

# Making Changes to a Maintained Mainstream School (Other than Expansion)

## A Guide for Local Authorities and Governing Bodies

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# **MAKING CHANGES TO A MAINTAINED MAINSTREAM SCHOOL (OTHER THAN EXPANSION) - A GUIDE FOR LOCAL AUTHORITIES AND GOVERNING BODIES**

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# **MAKING CHANGES TO A MAINTAINED MAINSTREAM SCHOOL (OTHER THAN EXPANSION) - A GUIDE FOR LOCAL AUTHORITIES AND GOVERNING BODIES**

**(Covering removal of sixth form; adding/removing early years provision; other changes to age range; adding/removing SEN provision; changing from single sex to mixed or vice versa; transfer to a new site; adding/changing/removing boarding provision; removing selection; discontinuance of one of school's sites and change of category to VA or VC)**

## **Introduction**

1. This guide provides information on the procedures established by The Education and Inspections Act 2006 (EIA 2006) and The School Organisation (Prescribed Alterations to Maintained Schools)(England) Regulations 2007. It contains both statutory guidance (i.e. guidance that must be followed) and non-statutory guidance on the process for making changes to school provision. The statutory guidance sections are indicated by shading. The relevant provisions of EIA 2006 came into effect on 25 May 2007.
2. If you have any comments on the content or layout of this guide please send these to the School Organisation Unit (using the SOU website's "Contact Us" facility - [www.dscf.gov.uk/schoolorg](http://www.dscf.gov.uk/schoolorg)) or by e-mail to: [schools.organisation-unit@dscf.gsi.gov.uk](mailto:schools.organisation-unit@dscf.gsi.gov.uk) ) making sure that you identify the title of the guide and quote the page and paragraph numbers where relevant.

## **Who is the Guidance For?**

3. This guidance is for those considering publishing proposals to make changes to school provision under Section 19 of the 2006 Act, referred to as proposers (i.e. the Local Authority (LA) or the governing body), those deciding proposals, referred to as the "Decision Maker" (i.e. the LA and the schools adjudicator) and also for information for those affected by proposals to make changes to school provision.
4. Separate guides are available for:
  - a. Expanding a school or adding a sixth form
  - b. Becoming a Trust school;
  - c. Establishing a new school; and
  - d. Closing a school.

## **School Organisation Planning Requirements**

5. LAs are under a statutory duty to ensure that there are sufficient school places in their area, promote high educational standards, ensure fair access to educational opportunity and promote the fulfilment of every child's educational potential. They must also ensure that there are sufficient schools in their area and promote diversity and increase parental choice.

6. Parents can make representations about the supply of school places and LAs have a statutory duty to respond to these representations. Further guidance on this duty is available in "Duty to Respond to Parental Representations about the Provision of Schools" which is on the school organisation website [www.dscf.gov.uk/schoolorg](http://www.dscf.gov.uk/schoolorg).

7. LAs are required to publish a Children and Young People's Plan (CYPP) as the single strategic overarching plan for all services affecting children and young people and includes reference to strategic planning for school places. It is for LAs, in partnership with other stakeholders, to plan for the provision of places. LAs should also explore the scope for collaborating with neighbouring authorities when planning the provision of schools. In particular, LAs might work together to consider how to meet the needs of parents seeking a particular type of school for their children in cases where there is insufficient demand for such a school within the area of an individual LA.

## **The Secretary of State's Role**

8. The Secretary of State has the power to issue guidance to which the Decision Maker must have regard when deciding proposals. This should ensure that proposals are considered in a consistent way and the Ministers' key priorities for raising standards and transforming secondary education are taken into account when decisions are taken. Proposers are strongly advised to look at the factors which the Decision Maker will take into account when considering their proposals (See Stage 4).

9. The Secretary of State does not decide statutory proposals relating to schools, except where proposals have been published by the Learning and Skills Council under Section 113A of the Learning and Skills Act 2000 (as inserted by Section 72 of the Education Act 2002), for changes to 16-19 provision in schools. For further information please see guidance available at [www.teachernet.gov.uk/docbank/index.cfm?id=4390](http://www.teachernet.gov.uk/docbank/index.cfm?id=4390).

## **When are proposals required?**

10. You first need to decide whether the change you propose to make requires the publication of statutory proposals. A separate guide is available for making changes to expand a school or add a sixth form, see "Expanding a Maintained Mainstream School or Adding a Sixth Form" which is available on the school organisation website [www.dscf.gov.uk/schoolorg](http://www.dscf.gov.uk/schoolorg).

11. The changes to community, voluntary and foundation schools that require proposals, other than for expansion or adding a sixth form, are:

- a. **Change of Upper Age Limit** – a change in the upper age limit by a year or more, except where the alteration is:
  - i) to provide or remove provision for pupils over compulsory school age who are repeating a course of education completed before they reached compulsory school age;
  - ii) to provide part-time further education for pupils aged over compulsory school age, or full-time further education for persons aged 19 or over i.e. under section 80(1) of SSFA 1998; or
  - iii) temporary and will be in place for no more than 2 years.
- b. **Change of Lower Age Limit** – which, when taken together with previous changes (i.e. in the past 5 years; since the school opened or since any previous age change proposals were implemented), would result in a lower/higher age limit by at least one year. This would include the addition or removal of early years provision. Proposals are not required for temporary changes that will be in place for no more than 2 years;
- c. **The addition or removal of, or change to, provision reserved for pupils with SEN;**
- d. **End selection in a grammar school** - proposals by the governing body of a designated grammar school to end selection (section 109 of the School Standards and Framework Act 1998);
- e. **Pupil gender** – a change from single-sex to mixed, or vice versa. If a school is single sex, but admits pupils of both sexes to its sixth form, it will be regarded as single sex, providing admission to the sixth form is 25% or less of the other sex;
- f. **Boarding** - the introduction or ending of boarding, or an increase or decrease in boarding provision by 50 pupils or 50% of capacity, whichever is the greater;
- g. **Transfer to a new site** - the transfer of a school to a new site, except where the new site is within 3.2 kilometres (2 miles) 'as the crow flies' of the existing site (unless the school is transferring to a site within another LA);
- h. **Discontinuance of one of school's sites** – the discontinuance of a site, where a school occupies more than one site, and the main entrance of any of the school's remaining sites is one mile or more from the main entrance of the site which is to be discontinued; and
- i. **Change of School Category** – a change of category from community, foundation, voluntary aided, or voluntary controlled to voluntary aided or voluntary controlled. A school **cannot** change

category to become a community school.

[NOTE: Separate guidance is available on changing category to become a Trust school and changing category to foundation]

12. The only alteration to a nursery school that requires statutory proposals is the transfer of the school to a new site, except where the new site is within 3.2 kilometres (2 miles) 'as the crow flies' of the existing site.

### **Change of Category to VA**

13. If a school proposes to change category to voluntary aided, 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). Whilst the Secretary of State has the power to provide grant aid for up to 90% of building work costs, the governors must provide the remaining 10% themselves. In bringing forward proposals, the governing body should be able to demonstrate that it has access to sufficient funds to enable it to meet 10% of its overall liabilities for at least 5 years from the date of implementation. The governing body could submit a schedule with the proposals outlining an estimate of the costs of capital work for the forthcoming five years and a statement as to how it will meet its liabilities for such costs.

### **VA schools – what if the governing body can no longer meet their financial contribution?**

14. Under Section 19(4) of EIA 2006, if the governing body of a VA school is unable or unwilling to carry out their financial obligations for funding capital building work, they must publish prescribed alteration proposals to change category to become a foundation or voluntary controlled school.

### **Schools with a Religious Character**

15. It is not possible for a voluntary or foundation school to acquire, lose or change religious character by making a prescribed alteration to the school. To make a change from, for example, a community school to a voluntary school with a religious character, the LA would need to publish proposals to close the community school, and a faith organisation (as proposers) would bring forward "related" proposals to establish a new voluntary school with a religious character.

### **Grammar schools**

16. Where a school has been designated as a grammar school by the Secretary of State, its selective admission arrangements can only be removed through the parental ballot arrangements or through statutory proposals to remove selection. Only the governing bodies of designated grammar schools may publish proposals to remove selection. Proposals to remove selection will fall if the LA are notified that a petition, which will trigger a ballot, has been received before the proposals are due to be implemented.

## Foundation bodies

17. A foundation body is a statutory foundation established under section 21 of the School Standards and Framework Act 1998. Paragraphs 16 to 20 below apply only to foundation bodies established under that Act. It does not apply to other types of foundations, including Trusts. There is separate guidance on the acquisition of a Trust entitled “Trust School Proposals” which is available on the school organisation website – [www.dscf.gov.uk/schoolorg](http://www.dscf.gov.uk/schoolorg) .

