of education and the persons responsible for leading, managing or governing the school are not demonstrating the capacity to secure the necessary improvement in the school. A 16-19 school may require significant improvement if although not requiring special measures it is performing significantly less well than it might in all circumstances reasonably be expected to perform.

89. The LSC powers to close are triggered only where, having had two consecutive adverse reports from Ofsted, a school has failed to turn its 16-19 provision round. Where the sixth form is proposed for closure there should be a presumption to approve these proposals, subject to evidence being provided by the LA and other interests that the development will have a positive impact on standards.

■ LSC powers to propose the reorganisation of 16-19 provision

90. The LSC may make proposals for the reorganisation of post-16 provision in an area, including changes to school sixth forms. The proposals may be made in response to the findings of an area inspection, or in order to meet at least one of three relevant objectives:

- to increase participation amongst 16-19 year olds
- to increase the achievement of 16-19 year olds
- to expand the range of learning opportunities available to 16-19 year olds.

91. LSC reorganisation proposals may include changes to provision in sixth form colleges and other FE settings in addition to schools and all decisions will be made by the Secretary of State. School Organisation Committees will be consulted and their comments on the proposals, and any objections or comments by

interested parties, must be passed by the LSC to the Secretary of State within one month of the end of the objection period when the proposals are submitted for decision.

■ **Conflicting Sixth Form Reorganisation proposals**

92. Where the implementation of reorganisation proposals from the LSC conflict with other published proposals put to the School Organisation Committee for decision, the Committee will be prevented by the School Organisation Proposals by the LSC for England Regulations 2003 from making a decision on the related proposals until the Secretary of State has decided the LSC proposals (see paragraph 7-9 of Decision Makers' Guidance Section 3). If proposals come before the Adjudicator he or she should similarly delay a decision until the Secretary of State has taken a decision on the LSC proposals.

■ **Special educational needs provision**

93. Section 14 of the Education Act 1996 provides a general duty on LAs to ensure sufficient primary and secondary school places. The same section also requires LAs to have regard to the need to secure that special educational provision is made for pupils with special educational needs. Indeed almost every school in the country will have some children on roll who have special educational needs (SEN). So there are likely to be SEN implications in every school reorganisation. School reorganisation provides opportunities for LAs to consider the most effective ways of ensuring that appropriate SEN support is delivered to pupils wherever it is needed. This may be in mainstream schools, in specialist resourced provision within the school or in a specialist unit attached to, or co-located with, mainstream schools, or in special schools.

94. When considering proposals for the reorganisation of special educational needs provision the Decision Maker should have regard to:

- the statutory duty placed on Local Authorities, under section 315 of the Education Act 1996, to keep under review their arrangements for special educational needs provision;
- the elements of the Local Authority's Children and Young People's Plan relevant to special educational needs, and in particular the Authority's plans for promoting inclusion (that is, for educating a higher proportion of pupils with statements of special educational needs within a mainstream setting);
- the particular SEN factors mentioned in Section 2.9.

95. Some children with special educational needs will also be disabled, and some disabled children, though they may not have special educational needs, may have particular access requirements. From September 2002 schools and LAs are under a statutory duty under the Disability Discrimination Act 1995 to increase the accessibility of schools for disabled pupils. LAs are required to prepare accessibility strategies and schools are required to prepare accessibility plans. These strategies and plans must show how the LA or school plan to:

- increase the extent to which disabled pupils can participate in the school curriculum;
- improve the physical school environment;
- improve the delivery to disabled pupils of written information in different formats.

■ **Change of school category**

96. The Government's five-year strategy and the White Paper - Higher Standards, Better Schools for All - envisages a system of "independent specialist schools", based on the expectation that community and voluntary controlled (VC) schools increasingly will seek to change category to foundation. Regulations have been introduced enabling the governing bodies of most community and VC schools to decide their own proposals to change category to foundation, and the Department has consulted on extending these arrangements to primary schools. Any proposals to change the category of a school falling to the SOC to

decide should be considered on their individual merits. A school cannot gain, lose or change a religious character by changing category. To do this a school must close and open as a new school.

97. In deciding such proposals the Decision Maker must take into account the restrictions on changing category prescribed in the regulations:

- if the school proposes to change to the voluntary aided category, evidence must be provided that the governing body are able and willing to meet their financial responsibilities for building work after the proposed implementation date (Form 18 should be provided);
- the change of category cannot authorise a school to establish, join or leave a foundation body; and
- a foundation, voluntary aided and voluntary controlled school may not become a community school and a foundation special school may not become a community special school unless the required transfer agreement is entered into (i.e. regarding the land or buildings owned by the trustees and/or governing body).

98. Where the change of category will lead to a change in admission arrangements those bringing forward proposals should also ensure that all interested parties are consulted on the proposed arrangements at an early stage. These parties should include schools and parents of children already at, or likely to attend the school. In considering proposals for a change of school category the Decision Maker may not modify proposed admission arrangements. These fall to be dealt with under the normal admissions consultation arrangements.

Implementation

99. Where as a result of a voluntary aided (VA) school changing category the Local Authority becomes responsible for the implementation of previously approved statutory proposals in respect of the VA school which have not yet been fully implemented, the Department would continue its support of any agreed capital costs for those proposals, and would be prepared to consider applications from an LA to meet its share of any capital costs which previously fell to the governing body. LAs would also be able to publish statutory proposals to be relieved of the duty to implement approved proposals in respect of the school in its previous category. The Decision Maker would decide any such proposals under the provisions of paragraph 5 of Schedule 6 to the School Standards and Framework Act 1998.

Conditional approvals

100. Some proposals to become a foundation school may involve becoming a member of a group foundation and may only be approved conditionally i.e. upon the Secretary of State approving the establishment of the new foundation body, or agreeing to the school joining an existing group foundation by a specified date. All such change of category proposals will require conditional approval and therefore cannot be determined by the local authority. They must be referred to the School Organisation Committee for decision and then passed to the adjudicator if the SOC cannot agree a unanimous decision.

101. Where it is necessary for a trust to be established or for an existing trust deed to be varied for the school to change category, any approval must also be conditional upon this occurring by a specified date.

■ **New secondary school proposals – Every Child Matters**

102. The Decision Maker should consider how the proposals will help every child and young person achieve their potential in accordance with Every Child Matters principles. This should include considering how the school will provide its extended services, opportunities for personal development, access to academic and vocational training, measures to address barriers to participation, support for children and young people with particular needs e.g. looked after children or children with special educational needs (SEN) and disabilities.

■ **New foundation secondary school proposals with a foundation**

103. The Decision Maker should consider whether the Trust has charitable objects which are appropriate for a key role in the establishment and leadership of a school (e.g. the advancement of education and/or other charitable objects relevant to this purpose), and also whether the trust partners are involved in any activities that might be considered inappropriate (for example tobacco, gambling, adult entertainment, alcohol etc). Where such information is available, the Decision Maker will also want to consider the experience and track record of the Trust partners, their particular expertise and background as against the needs of the school, for example, their contribution to raising school standards and also to promoting community cohesion.

Decision Makers Guidance Section 2.1A

Statutory Guidance - Factors to be considered - proposals for new secondary schools in response to a secondary school competition

■ 2.1A PROPOSALS FOR NEW SECONDARY SCHOOLS IN RESPONSE TO A SECONDARY SCHOOL COMPETITION

In general, similar considerations will apply to proposals for secondary schools within competitions as to individual proposals for schools. Different proposals may have different strengths and weaknesses. Decision Makers will need to balance these and decide which proposal best meets the criteria for new schools overall. In addition, they will need to decide which proposals best meet the specific requirements for a new school for the area in question.

The following factors should not be taken to be exhaustive. Their importance will vary, depending on the type and circumstances of decisions. All proposals should be considered on their individual merits.

The Decision Maker must also consult statutory guidance in Section 1, in particular any paragraph(s) referred to in brackets.

