

# Making Changes to a Maintained Mainstream School

(Other than Expansion, Foundation,  
Discontinuance & Establishment  
Proposals)

## A Guide for Local Authorities and Governing Bodies

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## INTRODUCTION

### **MAKING CHANGES TO A MAINTAINED MAINSTREAM SCHOOL (OTHER THAN EXPANSION, FOUNDATION, DISCONTINUANCE & ESTABLISHMENT PROPOSALS) - A GUIDE FOR LOCAL AUTHORITIES AND GOVERNING BODIES**

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## INTRODUCTION

### **MAKING CHANGES TO A MAINTAINED MAINSTREAM SCHOOL (OTHER THAN EXPANSION, FOUNDATION, DISCONTINUANCE & ESTABLISHMENT PROPOSALS) - A GUIDE FOR LOCAL AUTHORITIES AND GOVERNING BODIES**

**(Covering: removal of sixth form; adding/removing nursery 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 a school's sites and change of category to VA or VC)**

#### **Introduction (Paragraphs 1-28)**

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 (as amended by The School Organisation and Governance (Amendment) (England) Regulations 2007 which came into force on 21 January 2008 and The School Organisation and Governance (Amendment) (England) Regulations 2009 which came into force on 1 September 2009). For your convenience, a consolidated version of the Prescribed Alteration Regulations and the two sets of Amending Regulations can be found at: [www.dcsf.gov.uk/schoolorg/guidance.cfm?id=29](http://www.dcsf.gov.uk/schoolorg/guidance.cfm?id=29). The relevant provisions of EIA 2006 came into effect on 25 May 2007.

2. This guide contains both statutory guidance (i.e. guidance to which local authorities (LAs) and governing bodies have a statutory duty to have regard) and non-statutory guidance, on the process for making the following changes to a maintained mainstream school:

- Alteration of the upper and lower age limit - including the addition or removal of nursery provision and removal of sixth form provision (addition of sixth form provision is covered in separate guidance – details below);
- Special educational needs - addition/alteration/removal of provision recognised by the LA as reserved for pupils with special educational needs (SEN);
- Sex of pupils - changing provision from single sex to mixed or vice versa;
- Boarding - addition/alteration/removal of boarding provision;
- Transfer to a new site;
- Discontinuance of use of site – closing one of a school's split sites;

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- Admission arrangements - removing selection;
- Changes of category - to voluntary aided or voluntary controlled (foundation proposals are covered in separate guidance – details below).

Supplementary guidance is available for special schools under the relevant guidance section on the School Organisation website at [www.dcsf.gov.uk/schoolorg](http://www.dcsf.gov.uk/schoolorg). Throughout this guide any reference to “prescribed alterations” covers the above changes.

NOTE: for more detailed information on when proposals are required, see paragraphs 11 to 18 below.

The statutory guidance sections are indicated by shading, the word **must** in bold refers to a requirement in legislation, whilst the word **should** in bold is a recommendation.

3. If you have any comments on the content or layout of this guide please send these to the School Organisation & Competitions Unit (using the School Organisation website's "Contact Us" facility [[www.dcsf.gov.uk/schoolorg/contact.cfm](http://www.dcsf.gov.uk/schoolorg/contact.cfm)] or by email to: [school.organisation@dcsf.gsi.gov.uk](mailto:school.organisation@dcsf.gsi.gov.uk)) making sure that you identify the title of the guide and quote the page and paragraph numbers where relevant.

### **Who is this Guide for? (Paragraphs 4-5)**

4. This guide is for those considering publishing proposals to make changes to existing school provision under Section 19 of EIA 2006, referred to as “proposers” (i.e. the 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 existing school provision.

5. Separate guides are available from the School Organisation website for:
- Expanding a maintained mainstream school by enlarging or adding a sixth form” - [www.dcsf.gov.uk/schoolorg/guidance.cfm?id=5](http://www.dcsf.gov.uk/schoolorg/guidance.cfm?id=5);
  - Becoming a Foundation or “Trust” school (changing category to foundation; a foundation school acquiring a foundation (i.e. a Trust); a Trust school acquiring a majority of foundation governors on the governing body) - “Changing school category to foundation“ and “Trust school proposals“ - [www.dcsf.gov.uk/schoolorg/guidance.cfm?id=25](http://www.dcsf.gov.uk/schoolorg/guidance.cfm?id=25);

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- Opening a new school – “Establishing a new maintained mainstream school” - [www.dcsf.gov.uk/schoolorg/guidance.cfm?id=2](http://www.dcsf.gov.uk/schoolorg/guidance.cfm?id=2); and
- Ceasing to maintain a school – “Closing a maintained mainstream school” - [www.dcsf.gov.uk/schoolorg/guidance.cfm?id=3](http://www.dcsf.gov.uk/schoolorg/guidance.cfm?id=3).

### School Organisation Planning Requirements (Paragraphs 6-8)

6. 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, promote diversity and increase parental choice.

7. Parents can make representations about the supply of school places and LAs have a **statutory duty** to respond to these representations. Further statutory 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 at: <http://www.dcsf.gov.uk/schoolorg/guidance.cfm?id=26>.