18. A foundation body may be established by three or more schools acting jointly. If approved, the body will then hold the property for all the schools “for the purposes of the schools” and also be responsible for appointing the foundation governors for the schools within the group. The governing bodies of a group of schools may bring forward proposals to change the category and simultaneously establish a foundation body or join an existing foundation body.

19. Any application to the Secretary of State to establish a foundation body must contain -

a statement that the application has been agreed by the governing body of each school;

a draft instrument of government for the foundation body;

a statement containing the names of the initial governor members of the foundation body; the proposed date on which the foundation body comes into being; the category in which it is proposed that each school will enter the group (or a statement that a particular school will enter in its existing category), and an undertaking that the foundation body will appoint foundation governors to schools in the group in accordance with the individual schools’ instruments of government.

20. If the Secretary of State approves the application, a foundation body will then be established on a date specified by him in writing.

21. Where a school wishes to join an existing foundation body, they may only do so with the agreement of the governing bodies of all the schools which are already members of the group. Consequently any application to the Secretary of State must be made jointly by the governing body of the school seeking to join the group and the foundation body. The application should contain:

a statement that the governing bodies of all the schools in the group agree to the school joining the group; and

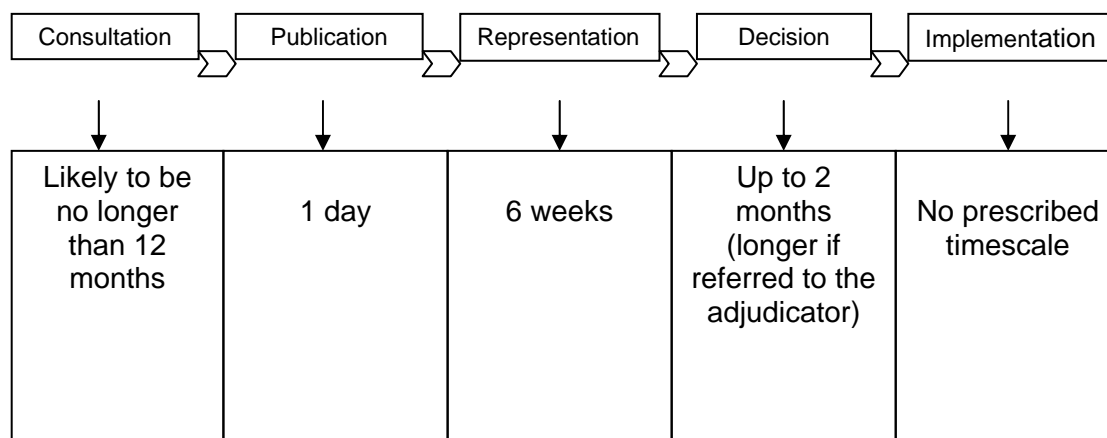
the category in which it is proposed that the school will enter the group. The Secretary of State shall, if he considers it appropriate, declare that the school shall form part of the group from the date specified in the proposals.

22. Where a school wishes to join a group, the foundation body will have to

simultaneously seek the Secretary of State's approval of a modification of the foundation's instrument of government.

### Overview of Process

23. There are 5 statutory stages for a statutory proposal to make a prescribed alteration to a school:



### Who Can Publish Statutory Proposals

24. The regulations prescribe who can publish the different types of proposals for each category of school but the table below summarises the provisions:

Who?	Type of Proposals
Local Authority	<p>Community Schools:-</p> <p>All types of alterations except removal of selection and changes of category</p> <p>Foundation and Voluntary schools:-</p> <p>Enlargement of Premises</p> <p>Increase the number of pupils</p> <p>Change upper age limit to provide sixth form education</p> <p>Addition or removal of SEN provision</p> <p>Nursery School:-</p> <p>Transfer to a new site</p>



	Proposals to be relieved of the duty to implement previously approved proposals published by the LA.
Governors of Foundation and Voluntary Schools	<p>Enlargement of premises</p> <p>Increase pupils numbers</p> <p>Change upper age limit</p> <p>Change lower age limit</p> <p>Revision of admission arrangements of a grammar school</p> <p>Addition, removal or change in the type of SEN</p> <p>Change of Gender</p> <p>The introduction, alteration or ending of boarding provision</p> <p>Transfer of a school to a new site</p> <p>Discontinue the use of a site</p> <p>Changes of Category from:-</p> <p style="padding-left: 40px;">VC to VA VA to VC Foundation to VC Foundation to VA</p> <p>Proposals to be relieved of the duty to implement previously approved proposals published by the Governing Body.</p>
Governors of a Community School	<p>Enlargement of premises</p> <p>Increase the number of pupils</p> <p>Change upper age limit to provide sixth form education</p> <p>Removal of selection (grammar school)</p> <p>Change of category from:-</p> <p style="padding-left: 40px;">Community to VC Community to VA</p> <p>Proposals to be relieved of the duty to implement previously approved proposals published by the Governing Body.</p>

### **LSC Powers to publish proposals**

25. The Learning and Skills Council (LSC) will work with local authorities to support the improvement of sixth-form provision. The LSC has the power to publish proposals for the closure of an inadequate school sixth form. Where a school sixth form has been judged to require Significant Improvement in two consecutive Ofsted inspections, or where a maintained school for 16-19 year olds has been judged to require Special Measures in two consecutive Ofsted inspections, the LSC may publish proposals to close the sixth form or 16-19 school. The proposals will be decided by the LA or schools adjudicator in accordance with the same procedures as set out in Stage 4 of this guide.

26. In addition to the above, the LSC can publish proposals to add or remove a school sixth form provision, or enlarge existing provision in the following circumstances:-

following an area inspection report; or

where the LSC can demonstrate that a reorganisation will increase participation and achievement of, and range of learning opportunities for, 16-19 year-olds.

27. These proposals are decided by the Secretary of State.

### **Where to Start?**

28. Before commencing formal consultation, the LA or governing body should ensure that they understand the statutory process that must be followed, the factors that will be considered by the Decision Maker and that they have a sufficiently strong case and supporting evidence. They should also ensure that if they require capital funding to make the alteration, this has been secured before they publish their proposals.

### **Capital**

30. Where proposals require capital resources for their implementation the funding for the proposals must be in place when the proposals are decided (see paragraph 4.44). Where proposers require capital funding to implement their proposals, they should secure this before publishing proposals.

31. All LA are allocated capital funding over each spending review period to support their investment in school buildings. Where an LA identifies the need to make changes to local school provision, as part of a Building Schools for the Future project, the funding will be provided through the Building Schools for the Future programme. Details of capital funding for the project in respect of all schools will be decided in discussions between the LA, the Department and Partnerships for Schools and will be included in the Final Business Case which the Department agrees. This may include the contribution by the LA (or schools or other stakeholders such as dioceses) to Building Schools for the Future funding of receipts from land made available through school reorganisation. For voluntary aided schools, government funding will normally be at 100% of the approved capital costs.

32. Where capital work is proposed for a community, foundation or voluntary controlled school other than as part of Building Schools for the Future, the proposers should secure a capital allocation from the LA. The LA should consider how they can prioritise this need in their asset management planning for the formulaic capital funding they receive, and for other resources which are available to them. Similarly proposers in respect of voluntary aided schools will need to get a commitment of grant from the Department, with the rate of grant support normally being 90% of the expenditure. The governing body will be responsible for funding the remaining 10%.

## Stage 1 – Consultation

1.1 The School Organisation (Prescribed Alterations to Maintained Schools)(England) Regulations 2007 provide that those bringing forward statutory proposals to make an alteration to a school **must** consult interested parties, and in doing so must have regard to the Secretary of State's guidance. The statutory guidance for this purpose is contained in paragraphs 1.2 to 1.5 below.

1.2 The Secretary of State considers that those bringing forward proposals should consult all interested parties. In doing so they should:

allow adequate time;

provide sufficient information for those being consulted to form a considered view on the matters on which they are being consulted;

make clear how their views can be made known;

able to demonstrate how they have taken into account the view expressed during consultation in reaching any subsequent decision as to the publication of proposals.

1.3 Where, in the course of consultation, a new option emerges which the proposers wish to consider, it will probably be appropriate to consult afresh on this option before proceeding to publish proposals.