■ Effect on standards and contribution to school improvement

- the extent to which the proposals will improve the standards, quality, range and/or diversity of educational provision in the area (Paras 1-4, 18, 19-23);
- the extent to which the proposals advance the transformation strategies set out in the Department for Education and Skills : Five Year Strategy for Children and Learners and Higher Standards, Better Schools For All, particularly to make it easier for new promoters – including parents' groups – to open schools in response to local demand.
- the extent to which the proposals will deliver a broad and balanced curriculum (Para 5).

■ Admissions

- whether the admission arrangements are fair and equitable, and in line with the School Admissions Code (Para 22A)

■ Need for places

- the extent of parental demand for the type of school in question, for example, provision for particular faiths or denominations or specialisms (Paras 17, 19)
- the extent to which the proposals would contribute to enhancing the diversity of provision in the area (Paras 1-2)

■ Finance

- whether the proposals represent a cost-effective use of public funds (Para 41)
- whether, if the proposal is for a new voluntary aided school, the promoters have provided a statement that the governing body would be able to meet their financial responsibilities for building work (Para 44)

■ Views of interested parties (Para 45)

- the views of parents and other local residents

- the views of any Local Authority affected by the proposals
- the views of the CE and RC dioceses in the area
- the views of other schools and colleges in the area
- the views of the Learning and Skills Council (if the proposals affect the provision of post-16 education)

■ **Community cohesion, inclusiveness and partnerships**

- the extent to which, and how satisfactorily in the circumstances of the community, the proposals address the need to promote community cohesion (Paras 46-49)
- the extent to which the proposals take account of the needs of families and the wider community (Paras 50-51)
- the extent to which the proposals contribute to delivery of the Every Child Matters agenda, including the health, safety, enjoyment and achievement of children (Para 102)

■ **14-19 issues**

- the extent to which appropriate collaborative arrangements have been considered (Para 73-74)
- how proposals fit in the context of the Five Key Principles i.e. quality; distinct 16-19 provision; diversity to ensure curriculum breadth; learner choice; affordability, value for money and cost effectiveness (Paras 76-78).

■ **Equal opportunities**

- any sex, race or disability discrimination issues or other human rights issues including any sex discrimination issues in relation to proposals for a single sex school (Para 53)

■ **Other issues**

- whether the school will provide strong links with the local community and provide family and community services (Para 59)
- for voluntary and foundation schools where a trust is not to hold the freehold of the site, whether the land tenure arrangements are satisfactory (Para 64-67)
- for voluntary and foundation schools, whether the proposal is to join an existing group foundation body or to jointly establish a new group foundation body (Para 61)
- for proposals to establish a foundation school with a foundation, whether the foundation has appropriate charitable objects (Para 103)
- whether the proposal is to join an existing federation or to jointly establish a new federation (Para 62)
- whether the new school will meet the minimum statutory requirement for provision of school playing fields (Para 63)

■ **Proposal from an existing independent school**

- if co-educational, whether it would provide equal opportunities for boys and girls (Para 53)
- whether it would have suitably qualified staff and the premises would be suitable for the purpose of a maintained school (Para 68)

Decision Makers Guidance Section 2.9

Statutory Guidance - Factors to be considered - Proposals for the reorganisation of special schools and SEN provision in mainstream schools

■ 2.9. PROPOSALS FOR THE REORGANISATION OF SPECIAL SCHOOLS AND SEN PROVISION IN MAINSTREAM SCHOOLS

The following factors should not be taken to be exhaustive. Their importance varies, depending on the type and circumstances of decisions. All proposals should be considered on their individual merits.

The Decision Maker must consult statutory guidance in Section 1, in particular any paragraph(s) referred to in brackets and the additional guidance on special schools in Section 4.

■ Effect on standards and contribution to school improvement

- Whether the proposals will improve the standards, quality, range and/or diversity of educational provision in the area (Para 1-4);
- Whether they advance national and local transformation strategies set out in Education and Skills: Investment for Reform and A New Specialist System:
- Transforming Secondary Education and the local Education Development Plan (Para 2-4);
- Whether the proposals will enable pupils' special educational needs to be met (Para 93-95);
- How the proposals will support increased inclusion (94);
- Whether the proposals will improve standards of accommodation;
- How the proposals will address any specific health, safety and welfare requirements;
- How the proposal will contribute to the efficient use of resources;
- The impact of the proposal on other special educational needs provision within the area.
- Where schools are merging, whether the standard of provision will be appropriate to meet the wider range of needs of the pupils including any displaced pupils.
- The standard of provision in existing and proposed alternative provision.

■ Need for provision

- Whether there is a need for a particular type of special educational needs provision within the area;
- Whether there is surplus of that particular type of special educational needs provision within the area;
- The length and nature of journeys to alternative appropriate provision.

■ Finance

- Whether the proposals represent a cost-effective use of public funds (Para 41);
- Whether the capital resources required can be found (Para 38-40);
- Whether the sale proceeds of redundant sites are to be made available and whether the Secretary of State's consent has been obtained where necessary (Para 42-43).

■ Views of interested parties (Para 45)

- The views of parents and other local residents, including those who may be particularly affected by the proposals or have a particular interest in them;
- The views of any Local Education Authority affected by the proposals or with an interest;
- The views of the Learning and Skills Council and local colleges (if the proposals affect the provision of post-16 education);
- The views of the Early Years Development and Childcare Partnership (where proposals affect early education provision);
- The views of parents of pupils at any school(s) affected by the proposals;
- The views of governors and staff of any school(s) affected by the proposals;
- Where appropriate the views of the Health Authority or local PCT or NHS Trust;
- The views and concerns of other parties affected by the proposals e.g.
 - other schools in the area;
 - local residents;
 - where appropriate, local social services departments.

■ Other issues

- Any sex, race or disability discrimination issues or other human rights issues (Para 53);
- Whether the change will affect the ability to meet the minimum statutory requirement for provision of school playing fields (Para 63).

Decision Makers Guidance Section 4

Statutory Guidance on SEN Provision

■ SECTION 4 - STATUTORY GUIDANCE - SEN PROVISION

This section provides additional guidance to assist School Organisation Committees in considering and reaching decisions on proposals for the reorganisation of provision to meet special educational needs, whether in special schools or within mainstream schools.

Although statutory proposals are not required to enable mainstream schools to adopt a more inclusive approach to educating pupils with special educational needs, we expect that as LEAs implement their inclusion policies there will be ever increasing co-operation between special and mainstream schools including co-location. For some types of special educational needs the development of specialist resourced provision within a mainstream school or a specialist unit attached to a mainstream school may be an appropriate alternative to a special school.

The School Organisation Committee should consider carefully the development of mainstream provision where this is linked to the reorganisation of special schools provision. In particular, the Committee may need to consider the role of Local Education Authority specialist support services, e.g. visual impairment, hearing impairment and behavioural support services, in providing support to mainstream schools. Nursing / medical requirements, access to therapists and other professionals may also require consideration. Alternatively the LEA may propose that some specialist services are provided as an outreach service from a special school.

The School Organisation Committees and Adjudicators should seek to ensure:

- that, where appropriate they can draw upon expert advice on the educational and other aspects of a particular proposal;
- that any reorganisation proposal fits within a clear strategic framework set by the Authority for meeting the full range of special educational needs and for promoting inclusion;
- that the pattern of specialist provision that results, and the way schools operate, should support the development of a more locally inclusive system of education.