8. Currently, LAs **must** publish a Children and Young People’s Plan (CYPP) as the single strategic overarching plan for all services affecting children and young people which also 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 are encouraged to 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.

Responsibility for CYPPs is passing to The Children’s Trust Board for each area and from 1 April 2011 each will be required to have a new 'jointly owned' CYPP in place.

Children’s Trusts are the sum total of co-operation arrangements and partnerships between organisations with a role in improving outcomes for children and young people in each area. The Trust is not in itself a separate legal entity; each partner retains its own functions and responsibilities within the partnership framework. However, the Apprenticeships, Skills, Children and Learning Act 2009 strengthens Children’s Trusts by requiring all local authorities to have a Children’s Trust Board in place by April 2010. It also extends the number of statutory “relevant partners” who will be represented on the Board to include schools (including Academies), colleges, Job Centre Plus and the management committees of short stay schools (formerly PRUs).

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In each local authority area the Children's Trust Board will be responsible for preparing and monitoring the implementation of the CYPP. This will give ownership of the plan to the partnership – whereas at present the CYPP is the responsibility of the local authority alone.

### **The Secretary of State's Role (Paragraphs 9-10)**

9. 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 and consultation responses and representations received from stakeholders are considered in a consistent way and that Ministers' key priorities for raising standards and transforming education are taken into account when decisions are taken. When drawing up their proposals, proposers are strongly advised to look at the factors which the Decision Maker **must** take into account when considering their proposals (See Stage 4).

10. The Secretary of State does not decide statutory proposals relating to schools, except where proposals have been published by the Learning and Skills Council (LSC)<sup>1</sup> 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 "School Organisation Proposals by the Learning and Skills Council" 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? (Paragraphs 11-12)**

11. Schedules 2 and 4 of The School Organisation (Prescribed Alterations to maintained Schools)(England) Regulations 2007 ("the Regulations") (as amended) set out the alterations that can be made by governing bodies and LAs.

12. The changes to community, voluntary aided, voluntary controlled and foundation schools, which require statutory proposals, that are covered by this guide are:

- a. **Alteration of Upper Age Limit** – a change in the upper age limit by a year or more (including the removal of sixth form provision – see NOTE below), 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 (This is not about raising the

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<sup>1</sup> References throughout this document to the LSC only apply up to April 2010. The Apprenticeships, Skills, Children and Learning Act (ASCL) Act 2009 will transfer the responsibilities of the LSC in respect of 16-19 education and training to LAs, supported by the Young People's Learning Agency. This guidance will be revised by April 2010 to take account of these changes.



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school leaving age. From 2013 all young people will be required to continue in some form of education or training post-16. We are increasing the minimum age at which young people can leave learning in two stages, to the end of the academic year in which they turn 17 from 2013 and until their 18th birthday from 2015.);

- 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.

NOTE: A separate Guide is available on “expansions” which includes increasing the upper age limit to add a sixth form: – “Expanding a maintained mainstream school by enlarging or adding a sixth form” -

[www.dcsf.gov.uk/schoolorg/guidance.cfm?id=5](http://www.dcsf.gov.uk/schoolorg/guidance.cfm?id=5).

b. **Alteration 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 for 3 and 4 year olds. Proposals are not required for temporary changes that will be in place for no more than 2 years;

c. **Special educational needs** - the addition, change or removal of provision that is recognised by the LA as reserved for pupils with SEN;

d. **Admissions arrangements** - proposals by the governing body of a designated grammar school to end selection (section 109 of the School Standards and Framework Act 1998);

e. **Sex of pupils** - 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 main entrance of the new site is within 3.2 kilometres (2 miles) ‘as the crow flies’ of the main entrance of the existing site (unless the school is transferring to a site within the area of another LA);

h. **Discontinuance of use of site** - the discontinuance of a split site, where a school occupies more than one site, and the main entrance of any of the

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school's remaining sites is one mile or more from the main entrance of the site which is to be discontinued; and

- i. **Changes of Category** - a change of school 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 "foundation" proposals (changing category to foundation; a foundation school acquiring a foundation (i.e. a Trust); a Trust school acquiring a majority of foundation governors on the governing body) - "Changing school category to foundation" and "Trust school proposals" - <http://www.dcsf.gov.uk/schoolorg/guidance.cfm?id=25>.

### **Local Authority Maintained Nursery Schools (Paragraph 13)**

13. The only prescribed alteration to a LA maintained nursery school that requires statutory proposals, is the transfer of the school to a new site, except where the main entrance of the new site is within 3.2 kilometres (2 miles) 'as the crow flies' of the main entrance of the existing site (unless the school is transferring to a site within the area of another LA). The process for establishing and closing a LA maintained nursery school are covered under the relevant Guides (see paragraph 5).

### **Change of Category to Voluntary Aided (Paragraph 14)**

14. If a school proposes to change category to voluntary aided (VA), 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 - available from the School Organisation website via the Members' Area, under 'Standard Forms'). Whilst the Secretary of State has the power to provide grant aid for up to 90% of building work costs, (100% in exceptional circumstances) 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.