1.4 The School Organisation (Prescribed Alterations to Maintained Schools)(England) Regulations 2007 require proposers to consult the following interested parties:

the governing body of any school which is the subject of proposals (if the LA are publishing proposals);

the LA that maintains the school (if the governing body is publishing the proposals);

families of pupils, teachers and other staff at the school;

any LA likely to be affected by the proposals, including neighbouring authorities where there may be significant cross-border movement of pupils;

the governing bodies, teachers and other staff of any other school that may be affected;

families of any pupils at any other school who may be affected by the proposals including where appropriate families of pupils at feeder primary schools;

any trade unions who represent staff at the school; and representatives of any trade union of any other staff at schools who may be affected by the

proposals;

(if proposals involve, or are likely to affect a school which has a particular religious character) the appropriate diocesan authorities or the relevant faith group in relation to the school;

(if a foundation or voluntary school does not have a religious foundation) any trust or foundation providing the school;

(if the proposals affect the provision of full-time 14-19 education) the Learning and Skills Council (LSC);

MPs whose constituencies include the schools that are the subject of the proposals or whose constituents are likely to be affected by the proposals;

the local district parish or community council where the school or proposed school that is the subject of the proposals is situated;

any other interested party, for example, the Early Years Development and Childcare Partnership (if one exists), or any local partnership or group that exists in place of an EYDCP (where proposals affect early years and/or childcare provision), or those who benefit from a contractual arrangement giving them the use of the premises; and

such other persons as appear to the proposers to be appropriate.

1.5 Under Section 176 of the Education Act 2002 LAs and governing bodies are also under a duty to consult pupils on any proposed changes to local school organisation that may affect them. Guidance on this duty is available on the Teachernet website: [www.publications.teachernet.gov.uk](http://www.publications.teachernet.gov.uk) and is entitled 'Pupil Participation Guidance: Working Together – Giving Children and Young People a Say'.

## Conduct of Consultation

1.6 How consultation is carried out is not prescribed in regulations and it is for the proposers to determine the nature of the consultation including, for example, whether to hold public meetings. Proposers should avoid consulting on proposals during school holidays.

Remember:

Do	Don't
Consult all interested parties	Consult during school holidays
Provide sufficient time and sufficient information	Use language which could be misleading, e.g. We <u>will</u> remove SEN provision
Think about the most appropriate consultation method	
Consider feedback and views	

Consider alternative options	
Explain decision making process	

## Stage 2 – Publication

2.1 The table at paragraph 22 of the Introduction section of this guide sets out who may publish proposals for the different categories of school.

2.2 Proposals **must** contain the information specified in The School Organisation (Prescribed Alterations to Maintained Schools)(England) Regulations 2007 – as set out in Annex A. Proposals should be published within a reasonable timeframe following consultation so that they are informed by up-to-date feedback, preferably within 12 months of consultation being concluded.

2.3 A statutory notice containing specified information (indicated by the shaded information in Annex A) and stating how complete copies of the proposals can be obtained **must** be published in a local newspaper, and also posted at the main entrance to the school (and all the entrances if there are more than one) and at some other conspicuous place in the area served by the school (e.g. the local library, community centre or post office etc.). Proposers may circulate a notice more widely in order to ensure that all those substantially affected have the opportunity to comment.

2.4. The DCSF School Organisation Website contains an online Statutory Notice Builder tool. Proposers are strongly advised to use this facility as it will help them to draft a statutory notice that complies with regulations, and offers an opportunity for the notice to be checked by the School Organisation Unit of the DCSF. The notice builder can be found at [www.dcsf.gov.uk/schoolorg](http://www.dcsf.gov.uk/schoolorg) . To gain access you must register for the “Members’ Area” on the website but this is free of charge.

## Related Proposals

2.5 Where proposals are interdependent they should be identified as “related”, either by being published in a single notice or the link to the other proposals made clear in each notice. Where proposals for community and voluntary schools are “related” (e.g. where an entire area is to be reorganised) the LA and governors/proposers may publish a single notice but this must make it clear who is making which proposals, under their respective powers, and there should be separate signatures for each relevant section. Where proposals are not “related”, they should not be published on the same notice unless the notice makes it very clear that the proposals are not “related”.

## Implementation date

2.6 There is no maximum limit on the time between the publication of a proposal and its date of implementation but circumstances may change significantly if too long a period elapses. In general, therefore, with the possible exception of proposals for major authority-wide reorganisation which may have to be phased in over a long period – the implementation date for proposals should be within 3 years of their publication. You may be expected to show good reason if you propose a longer timescale.

## **Explanatory Note**

2.7 If the full effect of the proposals is not apparent to the general public from the published notice, it may be supplemented by an explanatory note or background statement, but this should be clearly distinguishable from the formal proposals.

## **Invalid Notice**

2.8 Where a published notice has not been properly formulated in accordance with the regulations, the notice may be judged invalid and therefore ineligible to be determined by the LA or schools adjudicator. In these circumstances you should publish a revised notice making it clear that this replaces the first notice and that the statutory period for representations will run from the publication date of the revised notice.

## **Who should be sent copies of proposals?**

2.9 The proposers **must** send complete copies of their proposals, within a week of publication, to:

the LA (if the governing body published the proposals);

the school's governing body (if the LA published the proposals); and

the Secretary of State (i.e. to SOU, DCSF, Mowden Hall, Darlington DL3 9BG or via e-mail to [schools.organisation-unit@dcsf.gsi.gov.uk](mailto:schools.organisation-unit@dcsf.gsi.gov.uk)).

2.10 The proposers **must** also send a complete copy of their proposals to any person who requests a copy within 1 week of the date of the request.



### **Stage 3 - Representations**

3.1 Once proposals are published there follows a 6 week statutory period during which representations (e.g. objections or comments) can be made. These **must** be sent to the LA.

3.2 The representation period is the final opportunity for people and organisations to express their views about the proposals and ensure that they will be taken into account by the Decision Maker.

## Stage 4 – Decision

4.1. Decisions on school organisation proposals are taken by the LA or by the schools adjudicator. In this chapter both are covered by the form of words “Decision Maker”.

4.2 Section 21 of EIA 2006 provides for regulations to set out who should decide proposals for any prescribed alterations. The School Organisation (Prescribed Alterations to Maintained Schools)(England) Regulations 2007 (SI: 2007 No. 1289) make detailed provision for the consideration of prescribed alteration proposals (see in particular Schedules 3 and 5). Most decisions will be taken by the LA with some rights of appeal to the schools adjudicator.

4.3 The Department does not prescribe the process by which an LA carries out their decision-making function (e.g. full Cabinet or delegation to Cabinet member or officials). This is a matter for the LA to determine but the requirement to have regard to statutory guidance (see paragraph 4.15 below) applies equally to the body or individual that takes the decision.

4.4 If the LA fails to decide proposals within 2 months of the end of the representation period the LA **must** forward proposals, and any received representations (i.e. not withdrawn in writing), to the schools adjudicator for decision. They **must** forward the proposals within one week of the end of the 2 month period.

### Who Can Appeal Against an LA Decision?

4.5 The following bodies may appeal against an LA decision on alteration proposals:

the local Church of England diocese;

the bishop of the local Roman Catholic diocese;

where the school provides education for pupils aged 14 and over - the Learning and Skills Council; and

where proposals are published by the LA - the governors and trustees of the foundation or voluntary school.

Notes:

1 - We propose to amend the regulations to provide for an appeal by the governors and trustees of a foundation or voluntary school where the governing body have published any alteration proposals; and

2 - the governing body of the community school may appeal if their proposals to expand their school are rejected by the LA – see paragraph 4.5 of “Expanding a Maintained Mainstream School or Adding a Sixth Form” – [www.dscf.gov.uk/schoolorg](http://www.dscf.gov.uk/schoolorg) .

4.6 Appeals **must** be submitted to the LA within 4 weeks of the LA's decision. The LA **must** then send the proposals, and the comments and objections received, to the schools adjudicator within 1 week of the receipt of the appeal. The LA should also send a copy of the minutes of the LA's meeting or other record of the decision and any relevant papers. Where the proposals are "related" to other proposals, all the "related" proposals should be sent to the schools adjudicator.

### **Checks on Receipt of Statutory Proposals**

4.7 There are 4 key issues which the Decision Maker should consider before judging the respective factors and merits of the statutory proposals:

- a. Is any information missing? If so, the Decision Maker should write immediately to the proposer/promoter specifying a date by which the information must be provided.
- b. Does the published notice comply with statutory requirements? (see paragraph 4.8 below).
- c. Has the statutory consultation been carried out prior to the publication of the notice? (see paragraph 4.9 below).
- d. Are the proposals linked or "related" to other published proposals? (see paragraphs 4.10 to 4.14 below).

### **Does the Published Notice Comply with Statutory Requirements?**

4.8 The Decision Maker should consider whether the notice is valid as soon as a copy is received. Where a published notice does not comply with statutory requirements - as set out in The School Organisation (Prescribed Alterations)(England) Regulations 2007 (SI:2007 No.1289) - it may be judged invalid and the Decision Maker should consider whether they can decide the proposals.