Evidence from OFSTED inspections reveals few hard and fast rules about what approach to organising special schools makes for the most effective provision. The Authority's strategy should:

- be based on the educational needs of pupils within the local area;
- focus on the establishment of flexible systems of provision and support that can respond to the needs of individual pupils, rather than necessarily establishing broad categories of provision according to special educational need or disability;
- take full account of other educational considerations, in particular the need to ensure a broad and balanced curriculum, including the National Curriculum, with appropriately trained staff, to enable individual pupils to achieve to the maximum extent possible;
- if a school is all age there are benefits in making clear distinctions between the provision that is made for nursery and early years, primary, secondary and post-16 pupils;
- take account of the Authority's Accessibility Strategy (required under the Disability Discrimination Act 1995) for making schools more accessible to disabled pupils in terms of access to premises and facilities, access to information in different formats, and access to the curriculum);
- take account of parental preference for particular styles of provision or education settings;
- contribute to the requirement to ensure appropriate provision for 16-19 year-olds, taking account of the role of local LSC funded institutions and their admissions policies;
- take account of the need to ensure appropriate accommodation, day and residential provision, and specialist equipment and resources to meet the needs of individual pupils. In the case of residential

provision, the Local Education Authority may need to involve other authorities e.g. health and the National Care Standards Commission.

The resulting patterns of specialist provision will depend to a large extent on local circumstances; a widely shared local understanding of the roles of special schools, mainstream schools and specialist support services.

■ PROPOSALS FOR CLOSING SPECIAL SCHOOLS

For all reorganisation proposals there should be a clear statement of education intention, which, if appropriate, should provide the rationale for any special school closure. Proposals should reflect the LEA's strategic plans for school improvement as set out in their EDP, including plans for promoting inclusion; plans for providing school places as set out in the SOP; and any arrangements for the regional co-ordination of SEN provision promoted by the Secretary of State.

The above general considerations relating to special school reorganisation proposals apply. In addition, in the case of closure:

- it is important to ensure that appropriate full-time education will be available to all displaced pupils. Their statements of special educational needs will require amendment and all parental rights must be ensured. Other interested partners, such as the Health Authority and Social Services Department, should be involved;
- arrangements for alternative provision should be clearly stated. A 'hope' or 'intention' to find places elsewhere is not acceptable. Wherever possible, the host or alternative schools should confirm in writing that they are willing to receive pupils, and have all the facilities necessary to provide an appropriate curriculum;
- pupils who have been displaced as a result of the closure of a BESD school (difficulties with behavioural, emotional and social development) should not be placed long term in a Pupil Referral Unit (PRU) if a special school place is what they need. PRUs are intended primarily for pupils who have been excluded, although LEAs can and do use PRU provision for pupils out of school for other reasons such as illness and teenage pregnancies. There may of course be pupils who have statements identifying they have BESD who have been placed appropriately in a PRU because they have been excluded; in such cases the statement must be amended to name the PRU. But PRUs should not be seen as alternative long-term provision to special schools.

■ SEN PROVISION WITHIN MAINSTREAM SCHOOLS AND CO-LOCATED ON MAINSTREAM SITES

All mainstream schools will need to make provision for pupils on their roll who have special educational needs with and without statements. In addition some schools may be designated as having a specific role in making provision for children within the local area or region who have a particular special educational need.

Specialist provision may be provided within mainstream schools, either as resourced provision or organised as a unit, or a special school can be co-located on a mainstream school site. Such provision may take a variety forms, and terminology may vary from authority to authority, but some of the most common arrangements are:

- a. Co-location - pupils are educated in separate special school facilities with separate staff but on a mainstream school site. There may be some interchange of pupils, staff and dual use of facilities;
- b. Integrated Department - pupils are on the mainstream school roll with SEN staff supporting pupils in lessons where necessary;
- c. Resourced Provision – where places are reserved at a mainstream school for statemented pupils with specific types of special educational needs who are taught mainly within

- mainstream classes but also require a base and some specialist facilities around the school;
- d. Designated Unit – within a mainstream school, where statemented pupils with specific types of special educational needs are taught wholly or mainly in separate classes.

Any proposals for the location of special need provision within a mainstream setting or on a mainstream site should be specific about the arrangements intended in each case.

The above general considerations relating to mainstream and special school reorganisation proposals will apply. In addition, proposals for the establishment of mainstream SEN designated provision should cover the following:

- details of the specific educational benefits that will flow from the proposals;
- clear written statements from all the schools concerned supporting the proposals;
- plans and/or schedules to show that suitable accommodation will be provided;
- clear specification of the transport arrangements that will support appropriate access to the premises, and participation in the life of the school;
- clear specification of any physical adaptations to be made and equipment to be provided to meet the special educational and other needs of the pupils;
- clear specification of the funding and staffing arrangements, including access to external support services.

Decision Makers Guidance Section 5

Non-statutory guidance on community cohesion

■ Community cohesion – additional factors that may need to be considered

- How the school proposes to fulfil the Race Relations Amendment Act 2000 requirement to promote racial equality.
- How good citizenship will be encouraged.
- Where the school is to have a religious character, what are the intentions for religious education in the school's own and other faiths.
- Where the school is to have a religious character, whether it intends to give priority for at least some places to applicants of other faiths/denominations, or to specified groups of applicants (e.g. from the locality or local feeder schools) regardless of faith/denomination.
- Where the school is seeking to join the maintained sector from the independent sector, what it already does to demonstrate care for community cohesion.
- What plans the school has for partnership working with other schools, that would contribute to community cohesion by enabling pupils to gain an understanding of, and share experiences with, others from different ethnic, cultural or faith backgrounds. Illustrative examples of possible approaches are given below. This list is not exhaustive or prescriptive and promoters of new schools should be encouraged to be as creative as possible in the light of local circumstances.
- Inter-school twinning between schools with pupils from mainly different cultural backgrounds.
- Lesson exchanges giving opportunities for children of different backgrounds to meet and learn together.
- Teacher exchanges whereby teachers have the opportunity to take classes comprising children from different ethnic backgrounds.
- Joint school trips, either field trips where pupils work together in groups, or recreational trips such as visits abroad.
- Joint school choirs, orchestras or sports teams - offering opportunities for cross-cultural groups to work as part of the same team.
- Joint visits to theatres, museums and galleries.
- Joint drama productions.
- Joint committees of school governors/teachers/parents, working together to share experience and improve standards within the local family of schools.
- Joint cross-cultural community projects such as community action groups to help people living in isolation, or with special needs, for example young mothers, the elderly and infirm; or joint charity events.
- Community projects within the school designed to coach people with English language difficulties, helping them with conversation, reading and writing.
- Mentoring arrangements at various levels - between schools where the best schools help the lowest achievers, on a one-to-one basis between governors and heads where the more experienced help the less experienced, and between pupils where individuals have a named mentor in another school.
- Shared facilities so that less advantaged pupils have access to good IT facilities, science and language laboratories etc.
- Shared secular school assemblies.
- Joint workshops for brainstorming cross-cultural issues.

- Joint communications such as pupils and teachers working together on an inter-school newspaper, video conferencing between schools and electronic linking between schools, for example via a local area network.

Decision Makers Guidance Section 6

Non-statutory guidance - School Organisation Committee procedures on receipt of statutory proposals

■ Introduction

1. **This guidance came into force on 1 September 2006 and covers the Secondary School Competition provisions introduced by the Education Act 2005 and the Education (New Secondary School Proposals) (England) Regulations 2006.** Any questions on this guidance can be raised with the School Organisation Unit Tel 01325 391279 or 01325 391277. The guidance applies to England only - there are no School Organisation Committees in Wales. The guidance is in two parts: Part A deals with the procedures for handling statutory proposals, Part B deals with the constitution of the SOC and the conduct of its business. Whilst the guidance is non statutory, it contains some references that a SOC “must” take a particular action – these reflect regulatory requirements.

2. The School Organisation Committee (SOC) is central to the arrangements for local decision making introduced by the School Standards and Framework Act 1998, taking decisions on school organisation statutory proposals. It is the local authority’s responsibility to establish the SOC and appoint members, responding to nominations where appropriate.

3. There are some detailed requirements for the SOC in Schedule 4 to the School Standards and Framework Act 1998, including financial arrangements and proceedings. The Education (School Organisation Committees)(England) Regulations 1999 (as amended) govern the constitution of the SOC, and some voting arrangements. The Education (School Organisation Proposals)(England) Regulations 1999 (as amended) also cover the decision making arrangements. This guidance covers provisions in the Act and Regulations and offers some suggestions on good practice which Authorities and SOC’s might follow in carrying out their responsibilities, but SOC’s must ensure that they act in accordance with the statutory provisions. There is separate guidance for considering statutory proposals (see Decision Makers Guidance Sections 1-5) which is available on www.dfes.gov.uk/schoolorg .