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### **VA schools – what if the governing body can no longer meet their financial contribution? (Paragraph 15)**

15. 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 wishing to acquire, change or lose a Religious Character (Paragraph 16)**

16. It is not possible for a community, 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 need to bring forward “related” proposals to establish a new voluntary school with a religious character (either through “competition” under section 7 of the EIA 2006, or “exemption” under section 10 of the EIA 2006). Please refer to our guides on establishing and closing schools (see paragraph 5).

### **Grammar schools (Paragraph 17-18)**

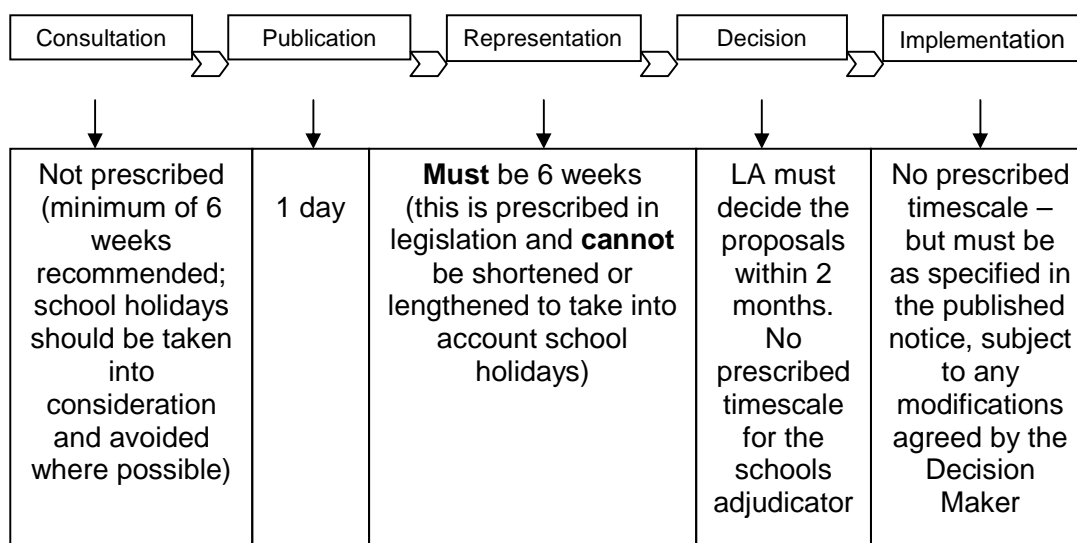
17. Where a school has been designated as a grammar school by the Secretary of State, its selective admission arrangements can only be removed through the parental ballot arrangements or through statutory proposals to remove selection. Only the governing bodies of designated grammar schools may publish 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.

18. In accordance with the Government’s position that there **should** be no increase in academic selection, the expansion of grammar schools, and selective places at partially selective schools, are excluded from capital incentive schemes.

### **Overview of Process (Paragraph 19)**

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

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### Who Can Publish Prescribed Alteration Statutory Proposals? (Paragraph 20)

20. 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><b>Community Schools:</b></p> <ul style="list-style-type: none"> <li>- Enlargement of premises;</li> <li>- Alteration of upper age limit including ‘addition/removal of a sixth form’;</li> <li>- Alteration of lower age limit including ‘addition/removal of nursery provision’;</li> <li>- Addition, removal or change of SEN provision;</li> <li>- Change of gender;</li> <li>- Addition, removal or change of boarding provision;</li> <li>- Transfer to a new site;</li> <li>- Discontinuance of use of a site.</li> </ul> <p><b>Foundation and Voluntary schools:</b></p> <ul style="list-style-type: none"> <li>- Enlargement of Premises;</li> <li>- Alteration of upper age limit to provide sixth form education;</li> <li>- Addition or removal of SEN provision.</li> </ul> <p><b>Nursery schools:</b></p> <ul style="list-style-type: none"> <li>- Transfer to a new site.</li> </ul> <p>Proposals to be relieved of the duty to implement previously approved proposals published by the LA.</p>
Governors of	<ul style="list-style-type: none"> <li>- Enlargement of premises;</li> </ul>

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<p>Foundation and Voluntary Schools</p>	<ul style="list-style-type: none"> <li>- Alteration of upper age limit including 'addition/removal of a sixth form';</li> <li>- Alteration of lower age limit including 'addition/removal of nursery provision';</li> <li>- Removal of selection (grammar school);</li> <li>- Addition, removal or change of SEN provision;</li> <li>- Change of gender;</li> <li>- Addition, removal or change of boarding provision;</li> <li>- Transfer to a new site;</li> <li>- Discontinuance of use of a site;</li> <li>- Change of category from:               <ul style="list-style-type: none"> <li>- Voluntary controlled to voluntary aided or foundation;</li> <li>- Voluntary aided to voluntary controlled or foundation;</li> <li>- Foundation to voluntary controlled or voluntary aided.</li> </ul> </li> </ul> <p style="text-align: center;">Proposals to be relieved of the duty to implement previously approved proposals published by the Governing Body.</p>
<p>Governors of Community Schools</p>	<ul style="list-style-type: none"> <li>- Enlargement of premises;</li> <li>- Alteration of upper age limit to provide sixth form education;</li> <li>- Removal of selection (grammar school);</li> <li>- Change of category from community to voluntary controlled, voluntary aided or foundation.</li> </ul> <p style="text-align: center;">Proposals to be relieved of the duty to implement previously approved proposals published by the Governing Body.</p>

### **LSC Powers to publish proposals (Paragraphs 21-23)**

21. The Learning and Skills Council (LSC)<sup>2</sup> will work with LAs 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.