### **Has the Statutory Consultation Been Carried Out Prior to the Publication of the Notice?**

4.9 Details of the consultation should be included in the proposals. The Decision Maker should be satisfied that the consultation meets statutory requirements (see Stage 1 paragraphs 1.2 – 1.5). If some parties submit objections on the basis that consultation was not adequate, the Decision Maker may wish to take legal advice on the points raised. If the requirements have not yet been met, the Decision Maker may judge the proposals to be invalid and should consider whether they can decide the proposals. Alternatively the Decision Maker may take into account the sufficiency and quality of the consultation as part of their overall judgement of the proposals as a whole.

### **Are the Proposals Related to Other Published Proposals?**

4.10 Paragraph 35 of Schedule 3, and Paragraph 35 of Schedule 5, to The School Organisation (Prescribed Alterations to Maintained Schools)(England) Regulations 2007 provides that any proposals that are “related” to particular proposals **must** be considered together. Paragraphs 4.11-4.14 provide statutory guidance on whether proposals should be regarded as “related”.

4.11 Generally, proposals should be regarded as “related” if they are included on the same notice (unless the notice makes it clear that the proposals are not “related”). Proposals should be regarded as “related” if 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 to directly affect the outcome or consideration of the other, the proposals should be regarded as “related”.

4.12 Where proposals are “related”, 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.

4.13 Where proposals for an expansion of a school are “related” to proposals published by the local LSC which are to be decided by the Secretary of State, the Decision Maker should defer taking a decision until the Secretary of State has taken a decision on the LSC proposals. This applies where proposals before the Decision Maker concern:

- a. the school that is the subject of the LSC proposals;
- b. any other secondary school, maintained by the same LA that maintains a school that is the subject of the LSC proposals; or
- c. any other secondary school in the same LA area as any FE college which is the subject of the LSC proposals.

4.14 The proposals will be regarded as “related” if their implementation would prevent or undermine effective implementation of the LSC proposals.

### **Statutory Guidance – Factors to be Considered by Decision Makers**

4.15 Regulation 8 of The School Organisation (Prescribed Alterations to Maintained Schools)(England) Regulations 2007 provides that both the LA and schools adjudicator **are required** to have regard to guidance issued by the Secretary of State when they take a decision on proposals. Paragraphs 4.16 to 4.60 below contain the statutory guidance.

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

### **EFFECT ON STANDARDS AND SCHOOL IMPROVEMENT**

#### **A System Shaped by Parents**

4.17 The Government's aim, as set out in the Five Year Strategy for Education and Learners and the Schools White Paper *Higher Standards, Better Schools For All*, is to create a schools system shaped by parents which delivers excellence and equity. In particular, the Government wishes to see a dynamic system in which:

weak schools that need to be closed are closed quickly and replaced by new ones where necessary;

the best schools are able to expand and spread their ethos and success; and

new providers have the opportunity to share their energy and talents by establishing new schools – whether as voluntary schools, Trust schools or Academies – and forming Trust for existing schools.

4.18 The EIA 2006 amends the Education Act 1996 to place new duties on LAs to secure diversity in the provision of schools and to increase opportunities for parental choice when planning the provision of schools in their areas. In addition, LAs are under a specific duty to respond to representations from parents about the provision of schools, including requests to establish new schools or make changes to existing schools. The Government's aim is to secure a more diverse and dynamic schools system which is shaped by parents. The Decision Maker should take into account the extent to which the proposals are consistent with the new duties on LAs.

## **Standards**

4.19 The Government wishes to encourage changes to local school provision where it will boost standards and opportunities for young people, whilst matching school place supply as closely as possible to pupils' and parents' needs and wishes.

4.20 Decision Makers should be satisfied that proposals for changes to a school's provision will contribute to raising local standards of provision, and will lead to improved attainment for children and young people. They should pay particular attention to the effects on groups that tend to under-perform including children from certain ethnic groups, children from deprived backgrounds and children in care, with the aim of narrowing attainment gaps.

4.21 Decision Makers should be satisfied that when proposals lead to children being displaced, any alternative provision will meet the statutory SEN improvement test (see paragraphs 4.53 - 4.59).

## **Diversity**

4.22 The Government's aim is to transform our school system so that every child receives an excellent education – whatever their background and wherever they live. A vital part of the Government's vision is to create a more diverse school system offering excellence and choice, where each school has

a strong ethos and sense of mission and acts as a centre of excellence or specialist provision.

4.23 Decision Makers should consider how proposals will contribute to local diversity. They should consider the range of schools in the relevant area of the LA and whether the expansion of the school will meet the aspirations of parents, help raise local standards and narrow attainment gaps.

### **Every Child Matters**

4.24. The Decision Maker should consider how proposals will help every child and young person achieve their potential in accordance with Every Child Matters' principles which are: to be healthy; stay safe; enjoy and achieve; make a positive contribution to the community and society; and achieve economic well-being. This should include considering how the school will provide a wide range of extended services, opportunities for personal development, access to academic and vocational training, measures to address barriers to participation and support for children and young people with particular needs, e.g. looked after children or children with special educational needs (SEN) and disabilities.

## **SCHOOL CHARACTERISTICS**

### **Boarding Provision**

4.25 In making a decision on proposals that make changes to boarding provision, the Decision Maker should consider whether or not there would be a detrimental effect on the sustainability of boarding at another state maintained boarding school within one hour's travelling distance of the proposed school.

4.26 In making a decision on proposals to introduce new boarding places the Decision Maker should consider:-

- a. the extent to which boarding places are over subscribed at any state maintained boarding school within an hour's travelling distance of the school;
- b. the extent to which the accommodation at the school can provide the new boarding places;
- c. the extent to which the expansion of boarding places will help placements of pupils with an identified boarding need; and
- d. the impact of the expansion on a state maintained boarding school within one hour's travelling distance from the school which may be undersubscribed.

4.27. In making a decision on proposals to remove boarding provision, the Decision Maker should consider whether there is a state maintained boarding school within one hour's travelling distance from the school. The Decision

Maker should consider whether there are satisfactory alternative boarding arrangements for those currently in the school and those who may need boarding places in the foreseeable future, including the children of service families.

### **Equal Opportunity Issues**

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

### **NEED FOR PLACES**

#### **Provision for Displaced Pupils**

4.29 Where proposals will remove provision, the Decision Maker should be satisfied that there is sufficient capacity to accommodate displaced pupils in the area, taking into account the overall supply and likely future demand for places. The Decision Maker should consider the quality and popularity with parents of the schools in which spare capacity exists and evidence of parents' aspirations for those schools.

#### **Creating Additional Places**

4.30 Where proposals will increase provision, the Decision Maker should consider the supporting evidence presented for the increase. The Decision Maker should take into account 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 places in particular schools. The existence of surplus capacity in neighbouring less popular or successful schools should not in itself prevent the addition of new places.

4.31 Where the school has a religious character, or follow a particular philosophy, the Decision Maker should be satisfied that there is satisfactory evidence of sufficient demand for places for the school to be sustainable.

4.32 Where proposals will add to surplus capacity but there is a strong case for approval on parental preference and standards grounds, the presumption should be for approval. The LA in these cases will need to consider parallel action to remove the surplus capacity thereby created.

#### **Travel and Accessibility for All**

4.33 In considering proposals for the reorganisation of schools, Decision Makers should satisfy themselves that accessibility planning has been properly taken into account. Facilities are to be accessible by those concerned, by being located close to those who will use them, and the

proposed changes should not adversely impact on disadvantaged groups.

4.34 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 too many children being prevented from travelling sustainably due to unsuitable routes e.g. for walking, cycling etc. The EIA 2006 provides extended free transport rights for low income groups – see Home to School Travel and Transport Guidance re 00373 – 2007BKT-EN at [www.teachernet.gov.uk/publications](http://www.teachernet.gov.uk/publications) . Proposals should also be considered on the basis of how they will support and contribute to the LA's duty to promote the use of sustainable travel and transport to school.

## 16-19 Provision

4.35 The Learning and Skills Act 2000 provides an entitlement to further education and training for young people aged 16-19. Schools and colleges should 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.

4.36 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 which affect local 16-19 provision (i.e. both proposed school expansions and proposals to add a new sixth form) in the context of these principles.

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

- a. quality – all provision for all learners should be high quality, whatever their chosen pathway;
- b. 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 group;
- c. 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;
- d. 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;



- e. 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.