4. The SOC is not a committee of the local authority. It is a separate statutory body which brings together the key partners in the provision of education at local level, giving each an equal voice. It is a decision-making body which convenes for the purpose of deciding statutory proposals. The SOC must also be consulted during the preparation of the local Children and Young People’s Plan (which must be in place by April 2006) but has no other statutory responsibilities for school organisation matters.

5. SOC’s are responsible for their own procedures and decisions. It is important for all individual members to make a full contribution, questioning individual proposals, actions and procedures where they feel it necessary.

■ PART A: STATUTORY PROPOSALS – PROCEDURES

■ Checks on receipt of statutory proposals

6. There are 5 key issues which SOC must consider before judging the respective factors and merits of the statutory proposals:-

- Is any information missing? If so, the SOC Secretary should write immediately to the proposer/promoter specifying a date by which the information must be provided.
- Does the published notice comply with statutory requirements? (see paragraph 7 below)
- Has the statutory consultation been carried out prior to the publication of the notice? (see paragraph 8 below)
- Are adequate capital resources available to implement the proposals? (see paragraphs 9-10 below); and
- Are the proposals linked or related to other published proposals? (see paragraphs 11-13 below).

■ Does the published notice comply with statutory requirements?

7. We recommend that the SOC Secretary consider whether the notice is valid as soon as a copy is received. Where a published notice does not comply with statutory requirements, it may be judged invalid and the SOC should consider whether it can decide the proposals.

■ Has the statutory consultation been carried out prior to the publication of the notice?

8. Details of the consultation should be included in the 'prescribed information' which should be submitted to the SOC by the party that published the proposals. Where proposals relate to a Secondary School Competition, Regulation 6 (New Secondary School Proposals Regulations 2006) applies and the local authority should provide information about the consultation carried out before the publication of the first notice. The SOC must be satisfied that the consultation meets statutory requirements (see Section 3 of Decision Makers Guide paragraphs 10-15). If some parties submit objections on the basis that consultation was not adequate, legal advice might need to be obtained before the SOC meeting. If the requirements have not been met, the SOC may judge the proposals to be invalid and that they therefore cannot be considered. If the proposals are judged invalid, the SOC may authorise the Secretary to write to the proposers informing them of its judgement. It would then be for proposers to decide whether to commence new consultation and publish a fresh notice. Alternatively the SOC may decide that the proposals are not invalid but may take into account the inadequacy of consultation as part of their overall judgement of the proposals as a whole.

■ Are adequate capital resources available to implement the proposals?

9. The SOC must be satisfied that funding is available for the implementation of the proposals if they were to be approved. Where the promoters/proposers require capital funding from other sources (e.g. the LEA and/or Secretary of State) the SOC should require written evidence that funding has been agreed. Where the Department has been asked to provide funding, any approval will be made "in principle" - subject to the proposals being approved by the SOC – e.g. Expansion of Successful and Popular School projects and Targeted Capital Fund projects. Where funds are to be provided by the local authority, the approval should be signed by an authorised local authority representative. The approval evidence should confirm funding approval for the full amount needed for implementation.

10. Proposals must **not** be approved "conditionally" upon funding being made available but with two specific exceptions – those being funded under the Private Finance Initiative (PFI) or the Building Schools for the Future programme (BSF). For proposals being funded under PFI and BSF schemes the SOC must be satisfied that funding has been agreed "in principle" (i.e. see paragraph 9 above) but it should set a condition of its approval (see paragraph 28 below). This protects proposers so that they are not under a statutory duty to implement the proposals until the relevant contracts have been signed and/or funding is finally released.

■ Are the proposals linked or related to other published proposals?

11. Where proposals are dependent upon other published proposals (i.e. "linked") they must be considered together. Generally proposals should be regarded as linked if they are included on the same notice or the notice makes a reference to a link to other proposals. If the statutory notices do not confirm a link, but it is clear that a decision on one of the proposals would be likely directly to affect the outcome or consideration of the other, the proposals should be regarded as linked. Proposals for a secondary school competition should be considered together with proposals for any school closure where there is a clear link. Where proposals are linked, the decisions should be compatible e.g. if one set of proposals is for the removal of provision, and another is for the establishment or enlargement of provision for displaced pupils, both should be approved or rejected. If the SOC is unable to reach a unanimous decision on any one of a set of linked proposals they should all be passed to the Adjudicator.

12. Where proposals are published that conflict with existing proposals (e.g. proposals to change the category of a school, for which there are already proposals to close the school or remove its sixth form) the SOC may consider the earlier proposal within the timeframe already planned. When it decides the subsequent proposal it should take into account the decision of the earlier proposal.

13. Where proposals are “related” to proposals published by the LSC, which are to be decided by the Secretary of State, the SOC must defer taking a decision until the Secretary of State has taken a decision on the LSC proposals (Section 1 of the Decision Makers’ Guidance paragraphs 90-92 and Section 3 paragraphs 7-8).

■ Acknowledge Receipt of proposals

14. If the initial checks suggest the proposals are valid and can be considered by the SOC the Secretary should:-

- Send a simple letter of acknowledgement;
- Send a copy of the published notice to the Secretary of State (School Organisation Unit, DfES, Mowden Hall, Darlington, DL3 9BG) within 2 weeks of receipt;
- Send a copy of the published notice to the LSC if it relates to 14-19 provision;
- For proposals published to physically enlarge, or add 27 or more to the admission number, or add a sixth form to, a secondary school other than a grammar school), inform the governing body within 2 weeks of receipt of proposals for that school, of the date, time and location of the SOC meeting at which the proposals will be delivered.

■ Representations

15. The Secretary should acknowledge receipt of representations forwarded directly to the SOC and seek comments from the proposers, on any objections received, setting a clear deadline for a response.

16. For proposals published by the LEA the representations will be sent to the SOC together with the LEA’s comments on them. Representations and comments should be forwarded to the SOC within one month. This period is reduced to two weeks where the proposals relate to schools classed as failing, or where proposals are to physically enlarge, add 27 or more to the admission number, or to add a sixth form to, a secondary school (other than a grammar school). Where an LEA is unsure whether a representation is an objection, they may contact the sender for clarification.

16A. For proposals published in response to a Secondary School Competition all representations will be sent to the local authority. The local authority must submit all representations to the SOC within 2 weeks of the end of the representation period, together with copies of the proposals. The SOC must be satisfied that the local authority held at least one public meeting within the first 2 weeks of the representation period: this is to inform the public of the proposals and arrangements for making objections and comments. All promoters should be invited to any public meetings for this purpose.

17. The length of the representation period will vary depending on the circumstances of the particular proposal: 1 month for schools classed as failing; 1 month for proposals to physically enlarge, or add 27 or more to the admission number, or to add a sixth form to, a secondary school (other than a grammar school); and 6 weeks for all other proposals (i.e. including secondary school competitions).

18. Where representations are received after the deadline, it is for SOCs to decide whether they take them into account.

■ Preparation of summary paper for the SOC

19. The Secretary should prepare a summary paper for the SOC setting out:

- advice on whether the notice met statutory requirements;
- advice on whether the consultation met statutory requirements;
- the capital cost to implement the proposals and how it is to be met;
- whether the proposals are:

- linked to other published proposals,
- conflict with other published proposals; or
- related to proposals published by the LSC,

and advice on the SOC's power to proceed;

- a summary of the objections and comments received and the response of those who published the proposals. (NB all representations should be available for SOC members to examine).
- the relevant sections of statutory guidance issued by the Secretary of State, to which SOC members must have regard when deciding statutory proposals, and reference to any other relevant sections or information;
- the timescale for the decision - including whether the implementation date is achievable.