22. 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:-

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<sup>2</sup> References throughout this document to the LSC only apply up to April 2010. The Apprenticeships, Skills, Children and Learning Act (ASCL) Act 2009 will transfer the responsibilities of the LSC in respect of 16-19 education and training to LAs, supported by the Young People's Learning Agency. This guidance will be revised by April 2010 to take account of these changes.

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- 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.

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

### **Where to Start? (Paragraph 24)**

24. Before commencing formal consultation, the LA or governing body **should** ensure they understand the statutory process that **must** be followed, the factors that are likely to be considered by the Decision Maker and that they have a sufficiently strong case and supporting evidence for their proposals. Published proposals cannot be considered unless the capital funding for their implementation is in place (perhaps conditionally on the proposals being agreed).

### **Capital Funding (Paragraphs 25-27)**

25. Where proposals require capital resources for their implementation the funding for the proposals **should** be in place when the proposals are decided (see paragraph 4.46-4.48 of the decision makers' guidance section). Where proposers require capital funding to implement their proposals, they **should** secure this before publishing proposals.

26. All LAs 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 (BSF) project, the funding will be provided through the BSF 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 BSF 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.

27. Where capital work is proposed for a community, foundation (including Trust) or voluntary controlled school other than as part of BSF, 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 through the LA, with the rate of grant support normally being 90% of the expenditure. The governing body will be responsible for funding the remaining 10% (unless an LA uses its power to assist).

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### **Amalgamations/Mergers (Paragraph 28)**

28. There are two ways to 'merge' or 'amalgamate' two or more existing schools:

a. The LA or GB (depending on school category) can publish proposals to close two (or more) schools and the LA or a proposer other than the LA (e.g. Diocese, faith or parent group, Trust) depending on category, can publish proposals to open a new school, either through a competition (under section 7 of EIA 2006), or after receiving exemption from the Secretary of State\* (under section 10 of the EIA 2006). This results in a new school number being issued for the new school.

b. The LA and/or GB (depending on school category) can publish proposals to close one school (or more) and proposals to enlarge/change the age range/transfer site etc of an existing school, to accommodate the displaced pupils. The remaining school would retain its original school number, as it is not a new school, even if its education phase has changed.

\*All section 10 exemption applications are considered on their individual merits. However there is a 'presumption for approval' for infant/junior amalgamations, faith school reorganisations and new schools proposed by proposers other than the LA, because Ministers have indicated, during debates in Parliament, that they may be prepared to give consent to requests under these criteria, for publication of proposals without holding a competition. See Section B of the "Establishing a Maintained Mainstream School" guide for further information ([www.dcsf.gov.uk/schoolorg/guidance.cfm?id=2](http://www.dcsf.gov.uk/schoolorg/guidance.cfm?id=2)).

## STAGE 1 - CONSULTATION

### Stage 1 – Consultation (Paragraphs 1.1-1.7)

1.1 The Regulations provide that those bringing forward statutory proposals to make a prescribed 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 1.4 . Where an LA or governing body carries out any preliminary (informal) consultation to consider a range of options, and/or principles, for a possible reorganisation, this would not be regarded as the statutory (formal) period of consultation as required by regulations. The statutory consultation would need to cover the specific prescribed alteration to the school in question.

1.2 The Secretary of State requires those bringing forward proposals to consult all interested parties (see paragraph 1.3 below). 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; and
- be able to demonstrate how they have taken into account the views expressed during consultation in reaching any subsequent decision as to the publication of proposals.

1.3 The Regulations 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, in particular 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;



## STAGE 1 - CONSULTATION

- 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;
- the trustees of the school (if any);
- (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 or parish council where the school that is the subject of the proposals is situated;
- any other interested party, for example, the Early Years Development and Childcare Partnership (or any local partnership that exists in place of an EYDCP) where proposals affect early years 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.

1.4 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 (Paragraphs 1.5-1.7)**

1.5 **How** statutory 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. Although regulations do not specify the consultation's duration, the Department strongly advises that the proposers **should** allow at least 6 weeks for this. This will allow consultees an opportunity to consider what is being proposed and to send their comments. Proposers **should** avoid consulting on proposals during school holidays, where possible.

1.6 At the end of the consultation the proposer **should** consider the views expressed during that period before reaching any final decision on whether to

## STAGE 1 - CONSULTATION

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

1.7 If the need for the prescribed alteration arises from an area wide reorganisation e.g. as a result of long-term LA planning, any related proposals **should** be consulted on at the same time. Notices for related proposals **should** be published at the same time and specified as “related” so that they are decided together (see paragraph 2.5).