### **Conflicting Sixth Form Reorganisation Proposals**

4.38 Where the implementation of reorganisation proposals by the LSC conflict with other published proposals put to the Decision Maker for decision, the Decision Maker is prevented (i.e. 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 paragraphs 4.13 to 4.14 above).

### **LSC Proposals to Remove Inadequate School Sixth Forms**

4.39 The Learning and Skills Act 2000 (as amended by the Education Act 2005) gives the LSC powers to propose the closure of a school sixth form which has been judged to require Significant Improvement in two consecutive Ofsted inspections. Where a school sixth form is proposed for closure in such circumstances there should be a presumption to approve the proposals, subject to evidence being provided that the development will have a positive impact on standards.

## **SCHOOL CATEGORY CHANGES**

### **Change to VA category**

4.40 If a school proposes to change category to voluntary aided, the Decision Maker must be satisfied that the governing body are able and willing to meet their financial responsibilities for building work. The Decision Maker may wish to consider whether the governing body has access to sufficient funds to enable it to meet 10% of its overall liabilities for at least 5 years from the date of implementation, taking into account anticipated building projects.

### **Foundation Bodies**

4.41 Where a school proposes to change category to become a voluntary school and simultaneously join an existing foundation body, or to propose the establishment of a new foundation body (see paragraph 15 to 20 of the Introduction), any approval for change of category proposals must be subject to a condition that the Secretary of State approves the foundation body (see paragraph 4.62).

### **Change to Foundation**

4.42 Proposals to change category and acquire a foundation (i.e. to become a Trust School) should be considered according to separate Decision Making guidance contained in the Guide to becoming a Trust School. Proposals to change category to foundation, but not acquire a trust, must be considered on their merits. The Government wants to see more schools become self governing and benefit from the freedom this offers e.g. to control their own

assets, employ their own staff and set their own admission criteria.

## **FUNDING AND LAND**

### **Capital**

4.43 The Decision Maker should be satisfied that any capital required to implement the proposals will be available. Normally, this will be some form of written confirmation from the source of funding on which the promoters rely (e.g. the LA, DCSF, or LSC). In the case of an LA, this should be from an authorised person within the LA, and provide detailed information on the funding, provision of land and premises etc.

4.44 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; not can any allocation 'in principle' 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.

4.45 Proposals should not be approved conditionally upon funding being made available, subject to the following specific exceptions. For proposals being funded under the Private Finance Initiative (PFI) or through the Building Schools for the Future (BSF) programme, the Decision Maker should be satisfied that funding has been agreed 'in principle', but the proposals should be approved conditionally on the entering into of the necessary agreements and the release of funding. A conditional approval will protect 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

### **Capital Receipts**

4.46 Where the implementation of proposals may depend on capital receipts from the disposal of land used for the purposes of a school (i.e. including one proposed for closure in "related" proposals) the Decision Maker should confirm whether consent to the disposal of land is required, or an agreement is needed, for disposal of the land. Current requirements are:

a. Community Schools – the Secretary of State's consent is required under paragraph 2 of Schedule 35A to the Education Act 1996 and, in the case of playing field land, under section 77 of the Schools Standards and Framework Act 1998 (SSFA 1998). (Details are given in DfES Guidance 1017-2004 *The Protection of School Playing Fields and Land for Academies* published in November 2004).

b. Foundation and Voluntary Schools:

(i) playing field land – the governing body, foundation body or trustees will require the Secretary of State's consent, under section 77 of the SSFA 1998, to dispose, or change the use of any playing

field land that has been acquired and/or enhanced at public expense.

(ii) non-playing field land or school buildings – the governing body, foundation body or trustees will no longer require the Secretary of State's consent to dispose of surplus non-playing field land or school buildings which have been acquired or enhanced in value by public funding. They will be required to notify the LA and seek local agreement of their proposals. Where there is no local agreement, the matter should be referred to the School Adjudicator to determine. (*Details of the new arrangements can be found in the Department's guidance [The Transfer and Disposal of School Land in England: A General Guide for Schools, Local Authorities and the Adjudicator](http://publications.teachernet.gov.uk/default.aspx?PageFunction=productdetails&PageMode=spectrum&ProductId=DfE-1017-2004&)*).

<http://publications.teachernet.gov.uk/default.aspx?PageFunction=productdetails&PageMode=spectrum&ProductId=DfE-1017-2004&>

4.47 Where proposals are dependent upon capital receipts of a discontinuing foundation or voluntary school the governing body is required to apply to the Secretary of State to exercise his various powers in respect of land held by them for the purposes of the school. Normally he would direct that the land be returned to the LA but he could direct that the land be transferred to the governing body of another maintained school (or the temporary governing body of a new school). Where the governing body fails to make such an application to the Secretary of State, and the school subsequently closes, all land held by them for the purposes of the discontinued school will, on dissolution of the governing body, transfer to the LA unless the Secretary of State has directed otherwise before the date of dissolution.

4.48 Where consent to the disposal of land is required, but has not been obtained, the Decision Maker should consider issuing a conditional approval for the statutory proposals so that the proposals gain full approval automatically when consent to the disposal is obtained.

### **New Site or Playing Fields**

4.49 Proposals dependent on the acquisition of an additional site or playing field may not receive full approval but should be approved conditionally upon the acquisition of a site or playing field.

### **Land Tenure Arrangements**

4.50 For the expansion of voluntary or foundation schools it is desirable that a trust holds the freehold interest in any additional site that is required for the expansion. Where the trustees of the voluntary or foundation school hold, or will hold, a leasehold interest in the additional site, the Decision Maker will need to be assured that the arrangements provide sufficient security for the school. In particular the leasehold interest should be for a substantial period – normally at least 50 years – and avoid clauses which would allow the leaseholder to evict the school before the termination of the lease. The

Decision Maker should also be satisfied that a lease does not contain 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.

### **School Playing Fields**

4.51 The Education (School Premises) Regulations 1999 set out the standards for school premises, including minimum areas of team game playing fields to which schools should have access. The Decision Maker will need to be satisfied that either:

- a. the premises will meet minimum requirements of The Education (School Premises) Regulations 1999; or
- b. if the premises do not meet those requirements, the proposers have secured the Secretary of State's agreement in principle to grant a relaxation.

4.52 Where the Secretary of State has given 'in principle' agreement as at paragraph 4.46(b) above, the Decision Maker should consider issuing conditional approval so that when the Secretary of State gives his agreement, the proposals will automatically gain full approval.

## **SPECIAL EDUCATIONAL NEEDS (SEN) PROVISION**

### **Initial Considerations**

4.53 When reviewing SEN provision, planning or commissioning alternative types of SEN provision or considering proposals for change LAs should aim for a flexible range of provision and support that can respond to the special educational needs of individual pupils and parental preferences, rather than necessarily establishing broad categories of provision according to special educational need or disability. There are a number of initial considerations for LAs to take account of in relation to proposals for change. They should ensure that local proposals:

- i. take account of parental preferences for particular styles of provision or education settings;
- ii. offer a range of provision to respond to the needs of individual children and young people, taking account of collaborative arrangements (including between special and mainstream), extended school and Children's Centre provision; regional centres (of expertise ) and regional and sub-regional provision; out of LA day and residential special provision;
- iii. are consistent with the LA's Children and Young People's Plan;
- iv. take full account of educational considerations, in particular the need to ensure a broad and balanced curriculum, including the

National Curriculum, within a learning environment in which children can be healthy and stay safe;

- v. support the LA's strategy for making schools and settings more accessible to disabled children and young people and their scheme for promoting equality of opportunity for disabled people;
- vi. provide access to appropriately trained staff and access to specialist support and advice, so that individual pupils can have the fullest possible opportunities to make progress in their learning and participate in their school and community;
- vii. ensure appropriate provision for 14-19 year-olds, taking account of the role of local LSC funded institutions and their admissions policies; and
- viii. 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 should be involved

4.54 Taking account of the considerations, as set out above, will provide assurance to local communities, children and parents that any reorganisation of SEN provision in their area is designed to improve on existing arrangements and enable all children to achieve the five Every Child Matters outcomes.

### **The Special Educational Needs Improvement Test**

4.55 When considering any reorganisation of SEN provision, including that which might lead to some children being displaced through closures or alterations, LAs, and all other proposers for new schools or new provision, will need to demonstrate to parents, the local community and Decision Makers how the proposed alternative arrangements are likely to lead to improvements in the standard, quality and/or range of educational provision for children with special educational needs. All consultation documents and reorganisation plans that LAs publish and all relevant documentation LAs and other proposers submit to Decision Makers should show how the key factors set out in paragraphs 4.56 to 4.59 below have been taken into account. Proposals which do not credibly meet these requirements should not be approved and Decision Makers should take proper account of parental or independent representations which question the LA's own assessment in this regard.