20. The summary paper should be a factual unbiased document, and not written in a way which could influence the decision of the SOC.

■ Proposals to be considered by two SOCs

21. The regulations require proposals to be considered by two SOCs where proposals are published:-

- to transfer a school from one LEA to a new site in a different LEA;
- by one LEA to establish and maintain a new school in a different LEA;
- to close a school which is maintained by a different LEA from that where it is situated; or
- to make an alteration to a school which is maintained by a different LEA from that where it is situated.

22. The SOC in the area of the LEA which currently maintains the school (or, in the case of proposals for a new school, will maintain the new school) - i.e. SOC "A" - must take the decision. The SOC in the LEA area where the school is, or will be, situated - i.e. SOC "B" - must consider the proposals and make a recommendation to SOC "A". In making their final decision, SOC "A" must consider the recommendation of SOC "B". The proposals must be referred to the Adjudicator if:-

- SOC A cannot itself reach a unanimous decision;
- SOC A cannot agree the recommendation of SOC B;
- SOC B cannot agree a unanimous recommendation; or
- SOC A have voted but at least 2 groups abstain from voting because they have a conflict of interest (see paragraph 35 below).

■ Types of decisions

23. The SOC may:

Proposals other than Secondary School Competitions:

- approve the proposals
- approve the proposals with modifications
- reject the proposals
- give a conditional approval

Secondary School Competitions:

- approve any of the proposals (e.g. they may decide to approve complementary proposals which together meet the specification for the new school)
- approve any of the proposals with modifications
- approve any of the proposals conditionally
- reject all of the proposals

■ Modifications to proposals

24. The SOC can modify proposals when they first decide them and also after they have been approved. If proposers want to modify proposals to a significant extent, they must withdraw them and publish new proposals, as the SOC cannot modify a proposal to the extent it substitutes a new proposal for the one that has been consulted on and published. The most common modification made by the SOC is to the implementation date, e.g. when it is no longer achievable or has passed. SOCs should not normally modify proposals for a new school by modifying the proposed site, unless the circumstances are exceptional and the new site is adjacent to, or very close to, the originally proposed site.

25. Before modifying a proposal the SOC must consult those who published the proposal and either the LEA (i.e. where proposals for a new foundation or voluntary school have been published by promoters and also any other proposals published by the governing body of a school) or the governing body (i.e. for proposals published by the LEA to enlarge a foundation school or close a foundation or voluntary school).

26. An LEA cannot modify proposals which they determined and therefore if a modification is required, they must refer the proposals to the SOC who can approve the modification.

27. Where proposals have been approved by the Adjudicator but subsequently require modification, the promoters/proposers must submit a request for the modification to the SOC. It will only be referred to the Adjudicator if the SOC cannot agree the modification unanimously.

■ Conditional approval

28. The regulations provide for a conditional approval to be given where the SOC is otherwise satisfied that the proposals can be approved, and approval can automatically follow an outstanding event. The SOC can only give conditional approval in the limited circumstances specified in the regulation i.e.:-

- a. the granting of planning permission under Part III of the Town and Country Planning Act 1990;
- b. the acquisition of a site on which a new school, a proposed enlargement of the premises of a school or other alteration to the premises of the school is to be constructed (e.g. including where a compulsory purchase order is needed);
- c. the acquisition of playing fields to be provided for the school;
- d. the securing of any necessary access to a site referred to in sub-paragraph (b) or playing fields referred to in sub-paragraph (c);
- e. the private finance credit approval given by the Department for Education and Skills following the entering into of a private finance contract by a local authority or the approval by the Department for Education and Skills of capital grant in an equivalent arrangement for voluntary aided schools;
- f. the entering into an agreement for any necessary building project supported by the Department for Education and Skills in connection with the programme known as "Building Schools for the Future";
- g. the making of any scheme relating to any charity connected with the school or proposed school;
- h. the formation of any federation (within the meaning of section 24(2) of the Education Act 2002) of which it is intended that a proposed school should form part, or the fulfilling of any other condition relating to the proposed school forming part of a federation;
- i. the making of any agreement under section 482(1) of the 1996 Act for the establishment of an Academy, where the proposals in question provide for some or all of the pupils currently at the school which is the subject of the proposals to transfer to the Academy;

- j. the Secretary of State giving notice under regulation 5(1) of the Education (Foundation Body) (England) Regulations 2000 that a foundation body shall become operative and that the school shall form part of a group for which a foundation body shall act;
- k. the Secretary of State making a declaration under regulation 22(3) of the Education (Foundation Body) (England) Regulations 2000 that the school shall form part of a group for which a foundation body acts; or
- l. the agreement to any change to admission arrangements specified in the approval, relating to another school;

29. The SOC must set a date by which the condition must be met. The SOC may modify the date if the proposers confirm, before the date expires, that the condition will be met later than originally thought. The SOC should seek confirmation that any condition it set, is subsequently met on time. If a condition is not met by the date specified, the proposals must be referred back to the SOC for fresh consideration. If the proposers no longer wish to proceed they must formally withdraw the proposals.

30. More than one condition can be set for the approval of proposals but final approval to proceed will depend upon all conditions being met. The SOC's decision letter must make it clear that the proposals cannot be implemented until the condition has been met, and the proposers should inform the SOC when the condition is met.

31. If a conditional approval is given by the Adjudicator and the condition is not met, then the proposal must be referred back to the Adjudicator (i.e. not the SOC) for fresh consideration.

■ Delayed SOC consideration - Reference to the Adjudicator

32. The SOC must refer all Secondary School Competition proposals to the adjudicator if they fail to make a decision within 2 months. In all other cases the proposer has the right to request that the proposals be passed to the Adjudicator, where the SOC has not taken a decision on proposals, after the following period:-

- for proposals published to physically enlarge, or add 27 or more to the admission number, or to add a sixth form, to a secondary school, other than a grammar school – 6 weeks from the end of the representation period or, if later, 6 weeks from the date the SOC receives the prescribed information. This 6 week period would also apply where subsequent proposals are published to be relieved of the duty to implement;
- (for proposals published by the LEA) - two months from the date on which the SOC receive from the local authority all representations and the Authority's observations on them, or, if later, two months from the date on which the SOC receives the prescribed information;
- (for all other proposals) - two months from the end of the period within which representations may be sent to the SOC or if later, two months from the date the SOC receives the prescribed information.

■ Voting

33. All decisions on statutory proposals must be taken by a vote of the groups present at the meeting. Each group has one vote. Decisions on statutory proposals must be unanimous – if the groups do not vote unanimously (i.e. one group votes differently to the others) there is no decision. If a group abstains this does not count as a vote for or against the proposals. If the SOC group votes are not unanimous the proposal must be forwarded to the Adjudicator for a final decision.

34. The regulations provide that (unless the group decides otherwise) a group vote must be decided by the majority of members of the group attending and voting and if there is a tie the group must abstain.

35. Where the majority/equal number of those in a group have an interest (and therefore have to abstain from voting within the member group) the group as a whole should be regarded as having an interest and

abstain. Where at least two groups abstain from the vote in this way (i.e. because they have a conflict of interest) the SOC may, if it thinks it would be appropriate, refer the proposal to the Adjudicator for decision. Paragraph 60 provides some guidance on conflict of interest issues.

36. The SOC can defer making a decision on a statutory proposal providing the SOC groups agree unanimously to do so. If the SOC votes on whether to defer a decision but cannot agree unanimously to defer, the proposal should then be considered by the SOC and referred to the Adjudicator if the SOC cannot agree a unanimous decision.

37. Where the SOC votes on matters other than statutory proposals, the decision must be determined by a majority vote of all members who are present and voting. Where there is an equality of votes, the chairman has a second or casting vote.

■ Decision letters

38. All SOC decision letters must give reasons for the decision, irrespective of whether the proposals were rejected or approved, indicating the main factors/criteria for the decision. SOCs should agree the reasons for their decision, for inclusion within the letter, during the SOC meeting.