Remember:

<b>Do</b>	<b>Don't</b>
Consult all interested parties	Consult during school holidays (where possible)
Provide sufficient time and sufficient information	Use language which could be misleading, e.g. We <u>will</u> remove SEN provision – instead, use ‘propose to’.
Think about the most appropriate consultation method	
Consider feedback and views	
Consider alternative options	
Explain the decision making process	

## STAGE 2 - PUBLICATION

### Stage 2 – Publication (Paragraphs 2.1-2.11)

2.1 The table at paragraph 20 of the Introduction section of this guide sets out who may publish prescribed alteration proposals for the different categories of school. Proposals **should** be published within a reasonable timeframe following consultation so that the proposals are informed by up-to-date feedback. Proposals **should** therefore be published within 12 months of consultation being concluded.

2.2 Proposals **must** contain the information specified in the Regulations. The regulations specify that part of the information (as set out in Regulation 28, Part 2 of Schedules 3 and 5), is published in a statutory notice (see paragraphs 2.3-2.4 below), but the complete proposal, (as set out in Part 1 of Schedules 3 and 5), **must** be sent to a range of copy recipients (see paragraph 2.9-2.10). [Annex A](#) can be used to prepare the complete proposal; the notice builder tool (see paragraph 2.4) can be used to prepare the draft statutory notice.

2.3 A statutory notice containing specified information (as set out in Regulation 28, Part 2 of Schedules 3 and 5) **must** be published in a local newspaper, and also posted at the main entrance to the school (or all the entrances if there is 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.). The ‘date of publication’ is regarded as being the date on which the last of the above conditions is met. Proposers may circulate a notice more widely in order to ensure that all those substantially affected have the opportunity to comment.

2.4 To help proposers prepare their statutory notice, the School Organisation website includes an online Notice Builder tool which will help ensure that the statutory notice complies with the Regulations and offers an opportunity for the notice to be checked by the School Organisation & Competitions Unit of the DCSF. Proposers are strongly advised to use this facility. The Notice Builder can be found at [www.dcsf.gov.uk/schoolorg](http://www.dcsf.gov.uk/schoolorg). To gain access the proposer needs to register for the “Members’ Area” on the website but this is free of charge. A template for the complete proposal is provided automatically by the Notice Builder when the draft statutory notice is finalised, alternatively the template can be found in “Standard Forms” in the Members’ Area of the website.

### Related Proposals (Paragraph 2.5)

2.5 Where proposals are interdependent (linked) 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 by the LA are “related” to proposals by governing bodies or other proposers (e.g. where an entire area is to be reorganised) the LA and governors or 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

## STAGE 2 - PUBLICATION

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 (Paragraph 2.6)**

2.6 There is no maximum limit on the time between the publication of a proposal and its proposed date of implementation but circumstances may change significantly if too long a period elapses. In general, therefore - with the possible exception of BSF or major authority-wide reorganisation proposals which may have to be phased in over a long period – the implementation date for the proposals (stated in the statutory notice) **should** be within 3 years of their publication. Proposers may be expected to show good reason if they propose a longer timescale. If the proposals are approved, they **must** then be implemented by the proposed implementation date, subject to any modifications made by the Decision Maker.

### **Explanatory Note (Paragraph 2.7)**

2.7 If the full effect of the proposals is not apparent to the general public from the statutory notice, it may be supplemented by an explanatory note or background statement, but this **should** be clearly distinguishable from the formal proposals as it does not form a statutory part of the notice. Ideally, whilst complying with regulations, the statutory notice **should** be as concise as possible, so that it is easily understood (this will also help keep publication costs to a minimum), with more detailed information contained in the complete proposal.

### **Invalid Notice (Paragraph 2.8)**

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 the proposer **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 (and whether or not any representations already received will still be considered by the Decision Maker). If the issue is very minor, e.g. a typo, a published addendum may suffice, in which case, the representation period would not need to change.

### **Who must be sent copies of proposals? (Paragraphs 2.9-2.10)**

2.9 The proposer **must, within one week of the date of publication**, send a full copy of the complete proposal, to:

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

## STAGE 2 - PUBLICATION

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

**within one week of the receipt of the request**, send a full copy of the complete proposal, to:

- any person who requests a copy; and

if the notice includes "related" proposed school closures, **on the date of publication**:

- if the governing body are the proposers of the school closure(s), they **must** submit a copy of their complete proposal to the LA that maintains the school (it would also be helpful to submit a copy of the statutory notice);
- if the LA are the proposers of the school closure(s), they **must** submit a copy of their complete proposal to the governing body of the school proposed for closure (it would also be helpful to submit a copy of the statutory notice).

2.10 The proposers **must** also send to the Secretary of State (i.e. to SOCU, DCSF, Mowden Hall, Darlington DL3 9BG or via email to [school.organisation@education.gsi.gov.uk](mailto:school.organisation@education.gsi.gov.uk) **within a week of publication**:

- a complete copy of the proposal, excluding all documentation relating to the consultation; and
- a copy of the statutory notice that appeared in the local newspaper, showing the date of publication.