### **Key Factors**

4.56 When LAs are planning changes to their existing SEN provision, and in order to meet the requirement to demonstrate likely improvements in provision, they should:

- identify the details of the specific educational benefits that will flow from the proposals in terms of:

- a) improved access to education and associated services including the curriculum, wider school activities, facilities and equipment, with reference to the LA's Accessibility Strategy;
- b) improved access to specialist staff, both education and other professionals, including any external support and/or outreach services;
- c) improved access to suitable accommodation; and
- d) improved supply of suitable places.

- LAs should also:

- i. obtain a written statement that offers the opportunity for all providers of existing and proposed provision to set out their views on the changing pattern of provision seeking agreement where possible;
- ii. clearly state arrangements for alternative provision. 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 or will have all the facilities necessary to provide an appropriate curriculum;
- iii. specify the transport arrangements that will support appropriate access to the premises by reference to the LA's transport policy for SEN and disabled children; and
- iv. specify how the proposals will be funded and the planned staffing arrangements that will be put in place.

4.57 It is to be noted that any pupils displaced as a result of the closure of a BESD school (difficulties with behavioural, emotional and social development) should not be placed long-term or permanently 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 LAs 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 that 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 an alternative long-term provision to special schools.

4.58 The requirement to demonstrate improvements and identify the specific educational benefits that flow from proposals for new or altered provision as set out in the key factors are for all those who bring forward proposals for new special schools or for special provision in mainstream schools including governors of foundation schools and foundation special schools. The proposer needs to consider all the factors listed above.

4.59 Decision Makers will need to be satisfied that the evidence with which they are provided shows that LAs and/or other proposers have taken account of the initial considerations and all the key factors in their planning and commissioning in order to meet the requirement to demonstrate that the reorganisation or new provision is likely to result in improvements to SEN provision.

## **OTHER ISSUES**

### **Views of Interested Parties**

4.60 The Decision Maker should consider the views of all those affected by the proposals or who have an interest in them including: pupils; families of pupils; staff; other schools and colleges; local residents; diocesan bodies and other providers; LAs; the LSC (where proposals affect 14-19 provision) and the Early Years Development and Childcare Partnership if one exists, or any local partnership or group that exists in place of an EYDCP (where proposals affect early years and/or childcare provision). This includes statutory objections and comments submitted during the representation period. The Decision Maker should not simply take account of the numbers of people expressing a particular view when considering representations made on proposals. Instead the Decision Maker should give the greatest weight to representations from those stakeholders likely to be most directly affected by the proposals.

### **Types of Decision**

4.61 In considering proposals, the Decision Maker can decide to:

reject the proposals;

approve the proposals;

approve the proposals with a modification (e.g. the proposal implementation date); or

approve the proposals subject to them meeting a specific condition (see paragraph 4.62 below).

### **Conditional Approval**

4.62 The regulations provide for a conditional approval to be given where the Decision Maker is otherwise satisfied that the proposals can be approved, and approval can automatically follow an outstanding event. Conditional approval can only be granted in the limited circumstances specified in the regulations i.e. as follows:

- a. the grant of planning permission under Part 3 of the Town and Country Planning Act 1990;
- b. the acquisition of the site required for the implementation of the proposals;
- c. the acquisition of playing fields required for the implementation of the proposals;
- 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 Children, Schools and Families following the entering into a private finance contract by an LA;
- f. the entering into an agreement for any necessary building project supported by the Department for Children, Schools and Families in connection with the programme known as “Building Schools for the Future”;
- g. in the case of mainstream schools, the agreement to any change to the admission arrangements of any other school or schools, as specified in the approval;
- h. the making of any scheme relating to any charity connected with the school;
- i. the formation of any federation (within the meaning of section 24(2) of the 2002 Act) of which it is intended that the school should form part, or the fulfilling of any other condition relating to the proposed school forming part of a federation;
- j. the Secretary of State giving approval under regulation 5(4) of the Education (Foundation Body) (England) Regulations 2000 that the school should form part of a group for which a foundation body act;
- k. the Secretary of State making a declaration under regulation 22(3) of the Education (Foundation Body) (England) Regulations 2000 that the school should form part of a group for which a foundation body acts;
- l. where the proposals depend upon any of the events specified in paragraphs (a) to (k) occurring by a specified date for any other school or proposed school, the occurrence of such and event;

4.63 The Decision Maker **must** set a date by which the condition should be met but will be able to modify the date if the proposers confirm, before the date expires, that the condition will be met later than originally thought. The proposer should inform the Decision Maker and the Department (SOU Unit, Mowden Hall, Darlington DL3 9BG or by e-mail to [schools.organisation-unit@dfes.gsi.gov.uk](mailto:schools.organisation-unit@dfes.gsi.gov.uk)) when a condition is met. If a condition is not met by the date specified, the proposals should be referred back to the Decision Maker for fresh consideration.

## Decisions

4.64 All decisions **must** give reasons for the decision, irrespective of whether the proposals were rejected or approved, indicating the main factors/criteria for the decision.



4.65 A copy of all decisions **must** be forwarded to:

the LA or governing body who published the proposals;

the trustees of the school (if any);

the Secretary of State (via the School Organisation Unit, DCSF, Mowden Hall, Darlington DL3 9BG or by e-mail to [schools.organisation-unit@dfes.gsi.gov.uk](mailto:schools.organisation-unit@dfes.gsi.gov.uk));

where the school includes provision for 14-16 education or sixth form education, the LSC;

the local CofE diocese;

the bishop of the RC diocese;

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; and

where the school is a special school, the relevant primary care trust and NHS trust or NHS foundation trust.

4.66 In addition, where proposals are decided by the LA, a copy of the decision **must** be sent to the Office of the Schools Adjudicator, Mowden Hall, Darlington DL3 9BG. Where proposals are decided by the schools adjudicator, a copy of the decision **must** be sent to the LA that it is proposed should maintain the school.

### **Can proposals be withdrawn?**

4.67 Proposals can be withdrawn at any point before a decision is taken. Written notice must be given to the LA, or governing body, if the proposals were published by the LA. Written notice must also be sent to the schools adjudicator (if proposals have been sent to him) and the Secretary of State – i.e. via the School Organisation Unit, DCSF, Mowden Hall, Darlington DL3 9BG or by e-mail to [schools.organisation-unit@dfes.gsi.gov.uk](mailto:schools.organisation-unit@dfes.gsi.gov.uk). Written notice must also be placed at the main entrance to the school, or all the entrances if there are more than one.

### **Transitional Exemption Order – Role of Decision Maker**

4.68 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.

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

## Stage 5 – Implementation

5.1 The proposers are under a statutory duty to implement any proposals which an LA or schools adjudicator has approved. The proposals **must** be implemented as published, taking into account any modifications made by the Decision Maker. If the approval was subject to a condition being met by a specified date – proposers **must** ensure that they meet this. If it looks as though it might not be possible to meet the condition by the specified date, the proposer may seek a modification to the condition from the original Decision Maker that decided the proposals.

### Can Proposals Be Modified?

5.2 If it proves impossible to implement the proposals as approved, the proposers can seek a modification and must apply to the Decision Maker who decided the proposals. A modification may be made at any time before the implementation date for the proposals.

5.3 The most common modification is to the implementation date. However, proposals cannot be modified to the extent new proposals are substituted for those that have been consulted upon and published. If proposers wish to make a significant change to proposals after they have been approved, they must publish “revocation” proposals to be relieved of the duty to implement the proposals (see paragraphs 5.5-5.9 below) and publish fresh proposals.

5.4 Before modifying proposals the Decision Maker, **must** consult the proposers and the LA, if the LA did not publish the proposals. The proposals must not be modified in a way that would in effect substitute new proposals – this would run the risk of successful legal challenge in the courts.

### Revocation

5.5 If proposers cannot implement approved proposals they **must** publish fresh proposals to be relieved of the duty to implement. The School Organisation (Prescribed Alterations to Maintained Schools)(England) Regulations 2007 provide that revocation proposals **must** contain the following information:

a description of the original proposals as published;

the date of the publication of the original proposals;

details of how copies of the original proposals can be obtained; and

a statement as to why it is proposed that the duty to implement proposals should not apply in relation to the original proposals.

5.6 The proposals **must** be published in a local newspaper, and also posted at the main entrance to the school (and all the entrances if there are more than one) and at some other conspicuous place in the area served by

the school. The proposals **must** provide for anyone to submit comments and objections on the proposals to the LA within 6 weeks of the proposals being published. The proposers **must** forward a copy of the proposals to the LA within 1 week of publication. Proposers are advised to consult interested parties on the planned revocation proposals before publication although there is no statutory requirement to do so.