39. Copy decision letters must be forwarded to:

- a. the person or body who published the proposals or (in the case of Secondary School Competitions) the person or body who submitted the proposals;
- b. (if different) the local authority who maintain the school or (in the case of a new school) who it is proposed should maintain the school;
- c. (if different) the governing body of the school to which the proposals relate;
- d. each objector except where a petition has been received. Where a petition is received a decision letter should be sent to the person who submitted the petition, or where this is unknown, the signatory whose name appears first on the petition;
- e. the School Organisation Unit, DfES, Mowden Hall, Darlington DL3 9BG;
- f. [where proposals to end selective admission arrangements of a grammar school are approved] Electoral Reform Services, 33 Clarendon Road, London N8 0NW (i.e. currently the "designated body" under Section 105(3)(c) of the 1998 Act).

■ Reference to the Schools Adjudicator

40. Where the SOC does not reach a unanimous decision, or 2 groups abstain because of a conflict of interest, the SOC must forward the papers to the Schools Adjudicator within two weeks of the date when the proposals were considered. The address for the Schools Adjudicator is: The Office of the Schools Adjudicator, Mowden Hall, Staindrop Road, Darlington, DL3 9BG.

41. Where proposals for a Secondary School Competition have not been considered by the SOC within 2 months of the receipt, the proposals must be sent to the Adjudicator within 2 weeks of the end of the 2 months' period. The Secretary of State may also direct a SOC to refer all proposals in response to a secondary school competition to the schools adjudicator for decision, together with any comments by the SOC on the proposals.

41A. In all other cases, where the proposals have not been considered by the SOC within 2 months, and the proposers have requested that the proposals be referred to the Adjudicator, the SOC must forward the papers within two weeks from the date the request was received.

■ Right of Appeal to the Adjudicator

42. Proposers/promoters can request that their proposals be referred to the Adjudicator if they are rejected by the SOC and the proposals are:

- to physically enlarge, or add 27 or more places to the admission number, or to add a sixth form to, a secondary school (other than a grammar school);
- to physically enlarge, or add 27 or more places to the admission number of, a popular primary school (as defined in regulations); or
- for a new foundation or voluntary school and the promoters are not represented on the SOC (i.e. are not the local authority or the local Church of England or RC diocesan authorities) – except where proposals are in response to a secondary school competition.

43. For proposals published to:-

- physically enlarge, or add 27 or more to the admission number of a “popular” primary school or a secondary school; or
- to add a sixth form to, a secondary school (other than a grammar school),

the SOC must inform the governing body’s representatives at the start of the SOC meeting, or, if they do not attend, within the decision letter, of their right of appeal to the adjudicator if the proposal is rejected by the SOC.

44. Such an appeal must be made to the SOC within 28 days of the date of the notification of the SOC’s decision. The SOC must then refer the papers to the Adjudicator within 2 weeks of the receipt of the appeal.

■ Additional Secondary School “Competitions” – the role of SOC

45. The Education Act 2005 introduced new arrangements for deciding proposals for new secondary schools. From 1 September 2006 a competition will normally be required for any proposal to establish a maintained secondary school, including brand new schools (e.g. for population growth) or schools established as a replacement for one or more existing schools (e.g. as part of a local reorganisation). The local authority must run a “competition” unless the Secretary of State consents to the publication of proposals for a new secondary school outside a competition. In running a competition the authority must publish a notice inviting interested parties to bring forward proposals for the new school and subsequently publish a further notice, giving details of all the proposals received, and any it wishes to make, and inviting comments on the various proposals. The Authority must then send copies of the proposals, together with any objections and comments received, to the SOC within two weeks of the end of the representation period.

45A. Where Academy proposals are submitted in response to a secondary school competition, the SOC must consult the Secretary of State on whether he might be willing to commence negotiations with a view to entering into an agreement for the establishment of an Academy. The SOC must write to School Organisation Unit, DfES, Mowden Hall, Darlington, DL3 9BG for this purpose, within 2 weeks of receiving the proposals.

46. The SOC must then consider the proposals and representations received. The SOC may decide to approve more than one set of proposals (i.e. complementary proposals) which together will meet the specification for the new school.

■ Secondary School Proposals – Secretary of State’s consent

47. As explained at paragraph 45 above, those proposing to establish a new secondary school can apply to the Secretary of State for consent to publish proposals for a new secondary school without a competition. Proposals would still have to be published and decided in accordance with existing statutory provisions.

■ Transitional Arrangements – Secondary School Competitions

47A. Where proposals have been **published** before 1 September 2006, the proposer will not be required to hold a competition or re-publish. Following the representation period, the proposals can be decided in accordance with existing statutory provisions ie local authority/SOC/or schools adjudicator, as appropriate.

■ Schools - Change of Category to Foundation

48. The governing body of any Community school or Voluntary Controlled school, may publish and decide proposals to change category to foundation under new fast track procedures. These arrangements do not apply to any school to which Sections 15, 17 of, or Section 51 of or Schedule 15 to the School Standards and Framework Act 1998 applies (i.e. the school is subject to a formal warning, in special measures or requires significant improvement). The SOC has no role in deciding proposals published under these arrangements.

■ Transitional Exemption Order – Role of SOC

49. Single sex schools are not required to comply with certain provisions of the Sex Discrimination Act (SDA) 1975. When a single sex school becomes mixed it will automatically become subject to those requirements. Since the change from single sex to co-educational would normally be phased over a period of years by changing the admission arrangements to allow the admission of both sexes, the school would not be able to comply fully with the SDA requirements for some years. Transitional Exemption Orders relax the requirement to comply during the period before the school becomes wholly co-educational.

50. Where the SOC receives statutory proposals to alter a single sex school to become co-educational, the SOC should treat the proposals as an application for a Transitional Exemption Order and make the order if they approve the proposals.

■ PART B: SOC CONSTITUTION AND CONDUCT OF BUSINESS

■ Constitution of the SOC

51. Members of the SOC are formally appointed by the local authority who should ensure that all the groups are as representative as possible. There must be a minimum of 5 groups on a SOC with an optional sixth group. The 6th group would be appointed by the local authority, to represent any section of the local community. Each group can have up to 7 members. The groups are:

- **LEA** - elected members whom we suggest are appointed in proportion to the balance of political power within the Authority. Members of the LEA group can be removed from the SOC in order to continue to reflect the political balance of the group, as long as the basis for the termination of membership is not excluded by their terms of appointment.
- **Church of England** - nominated by diocese(s) covering the local authority area, and whom we suggest are drawn from diocesan officers and/or from foundation or head teacher governors of relevant schools;
- **Roman Catholic Church** - nominated by diocese(s) covering the Authority's area, and whom we suggest are drawn either from diocesan officers and/or from foundation or head teacher governors of relevant schools;
- **Learning & Skills Council (LSC)** - nominated by the LSC. We recommend that this group would normally be made up of a single individual. We also recommend that the LSC group exercises its voting rights only where the statutory proposals being considered affect 14-19 provision;
- **Schools Group** – with members drawn from serving maintained school governors see Annex 1. The schools group must be reviewed by the local authority every February, to determine whether, according to pupil numbers, the appropriate categories of schools are represented. The Authority may give one month's notice of termination if it is necessary to amend the schools group membership.
- **Optional 6th group** – established to represent the interests of any section of the local community. Normally this would reflect established arrangements to involve particular interests. The Authority can decide to establish this additional group at any time. Once established, the group can be removed, so long as the terms of appointment provide for the termination of membership.

Examples of 6th groups include representatives from ethnic minority communities, district/borough councillors, teacher/school staff unions and Early Years Childcare Partnership.

In deciding whether to appoint a sixth group authorities must have regard to Section 71 of the Race Relations Act as amended and will want to have regard to the importance of promoting community cohesion, taking into account local issues and circumstances. Local authorities may wish to consult local bodies, community groups and schools, in addition to the SOC itself, about the need for a sixth group and its possible constitution.