### **Compulsory Purchase Orders (Paragraph 2.11)**

2.11 Where an LA needs to acquire land compulsorily in conjunction with any statutory proposals, the LA **should not** make the compulsory purchase order until proposals have been approved conditionally on the acquisition of the site. The Secretary of State will not consider confirming and sealing an order until proposals have been approved.

## STAGE 3 - REPRESENTATIONS

### Stage 3 – Representations (Paragraphs 3.1-3.2)

3.1 Once proposals are published there follows a **6 week statutory representation period** during which comments on the proposals can be made. These **must** be sent to the LA. Any person can submit representations, which can be objections as well as expressions of support for the proposals. 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.

3.2 The representation period is specified in legislation for the prescribed alterations covered by this guide as **6 weeks** and **must not** be altered e.g. cannot be shortened or extended to fit in with scheduled meetings or to take into account school holidays – meetings will need to be rescheduled and every effort **should** be made to advise stakeholders during the consultation period when the notice is likely to be published.

## STAGE 4 - DECISION

### Stage 4 – Decision (Paragraphs 4.1-4.69)

#### Who Will Decide the Proposals? (Paragraphs 4.1-4.4)

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” which applies equally to both.

4.2 Section 21 of EIA 2006 provides for regulations to set out who **must** decide proposals for any prescribed alterations. The Regulations make detailed provision for the consideration of prescribed alteration proposals (see in particular Schedules 3 and 5). Decisions on the prescribed alterations covered in this guide will be taken by the LA with some rights of appeal to the schools adjudicator. Only if the prescribed alteration proposals are “related” to other proposals that fall to be decided by the schools adjudicator, will the LA not be the decision maker in the first instance.

4.3 If the LA fail 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 from the end of the 2 month period.

4.4 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.

#### Who Can Appeal Against an LA Decision? (Paragraphs 4.5-4.6)

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

- the local Church of England diocese;
- the bishop of the local Roman Catholic diocese;
- the LSC where the school provides education for pupils aged 14 and over; and
- the governors and trustees of a foundation (including Trust) or voluntary school that is subject to the proposals.

4.6 Any appeals **must** be submitted to the LA within 4 weeks of the notification of the LA’s decision. On receipt of an appeal the LA **must** then send the proposals, and the representations received (together with any comments

## STAGE 4 - DECISION

made on these representations by the proposers), 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 **must** also be sent to the schools adjudicator.

### **Checks on Receipt of Statutory Proposals (Paragraph 4.7)**

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

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

### **Does the Published Notice Comply with Statutory Requirements? (Paragraph 4.8)**

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 Regulations - 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? (Paragraph 4.9)**

4.9 Details of the consultation **must** be included in the proposals. The Decision Maker **should** be satisfied that the consultation meets statutory requirements (see Stage 1 paragraphs [1.2–1.4](#)). 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 been met, the Decision Maker may judge the proposals to be invalid and needs to 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.



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### **Are the Proposals Related to Other Published Proposals? (Paragraphs 4.10-4.14)**

4.10 Paragraph 35 of Schedule 3, and Paragraph 35 of Schedule 5, to the Regulations provides that any proposals that are “related” to particular proposals (e.g. for a new school; school closure; prescribed alterations to existing schools i.e. change of age range, acquisition of a Trust, addition of boarding, etc; or proposals by the LSC to deal with inadequate 16-19 provision) **must** be considered together. This does not include proposals that fall outside of the Regulations e.g. removal of a Trust, opening of an Academy, federation proposals. 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 (published under School Organisation and Trust regulations). 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<sup>3</sup> which are to be decided by the Secretary of State, the Decision Maker **must** defer taking a decision until the Secretary of State has taken a decision on the LSC proposals. This applies where the proposals before the Decision Maker concern:

- the school that is the subject of the LSC proposals;
- any other secondary school, maintained by the same LA that maintains a school that is the subject of the LSC proposals; or
- 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

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<sup>3</sup> References throughout this document to the LSC only apply up to April 2010. The Apprenticeships, Skills, Children and Learning Act (ASCL) Act 2009 will transfer the responsibilities of the LSC in respect of 16-19 education and training to LAs, supported by the Young People's Learning Agency. This guidance will be revised by April 2010 to take account of these changes.

## STAGE 4 - DECISION

prevent or undermine effective implementation of the LSC proposals.

### **Statutory Guidance – Factors to be Considered by Decision Makers (Paragraphs 4.15-4.16)**

4.15 Regulation 8 of The Regulations provides that both the LA and schools adjudicator **must** 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 (Paragraphs 4.17-4.18)**

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

4.18 The EIA 2006 amends the Education Act 1996 to place 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 (Paragraphs 4.19-4.20)**

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

## STAGE 4 - DECISION

4.20 Decision Makers **should** be satisfied that proposals for prescribed alterations 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.