5.7 Revocation proposals are decided by the LA, except where the original proposals were decided by the schools adjudicator. Where the proposals were originally decided by the schools adjudicator the LA **must** forward the proposals, and any comments and objections received, to the schools adjudicator within 2 weeks from the end of the representation period. If the LA is to decide proposals they **must** do so within 2 months from the end of the representation period and if not, **must** pass the proposals to the schools adjudicator within 1 week from the end of the 2 month period.

5.8 To approve the proposals the Decision Maker **must** be satisfied that implementation of the original proposals would be unreasonably difficult, or that circumstances have so altered since the original proposals were approved that their implementation would be inappropriate.

5.9 A copy of the decision **must** be forwarded to:

the LA or governing body who published the proposals;

the trustees of the school (if any);

the Secretary of State (via the School Organisation Unit, DCSF, Mowden Hall, Darlington DL3 9BG or by e-mail to [schools.organisation-unit@dfes.gsi.gov.uk](mailto:schools.organisation-unit@dfes.gsi.gov.uk));

where the school includes provision for 14-16 education or sixth form education, the LSC;

the local CofE diocese;

the bishop of the RC diocese.

## **CHANGE OF CATEGORY ISSUES**

### **Responsibility for implementation of other unimplemented proposals**

5.10 Where, as a result of VA school changing category, the LA becomes responsible for the implementation of any other previously approved proposals, 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.

## **Admissions - transitional measures**

5.11 The admission authority for a community or voluntary controlled school is the LA, while the admission authority for a voluntary aided or foundation school is the school's governing body. When a school changes category, and the admission authority changes too, any action taken or decisions made by the former authority in its role as the admission authority will, from the implementation date, have effect as if they had been taken by the new admission authority. This means that, for example, where a community school becomes a voluntary aided school, the governing body of the voluntary aided school must honour any admission decisions already taken by the LA about the admission arrangements of the school and any offers of places that have been made or applications that have been refused. Further information about admission arrangements can be found in the School Admissions Code at [www.dfes.gov.uk/sacode](http://www.dfes.gov.uk/sacode).

## **Reconstitution of the governing body**

5.12 In changing category the governing body must be reconstituted in a form appropriate to the school's new category and also in accordance with the appropriate instrument of government taking into account the *School Governance (Constitution) (England) Regulations 2007*. A period called the "implementation period" begins when the proposals are decided and ends on the date the proposals are implemented. During this period the LEA and governing body are required to make a new instrument of government for the school.

5.13 As soon as reasonably practicable after the beginning of the implementation period, and in any case within a period of 3 months after the implementation date, the governing body and LEA are required to reconstitute the governing body. Until the governing body is reconstituted the current governing body continues to exercise its functions in respect of the school.

5.14 In reconstituting the governing body, if a school has surplus governors in one or more of the categories appropriate to the school's new category, unless those surplus governors voluntarily agree to cease to hold office, they shall be removed as follows:

seniority - the governor with the shortest period of service being the first to cease to hold office, the governor with the next shortest period of service being the next to cease to hold office, and so on;

drawing of lots - where governors are of equal seniority, determination of who shall cease to hold office shall be done by drawing lots.

5.15 Where it is proposed that a school should change category and join an existing foundation body, the governing body must also request the LA, when making the school's instrument of government, to name the foundation body as the appointing body for foundation governors. The LA should make the instrument so that the appointment of foundation governors can take effect from the date that the school joins the group. This would be the

implementation date of the proposals. In such cases the instrument must be made during the implementation period.

5.16 Where it is proposed that a school should change category and, along with at least two other schools, establish a new foundation body the governing body must also request the LA, when making the school's instrument of government, to name the foundation body as the appointing body for foundation governors. The LA should make the instrument so that the appointment of foundation governors can take effect from the date that the group is established. This could be any period up to 3 months after the implementation date. However the making of the instrument and the establishment of the foundation body must be on the same day, and in accordance with the date specified by the Secretary of State for the establishment of the foundation body.

### **Staffing**

5.17 A change of school category from community or voluntary controlled to voluntary aided will result in a change of employer for the school's staff. Paragraphs 49 to 55 of Schedule 3 to The School Organisation (Prescribed Alterations to Maintained Schools)(England) Regulations 2007 provide for all rights, powers, duties and liabilities to transfer from the LA to the governing body. Another consequence of changing category is that anything done by the LA in respect of the employee is considered, from the implementation date, to have been done by the governing body.

5.18 The effect of these provisions is to protect an individual's employment rights on transfer. Any agreements entered into by the LA or governing body before this date, in respect of an individual's terms and contract of employment must therefore be honoured by the new employer. Equally, if any action is being taken by an employee against the former employer in respect of a liability, duty etc of that employer before a school changes category, the liability transfers to the new employer.

5.19 The governing body should also take account of the "Staff Transfers in the Public Sector" statement of practice which can be accessed at

[http://www.civilservice.gov.uk/publications/staff\\_transfer.asp](http://www.civilservice.gov.uk/publications/staff_transfer.asp)

### **Variation of voluntary or foundation school trusts**

5.20 The trust of a voluntary or foundation school often makes very specific provisions regarding the conduct of the school and the use of any fund held by the trust for the use of the school and premises. In bringing forward proposals to change category, proposers will need to consider whether the school's current trust allows for the change in category proposed. If in doubt, or if a variation in the trust is clearly necessary, promoters are advised to make early contact with the Charity Commission to apply for the trust to be varied under the relevant trust law.

### **Land Transfer**

5.21 Schedule 3 to The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 (SI: 2007 No. 1289) have effect in relation to the transfer of land. Any land transfers will follow the existing patterns of ownership for maintained schools so far as possible and will take place on the implementation date.

5.22 Where a community or a voluntary school becomes a foundation school any land held by an LA for the school transfers automatically to the school's trustees or, if it has no trustees, to the governing body.

### **Rights to use land**

5.23 Where land held by another body was used by a school prior to its change of category (for instance a private playing field, church hall or swimming pool) the rights and liabilities connected with the use of that facility enjoyed by the school prior to the change of category will continue to apply. Therefore, where a community school has, by agreement, been allowed to use a playing field owned by a sports club prior to changing category, the school cannot be disqualified from using the facility merely because of the change in category.

### **Restrictions on disposing of property**

5.24 Once a governing body has given notice to the LA that a motion to consult on change of category proposals is to be discussed by the governing body, an embargo is placed on an LA, in whom property which is used for the purposes of the school is vested, disposing of that property or ceasing to hold or use it for the school. This embargo lasts until the proposals are decided or withdrawn.

### **Land excluded from transfer**

5.25 Land may be excluded from transfer with the prior written approval of the schools adjudicator. Applications to the adjudicator to exclude land from transfer can be made jointly (where there is agreement) or individually from either party. Applications to exclude land from transfer can only be made during the period between the change of category proposals being approved and the implementation date.

### **Land Transfer when schools join or form a foundation body**

5.26 The Education (Foundation Body) (England) Regulations 2000 provide for the transfer of land and user rights in the case of a school which changes category and forms or joins a foundation body. These regulations provide that land held by the LA or governing body will transfer to and vest in the foundation body.

## **Annex A**

### **Information to be included in or provided in relation to alteration proposals**

(Note: Shading indicates information to be contained in published statutory notice)

#### **School and governing body's details**

1. The name, address and category of the school for which proposals are published and contact details of the LA or the governing body that are publishing the proposals.

#### **Implementation and any proposed stages for implementation**

2. The date on which the proposals are planned to be implemented, and if they are to be implemented in stages, a description of what is planned for each stage, the number of stages intended and the dates of each stage.

#### **Objections and comments**

3. A statement explaining the procedure for making representations, including—

- (a) the date by which objections or comments should be sent to the LA; and
- (b) the address of the LA to which objections or comments should be sent.

#### **Alteration description**

4. A description of the proposed alteration and in the case of special school proposals, a description of the current special needs provision.

#### **School capacity**

5.—Where the alteration is an alteration falling within any of paragraphs 1 to 4, 8 and 9, 12 to 14 and 18 to 21 of Schedule 2 or Schedule 4 of the School Organisation (Prescribed Alterations to Maintained Schools)(England) Regulations 2007 – SI 2007 No. 1289 - the proposal must also include—

- (a) details of the current capacity of the school and, where the proposals will alter the capacity of the school, the proposed capacity of the school after the alteration;
- (b) details of the number of pupils to be admitted to the school in each relevant age group in the first school year in which the proposals will have been implemented;
- (c) where it is intended that proposals should be implemented in stages, the number of pupils to be admitted to the school in the first school year in which each stage will have been implemented; and



(d) where the number of pupils in any relevant age group is lower than the indicated admission number for that relevant age group, a statement to this effect and details of the indicated admission number in question.