■ **Terms of Office for SOC Members**

52. Members of SOC's will be appointed for a maximum of three years, subject to their remaining eligible. A member may resign from membership of the SOC at any time. A member can no longer be a member if they cease to be eligible, for example, where an LEA group member failed to retain their seat in a local election; or, in the case of nominated members, the body which provided the original nomination withdraws that nomination.

53. A member should consider resigning if they fail to attend three consecutive meetings of a SOC, even where an alternate attended on their behalf. This would not apply to the LSC group representative where they have not attended because they had no interest in proposals being considered.

54. When their term of appointment comes to an end, members may be re-appointed and there is no limit on the number of consecutive terms of office an individual may serve on a SOC. However the interest group who nominated them may choose to replace them or the individual may prefer not to be re-appointed.

■ **Chair and Vice-chair**

55. The SOC should appoint a chair and vice-chair from within its membership, electing them by a majority of votes cast by individual members. The chair and vice-chair should not be drawn from the same SOC group. The Department recommends that the Cabinet Member for Education is not appointed as the Chair of the SOC, to avoid any public concern about the SOC's independence of the local authority.

56. The term of office for each is one year, but with the prospect of annual re-election. A chair or vice-chair shall cease to hold office if they resign by giving written notice to the Secretary of the SOC, or if they cease to be members of the SOC. Their responsibilities include chairing meetings, overseeing preparation of the record of the meeting, submitting a budget for the local authority's approval and being accountable for expenditure against that budget, and taking responsibility for the SOC's statutory duties (including overseeing the provision of relevant papers to the Office of the Schools Adjudicator). When a vote is required on statutory proposals, the chair and vice-chair each votes with his, or her, own group.

■ **Secretary**

57. The SOC must appoint a Secretary from nominations from the local authority. The Secretary will work closely with the Chair. The Secretary's responsibilities include checking proposals on receipt, preparing papers for the SOC meetings, briefing alternates, producing minutes of SOC meetings, recording votes cast by groups and keeping complete copies of relevant papers for passing to the Adjudicator if necessary. The Secretary should have access to legal advice in order to advise the SOC on its statutory responsibilities as set out in regulations and guidance, in order to minimise the risk of challenge.

58. Many SOC Secretaries are appointed from within local authorities' committee services departments. Some authorities 'exchange' secretaries with neighbouring authorities, or employ retired personnel e.g. head teacher or senior local authority official. Where the Secretary to the SOC is a local authority official with relevant school place planning responsibilities, the Authority and SOC should agree a protocol for the provision of advice by the Secretary to the SOC, to avoid any conflict of loyalties.

■ **Conduct and Conflict of Interest**

59. In carrying out their functions, members of a SOC are expected to act in accordance with the seven principles of public life set out in the first report of the Committee on Standards in Public Life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership. The model Code of Conduct for local authorities does not legally apply to members of the SOC, other than LEA group members. However SOCs may wish to consider adopting relevant elements of the Code for all their members.

60. SOC members must declare any interest in any proposal, to be considered by the SOC. It is for SOCs and individual members to decide what constitutes a conflict of interest. However, as a minimum, the Department considers that a member has an interest in the proposals if they are a governor of the school, a parent of a child attending the school, a spouse or partner of a teacher at the school or have formally submitted objections to the proposals. It is acceptable for a Cabinet member, or other councillor, to hold office in the LEA group of a SOC (including where they have been directly involved in taking school proposals through council committees or representing the council during consultation meetings with the public) – this would not represent an interest in the proposals. Similarly, members of the Diocesan groups should not be excluded from voting on proposals for diocesan schools, on the basis of conflict of interest, unless they are governors or otherwise have a specific interest in the schools.

61. Where it is clear that a decision in which a member has an interest will be taken at a SOC meeting, the member may invite an alternate, who does not have an interest, to attend that meeting (see paragraphs 74-75 below). Any member attending a SOC meeting where a proposal is to be considered in which they have an interest, should withdraw and take no part in any discussions about the proposals or vote on the proposals.

62. Whilst SOC members are appointed to particular stakeholder groups, they have a duty to consider all the evidence and arguments in a case with an open mind and judge the respective merits of proposals having full regard to the Secretary of State's guidance (i.e. Sections 1 and 2 of the Decision Makers' guidance). In a High Court judgement (R v Bury School Organisation Committee, Ex Parte Wendy Loudon, 19th December 2002) the Judge commented that:

“The role of the SOC is administrative, indeed to a degree political, in the sense that it is concerned with priorities in the allocation of resources. The SOC is a body whose constituent members are parties in a broad political sense (and not of course financially) interested and affected by the issue of closure. They may be expected to have views and expressed views prior to undertaking the responsibility of membership of the SOC. Previously publicly stated views cannot disqualify them from membership. Their duty on accepting membership is to maintain a mind open, to reconsider previously expressed views, remaining unfettered by them, and to the issues, arguments and the evidence. The distinction between (disqualifying) pecuniary interests and (non-disqualifying) potential pre-judgement arising from publicly stated views in the case of administrative bodies such as the SOC is well established.”

63. Once the SOC has retired to consider proposals, members should not normally discuss proposals with a third party, apart from other SOC members or the officials assisting the SOC.

64. As the SOC is a separate statutory body to the Authority, its members should not be subject to any election "purdah" protocols and local councillor members may continue to vote and take part in SOC meetings and decisions during any local election "purdah" period.

65. The Model Code of Practice for local authorities may apply to LEA group members while attending SOC meetings as they are acting as a representative of the local authority. However, the SOC's standing orders should make it clear that when taking decisions on statutory proposals, all members, including the LEA group, should base their decision on the evidence and merits of the individual proposal, as required by SOC regulations and statutory guidance.

■ Standing Orders

66. Whilst the Department does not prescribe standing orders and procedures which SOCs should adopt, it nonetheless recommends that the SOC determines and adopts standing orders. Agreed standing orders will formalise the conduct of meetings and ensure the public understand the process more readily. Standing

orders might usefully cover the following topics (references to any relevant regulations are shown in brackets and any standing orders must reflect regulatory requirements):-

- Voting arrangements/proceedings – (Regulation 12 of the Education (School Organisation Committees)(England) Regulations 1999 (as amended) and also Regulation 13 of the Education (School Organisation Proposals)(England) Regulations 1999 (as amended). See also paragraph 33-37 above.
- Adjournments.
- Terms of reference/remit.
- Constitution/composition – (Regulations 5 and 7 of the Education (School Organisation Committees)(England) Regulations 1999 - as amended). See also paragraph 51 above.
- Chair and Vice Chair arrangements – (Regulation 8 of the Education (School Organisation Committees)(England) Regulations 1999 - as amended). See also paragraphs 55-56 above.
- Secretary appointment/arrangements – (Regulation 9 of the Education (School Organisation Committees)(England) Regulations 1999 - as amended). See also paragraph 57-58 above.
- Terms of office – (Regulation 6 of the Education (School Organisation Committees)(England) Regulations 1999 – as amended). See also paragraph 52-54 above.
- Alternate members – (Regulation 11 of the Education (School Organisation Committees)(England) Regulations 1999 - as amended). See also paragraphs 74-75 below.
- Code of conduct. See paragraphs 59-65 above.
- Declaration of interests. See paragraphs 60-61 above.
- Quorum. See paragraph 67 below.
- Notice of meetings – (Regulation 10 of the Education (School Organisation Committees)(England) Regulations 1999 - as amended). See also paragraph 77 below.
- Attendance by advisors, officials, press, public. See paragraphs 68-69 below.
- Representations to SOC and obtaining further advice/evidence. See paragraphs 70-73 below.
- Budget. See paragraph 83-84 below.

■ Quorums

67. Quorum arrangements should be agreed by each SOC, stipulating, for example, how many groups must be present; a minimum number of members in each group/or an overall number of members irrespective of which groups they represent. Sufficient notice of meetings should be given to ensure that a quorum can be secured, with the appointment of alternates where necessary.