### **Diversity (Paragraphs 4.21-4.23)**

4.21 Decision Makers **should** be satisfied that when proposals lead to children (who attend provision recognised by the LA as being reserved for pupils with special educational needs) being displaced, any alternative provision will meet the statutory SEN improvement test (see paragraphs 4.55 - 4.59).

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 alteration to the school will meet the aspirations of parents, help raise local standards and narrow attainment gaps.

### **Every Child Matters (Paragraph 4.24-4.25)**

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.

4.25 This **should** include considering how the school will provide a wide range of extended services, opportunities for personal development, access to academic and applied learning 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.

## STAGE 4 - DECISION

### SCHOOL CHARACTERISTICS

#### Boarding Provision (Paragraphs 4.26-4.29)

4.26 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.

4.27 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.

4.28 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.

4.29 In making a decision on proposals for expansion of boarding places the Decision Maker **should** consider:-

- a. the extent to which boarding places are over subscribed at the school and any state maintained boarding school within an hour's travelling distance of the school at which the expansion is proposed;
- b. the extent to which the accommodation at the school can provide additional boarding places;
- c. any recommendations made in the previous CSCI/Ofsted reports which would suggest that existing boarding provision in the school failed significantly to meet the National Minimum Standards for Boarding Schools;
- d. the extent to which the school has made appropriate provision to admit other categories of pupils other than those for which it currently caters (e.g.

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taking pupils of the opposite sex or sixth formers) if they form part of the expansion;

- e. any impact of the expansion on the continuity of education of boarders currently in the school;
- f. the extent to which the expansion of boarding places will help placements of pupils with an identified boarding need; and
- g. the impact of the expansion on a state maintained boarding school within one hour's travelling distance from the school which may be undersubscribed.

### **Equal Opportunity Issues (Paragraph 4.30)**

4.30 The Decision Maker **should** consider whether there are any sex, race or disability discrimination issues that arise from the changes being proposed, for example that where there is a proposed change to single sex provision in an area, there is equal access to single sex provision for the other sex to meet parental demand. Similarly there 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 (Paragraph 4.31)**

4.31 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 (Paragraphs 4.32-4.34)**

4.32 Where proposals will increase provision, the Decision Maker **should** consider whether there is a need for the expansion and **should** consider the evidence presented for the expansion such as planned housing development or demand for provision. The Decision Maker **should** take into account not only the existence of spare capacity in neighbouring schools, but also the quality and popularity with parents of the schools in which spare capacity exists and evidence of parents' aspirations for places in the school proposed for expansion. The existence of surplus capacity in neighbouring less popular or successful schools **should not** in itself prevent the addition of new places.

4.33 Where the school has a religious character, or follows a particular philosophy, the Decision Maker **should** be satisfied that there is satisfactory evidence of sufficient demand for places for the expanded school to be

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sustainable.

4.34 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 (Paragraphs 4.35-4.36)**

4.35 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.

4.36 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 (Paragraphs 4.37-4.39)**

4.37 The pattern of 16-19 provision differs across the country. Many different configurations of school and college provision deliver effective 14-19 education and training. An effective 14-19 organisation has a number of key features:

- standards and quality: the provision available **should** be of a high standard – as demonstrated by high levels of achievement and good completion rates;
- progression: there **should** be good progression routes for all learners in the area, so that every young person has a choice of the full range of options within the 14-19 entitlement, with institutions collaborating as necessary to make this offer. All routes **should** make provision for the pastoral, management and learning needs of the 14-19 age group;
- participation: there are high levels of participation in the local area; and,
- learner satisfaction: young people consider that there is provision for their varied needs, aspirations and aptitudes in a range of

## STAGE 4 - DECISION

settings across the area.

4.38 Where standards and participation rates are variable, or where there is little choice, meaning that opportunity at 16 relies on where a young person went to school, the case for reorganisation, or allowing high quality providers to expand, is strong.

4.39 Where standards and participation rates are consistently high, collaboration is strong and learners express satisfaction that they have sufficient choice, the case for a different pattern of provision is less strong. The Decision Maker therefore will need to take account of the pattern of 16-19 provision in the area and the implications of approving new provision.

### **Conflicting Sixth Form Reorganisation Proposals (Paragraph 4.40)**

4.40 Where the implementation of reorganisation proposals by the LSC<sup>4</sup> conflict with other published proposals put to the Decision Maker for decision, the Decision Maker is prevented (by the School Organisation Proposals by the LSC for England Regulations 2003) from making a decision on the “related” proposals until the Secretary of State has decided the LSC proposals (see paragraphs 4.13 to 4.14 above).

### **LSC<sup>4</sup> Proposals to Remove Inadequate School Sixth Forms (Paragraph 4.41)**

4.41 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 school category to VA (Paragraph 4.42)**

4.42 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.

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<sup>4</sup> References throughout this document to the LSC only apply up to April 2010. The ASCL Act 2009 will transfer the responsibilities of the LSC in respect of 16-19 education and training to LAs, supported by the Young People's Learning Agency. This guidance will be revised by April 2010 to take account of these changes.