(2) Where the alteration is an alteration falling within any of paragraphs 1, 2, 9, 12, 13, and 18 to 21 of Schedule 2 or Schedule 4 of the School Organisation (Prescribed Alterations to Maintained Schools)(England) Regulations 2007 – SI 2007 No. 1289 - a statement of the number of pupils at the school at the time of the publication of the proposals.

### **Implementation**

6. Where the proposals relate to a foundation or voluntary controlled school a statement as to whether the proposals are to be implemented by the LA or by the governing body, and, if the proposals are to be implemented by both, a statement as to the extent to which they are to be implemented by each body.

### **Additional Site**

7.—A statement as to whether any new or additional site will be required if proposals are implemented and if so the location of the site if the school is to occupy a split site.

(1) Where proposals relate to a foundation or voluntary school a statement as to who will provide any additional site required, together with details of the tenure (freehold or leasehold) on which the site of the school will be held, and if the site is to be held on a lease, details of the proposed lease.

### **Changes in boarding arrangements**

8.—Where the proposals are for the introduction or removal of boarding provision, or the alteration of existing boarding provision —

- (a) the number of pupils for whom it is intended that boarding provision will be made if the proposals are approved;
- (b) the arrangements for safeguarding the welfare of the children at the school;
- (c) the current number of pupils for whom boarding provision can be made and a description of the boarding provision; and
- (d) except where the proposals are to introduce boarding provision, a description of the existing boarding provision.

(2) Where the proposals are for the removal of boarding provision or an alteration to reduce boarding provision —

- (a) the number of pupils for whom boarding provision will be removed if the proposals are approved; and
- (b) a statement as to the use to which the former boarding accommodation will be put if the proposals are approved.

### **Transfer to new site**

9. Where the proposals are to transfer a school to a new site the following information—

- (a) the location of the proposed site (including details of whether the school is to occupy a single or split site), and including where appropriate the postal address;
- (b) the distance between the proposed and current site;
- (c) the reason for the choice of proposed site;
- (d) the accessibility of the proposed site or sites;
- (e) the proposed arrangements for transport of pupils to the school on its new site; and
- (f) a statement about other sustainable transport alternatives where pupils are not using transport provided, and how car use in area will be discouraged.

## **Objectives**

**10.** The objectives of the proposals.

## **Consultation**

**11.** Evidence of the consultation before the proposals were published including—

- (a) a list of persons who were consulted;
- (b) minutes of all public consultation meetings;
- (c) the views of the persons consulted;
- (d) a statement to the effect that all applicable statutory requirements in relation to the proposals to consult were complied with; and
- (e) copies of all consultation documents and a statement on how these documents were made available.

## **Project costs**

**12.** A statement of the estimated total capital cost of the proposals and the breakdown of the costs that are to be met by the governing body, the LA, and any other party.

**13.** A copy of confirmation from the Secretary of State, LA and the Learning and Skills Council for England (as the case may be) that funds will be made available (including costs to cover any necessary site purchase).

## **Age range**

**14.** Where the proposals relate to a change in age range, the current age range for the school.

## **Early years provision**

**15.** Where the proposals are to alter the lower age limit of a mainstream school so that it provides for pupils aged between 2 and 5—

- (a) details of the early years provision, including the number of full-time and part-time pupils, the number and length of sessions in each week, and the services for disabled children that will be offered;
- (b) how the school will integrate the early years provision with childcare services and how the proposals are consistent with the integration of early years provision for childcare;
- (c) evidence of parental demand for additional provision of early years provision;
- (d) assessment of capacity, quality and sustainability of provision in schools and in establishments other than schools who deliver the Early Years Foundation Stage within 3 miles of the school; and
- (e) reasons why such schools and establishments who have spare capacity cannot make provision for any forecast increase in the number of such provision.

### **Changes to sixth form provision**

**16.** Where the proposals are to alter the upper age limit of the school so that the school provides sixth form education or additional sixth form education, a statement of how the proposals will—

- (a) improve the educational or training achievements;
- (b) increase participation in education or training; and
- (c) expand the range of educational or training opportunities

for 16-19 year olds in the area.

**17.** Where the proposals are to alter the upper age limit of the school so that the school ceases to provide sixth form education, a statement of the effect on the supply of 16-19 places in the area.

### **SEN**

**18.** Where the proposals are to establish or change provision for special educational needs—

- (a) a description of the types of learning difficulties in respect of which education will be provided;
- (b) any additional specialist features will be provided;
- (c) the proposed numbers of pupils for which the provision is to be made;
- (d) details of how the provision will be funded;
- (e) a statement as to whether the education will be provided for children with special educational needs who are not registered pupils at the school to which the proposals relate;
- (f) a statement as to whether the expenses of the provision will be met from the school's delegated budget;
- (g) the location of the provision if it is not to be established on the existing site of the school; and
- (h) where the provision will replace existing educational provision for children with special educational needs, a statement as to how the LA

believes that the new provision is likely to lead to improvement in the standard, quality and range of the educational provision for such children.

**19.**Where the proposals are to discontinue provision for special educational needs—

- (a) details of alternative provision for pupils for whom the provision is currently made;
- (b) details of the number of pupils for whom provision is made that is recognised by the LA as reserved for children with special educational needs during each of the 4 school years preceding the current school year;
- (c) details of provision made outside the area of the LA for pupils whose needs will not be able to be met in the area of the authority as a result of the discontinuance of the provision; and
- (d) a statement as to how the LA believe that the proposals are likely to lead to improvement in the standard, quality and range of the educational provision for such children.

**20.**Where the proposals will lead to alternative provision for children with special educational needs, as a result of the establishment, alteration or discontinuance of existing provision, the specific educational benefits that will flow from the proposals in terms of—

- (a) improved access to education and associated services including the curriculum, wider school activities, facilities and equipment with reference to the LA's Accessibility Strategy;
- (b) improved access to specialist staff, both educational and other professionals, including any external support and outreach services;
- (c) improved access to suitable accommodation; and
- (d) improved supply of suitable places.

## **Sex of pupils**

**21.** Where the proposals are to make an alteration to provide that a school which was an establishment which admitted pupils of one sex only becomes an establishment which admits pupils of both sexes—

- (a) details of the likely effect which the alteration will have on the balance of the provision of single sex education in the area;
- (b) evidence of local demand for single-sex education; and
- (c) details of any transitional period which the body making the proposals wishes specified in a transitional exemption order (within the meaning of section 27 of the Sex Discrimination Act 1975).

**22.** Where the proposals are to make an alteration to a school to provide that a school which was an establishment which admitted pupils of both sexes becomes an establishment which admits pupils of one sex only—

- (a) details of the likely effect which the alteration will have on the balance of the provision of single-sex education in the area; and

- (b) evidence of local demand for single-sex education.

### **Extended services**

**23.** If the proposed alterations affect the provision of the school's extended services, details of the current extended services the school is offering and details of any proposed change as a result of the alterations.

### **Need or demand for additional places**

**24.** If the proposals involve adding places—

- (a) a statement and supporting evidence of the need or demand for the particular places in the area;
- (b) where the school has a religious character, a statement and supporting evidence of the demand in the area for education in accordance with the tenets of the religion or religious denomination; and
- (c) where the school adheres to a particular philosophy, evidence of the demand for education in accordance with the philosophy in question and any associated change to the admission arrangements for the school.

**25.** If the proposals involve removing places—

- (a) a statement and supporting evidence of the reasons for the removal, including an assessment of the impact on parental choice; and
- (b) a statement on the local capacity to accommodate displaced pupils.

### **Additional information in the case of special schools**

**26.** Where the proposals relate to a special school the following information must also be provided—

- (a) information as to the numbers, age range, sex and special educational needs of the pupils (distinguishing boarding and day pupils) for whom provision is made at the school;
- (b) information on the predicted rise or fall (as the case may be) in the number of children with particular types of special educational needs requiring specific types of special educational provision;
- (c) a statement about the alternative provision for pupils who may be displaced as a result of the alterations;
- (d) where the proposals would result in the school being organised to make provision for pupils with a different type or types of special educational needs, with the result that the provision which would be made for pupils currently at the school would be inappropriate to their needs, details of the other schools which such pupils may attend including any interim arrangements and transport arrangements to such schools;
- (e) where the proposals relate to a foundation special school, a statement as to whether the proposals are to be implemented by the LA, or by the governing body, and if the proposals are to be implemented by both, a

statement as to the extent to which they are to be implemented by each body.