■ Conduct of Meetings

68. A SOC may decide whether its meetings should be open or closed to members of the public or the press. If meetings are open, SOC members may want to consider whether some parts of the meeting should be closed e.g. discussing and arriving at their group vote in private, before putting that vote to the open SOC meeting.

69. Regulations do not require a local authority official to be present at SOC meetings. If the Secretary or Chair considers that a response to a question may be needed from the Authority during the meeting, they could invite a written response or invite officials to attend and give oral advice but they should consider whether they need to offer an opportunity for other parties to comment.

70. It is for SOCs to decide whether or not to take oral evidence during a meeting. If the SOC agrees to do so, care should be taken to ensure that those with different viewpoints are given an equal opportunity to address the SOC. In a judicial review in 2002, the court ruled that it was for a SOC to decide whether or not to hear from objectors orally and that objectors do not have a right to be heard by the SOC. However, the decision on whether to invite objectors to make oral representations should depend upon the facts of the particular case, and should be based on rationality grounds. SOCs should therefore not make a 'blanket policy' to refuse oral representations from objectors.

71. The SOC should ensure that, where necessary, it can draw on expert advice on the educational aspects of particular proposals (e.g. special school reorganisation proposals) before taking a decision.

72. Regulations provide that where proposals have been published to physically enlarge, or add 27 or more to the admission number, or to add a sixth form to, a secondary school (other than a grammar school), the governing body of that school may send up to 2 representatives to attend the SOC meeting and make representations to members of the SOC before they vote.

73. In some circumstances the SOC may wish to seek clarification or further evidence or carry out a site visit to see the site, location and area of the proposals. The SOC must ensure that, where new information is obtained, or new points are raised, that could influence the decision, the proposers, or others with a key interest, are given the opportunity to comment. Where a site visit is made, it is important to ensure that this does not provide an opportunity or unfair advantage, to one party.

■ Alternates

74. Members may nominate an alternate to take their place at SOC meetings which they cannot attend or where a conflict of interest might arise. The alternate must be eligible to sit on the SOC and meet the same criteria as the permanent member e.g. same type and category of school for the Schools Group. A nomination for an alternate must be given in writing to the Secretary with a clear indication of the period for which the alternate will stand.

75. An alternate must be fully briefed and made aware of their responsibility and role as a SOC member and all SOC procedures. They must have the opportunity to familiarise themselves with any paperwork issued to other members.

■ Minutes of SOC Meeting

76. Minutes of the SOC meeting must be sufficiently detailed so that they inform any referral to the Adjudicator, subsequent judicial review or other enquiry. Minutes should ideally be agreed by the Chair as soon as possible after the meeting particularly where proposals are to be passed to the Adjudicator. The minutes should confirm the factors considered by the SOC e.g. that the SOC was satisfied that the notice and consultation met statutory requirements, the application of any presumptions from the statutory guidance – i.e. Section 1 of Decision Makers' Guidance (e.g. why a proposal constituted a strong case for the closure of a rural school etc). The minutes should also record the key factors and reasons for a decision so that they can be agreed for inclusion in the decision letters (see paragraph 38 above).

■ Notice of meetings

77. The Regulations require the Secretary to convene meetings of the SOC, giving a minimum notice of seven working days in advance of meetings, and providing a full agenda. A longer period of notice should be given where possible, especially where there are a number of papers that members will be expected to read before the meeting. Wherever possible, meetings should be planned sufficiently well in advance, taking into account the publication of proposals which are likely to come before the SOC for decision, to ensure members' attendance and the need to secure a quorum. This would also provide for members to arrange an alternate if they cannot attend and for the alternate to be properly briefed by the Secretary.

■ Sex Discrimination

78. The School Standards and Framework Act 1998 places the SOC under an explicit duty to have regard to the duties placed on Local Education Authorities and school governing bodies by the Sex Discrimination Act 1975 and the Race Relations Act 1976. In the Department's view SOCs will be 'public authorities' for the purpose of the Human Rights Act 1998 and must not act in a way which is incompatible with the rights and freedoms in the European Convention on Human Rights.

■ Indemnification of Members

79. The School Standards and Framework Act 1998 requires the local authority to indemnify members against reasonable legal costs and expenses arising from decisions or action taken in good faith.

■ Complaints Procedures

80. A party can challenge a decision by a SOC by judicial review in the High Court if they believe that the SOC has acted unlawfully or unreasonably. Applications for judicial review should normally be made within 3 months of the decision. A party may also complain to the Local Government Ombudsman about the SOC if they believe maladministration has occurred.

81. The Department may also investigate cases where the Secretary of State is asked to use powers of intervention established by the Education Act 1996:-

Section 496 – provides for the Secretary of State to give a direction as to the performance of a statutory duty as appears expedient where a SOC has acted unreasonably. This could, for example, be a direction for SOC members to undergo appropriate training.

Section 497 – the Secretary of State has the power to direct a School Organisation Committee to reconsider a decision where it has failed to discharge a statutory duty.

■ The Freedom of Information Act

82. This Act gives legal right of access to policy, operational and factual information held by public sector bodies. Whilst SOCs will not initially be bound by the requirement under the Act from 1 January 2005, they may wish to consider observing its principles as a matter of good practice.

■ Budget

83. The SOC should agree on the circumstances for which it requires funds. This might include loss of earnings allowances; travel and subsistence payments for members; the costs of any specialist advice required to be bought in; and the hire of a meeting room, where a room was not provided by the local authority. The Authority would no doubt offer guidance on its own budgetary procedures.

84. The SOC should submit a provisional and itemised budget for approval to a timetable agreed with the Authority, depending on its own budget management procedures, but in any event, before the beginning of the financial year to which the budget applies. The Authority should agree the budget, or stipulate reasons for rejecting it and provide a revised budget. The Authority may revise the budget during the year.

■ Annex 1: SCHOOL ORGANISATION COMMITTEE CONSTITUTION - SCHOOLS GROUP APPOINTMENTS

- Appointees must be members of a school Governing Body but must not be a local authority appointed governor who is also a member of the local authority (i.e. local councillor).
- The number of members must be at least one and not more than 7 (except where needed to secure representation of all school categories - see below).
- Must be at least one member of the governing body of the following **school types**:-
 - primary school (other than special or nursery school) – if there is at least one primary school in the local authority area;
 - secondary school (other than special school) – if there is at least one secondary school in the local authority area;
 - nursery school (if there is at least one nursery school in the local authority area);
 - special school (if there is at least one special school in the local authority area);
 - middle school (if there is at least one middle school in the local authority area).
- Also, where there are at least 5% of the local authority pupils in any school of the following categories, there must be at least one member of the schools group who is a member of the governing body of that **school category** :-
 - community schools and community special schools (*);
 - foundation schools and foundation special schools (*);
 - voluntary schools of a religious character (other than schools under the auspices of the local CE or RC diocese);

- voluntary schools without a religious character; and
- nursery schools (*)

Notes:

1 – a governor member can represent both a **type** of school and a **category** e.g. one representative for both primary and foundation/foundation special;

2 – (*)the regulations provide that nursery and special schools are school categories for the purposes of the regulations, but also provide an explicit exemption from the above “5% rule”, as members should be appointed to the schools group where there is at least one nursery or special school in the local authority area]

- The number of group members for each category should ideally be proportional to the number of pupils in that category - e.g. if 25% of the Authority’s pupils are in foundation schools, ideally 25% of group members should be foundation school governors.
 - Pupils counting towards "Authority’s pupils", for the purpose of establishing 5%, are all those in **school categories** as described above. This excludes diocesan RC and CE pupils. Pupils under 5 will only count where they are in a unit attached to a primary school or in a maintained nursery school.
 - Ideally members should be a range of governors (i.e. head teachers, parents, community foundation partnership, staff and local authority appointees).
 - Ideally the Schools group should have members with knowledge and experience in the provision for pupils with special educational needs, both in special schools and within mainstream provision.
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