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### FUNDING AND LAND

#### Capital (Paragraphs 4.43-4.45)

4.43 The Decision Maker **should** be satisfied that any land, premises or 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 Where proposers are relying on DCSF as a source of capital funding, there can be no assumption that the approval of proposals will trigger the release of capital funds from the Department, unless the Department has previously confirmed in writing that such resources will be available; nor 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 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 (Paragraphs 4.46-4.48)

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) -

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

b. Foundation (including Trust) and Voluntary Schools:



## STAGE 4 - DECISION

- 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 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&> ).

4.47 Where prescribed alteration 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 (see paragraph 4.63).

### **New Site or Playing Fields (Paragraph 4.49)**

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 (Paragraph 4.50)**

4.50 For the expansion of voluntary or foundation schools it is desirable that a trust, or the governing body if there is no foundation, holds the freehold interest in

## STAGE 4 - DECISION

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 (Paragraphs 4.51-4.52)**

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 (Paragraphs 4.53-4.54)**

4.53 SEN provision, in the context of School Organisation legislation and this guidance, is provision recognised by the LA as specifically reserved for pupils with special educational needs. 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:

- a. take account of parental preferences for particular styles of provision or education settings;

## STAGE 4 - DECISION

- b. 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;
- c. are consistent with the LA's Children and Young People's Plan;
- d. 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;
- e. 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;
- f. 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;
- g. ensure appropriate provision for 14-19 year-olds, taking account of the role of local LSC funded institutions and their admissions policies; and
- h. 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 (Paragraph 4.55)**

4.55 When considering any reorganisation of provision that would be recognised by the LA as reserved for pupils with special educational needs, 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

## STAGE 4 - DECISION

out in paragraphs 4.59 to 4.62 below have been taken into account by applying the SEN improvement test. 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 (Paragraphs 4.56-4.59)**

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**:

- a. identify the details of the specific educational benefits that will flow from the proposals in terms of:
  - i. improved access to education and associated services including the curriculum, wider school activities, facilities and equipment, with reference to the LA's Accessibility Strategy;
  - ii. improved access to specialist staff, both education and other professionals, including any external support and/or outreach services;
  - iii. improved access to suitable accommodation; and
  - iv. improved supply of suitable places.
- b. 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.

## STAGE 4 - DECISION

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 (Paragraph 4.60)

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 (Paragraph 4.61)

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

- reject the proposals;

## STAGE 4 - DECISION

- approve the proposals;
- approve the proposals with a modification (e.g. the implementation date); or
- approve the proposals subject to them meeting a specific condition (see paragraph 4.64).

### **Conditional Approval (Paragraphs 4.62-4.63)**

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 DCSF 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 DCSF in connection with the BSF programme;
- g. the agreement to any change to the admission arrangements specified in the approval, relating to the school or any other school or schools (*this allows the approval of proposals to enlarge the premises of a school to be conditional on the decision of adjudicators to approve any related change in admission numbers*);
- 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 proposed school should form part, or the fulfilling of any other condition relating to the 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 to a proposal that a

## STAGE 4 - DECISION

foundation body must be established and that the school must form part of a group for which a foundation must 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;

ka. where the proposals are to alter the upper age limit of the school, the decision of the Secretary of State to establish a new FE college under s16 of the Further and Higher Education Act 1992;

l. where the proposals in question depend upon any of the events specified in paragraphs (a) to (ka) occurring by a specified date in relation to proposals relating to any other school or proposed school, the occurrence of such an event; and

m. where proposals are related to proposals for the establishment of new schools or discontinuance of schools, and those proposals depend on the occurrence of events specified in regulation 20 of the School Organisation (Establishment and Discontinuance of Schools) (England) Regulations 2007(5) the occurrence of such an event.

4.63 The Decision Maker **must** set a date by which the condition **must** be met, but will be able to modify the date if the proposers confirm (preferably before the date expires), that the condition will be met later than originally thought. The condition-to-be-met-by date **must** be before the proposed implementation date of the proposal (which can also be modified if necessary). Therefore care **should** be taken when setting condition-to-be-met-by dates, particularly if proposals are “related” e.g. if a school is proposed to add a sixth form on 1<sup>st</sup> September one year, and enlarge on 1<sup>st</sup> September the following year, and the enlargement requires planning permission, the condition set **must** be met before the addition of a sixth form can be implemented (the earlier proposal). This is because as “related” proposals, they **should** both have the same decision, which in this case, would have been approval conditional upon planning permission being met. The proposer **should** inform the Decision Maker and the Department (SOCU, DCSF, Mowden Hall, Darlington DL3 9BG or by email to [school.organisation@education.gsi.gov.uk](mailto:school.organisation@education.gsi.gov.uk)) of the date when a condition is modified or met in order for the Department’s records, and those of Edubase to be kept up to date. If a condition is not met by the date specified, the proposals **must** be referred back to the Decision Maker for fresh consideration.

### Decisions (Paragraphs 4.64-4.66)

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

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## STAGE 4 - DECISION

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 & Competitions Unit, DCSF, Mowden Hall, Darlington DL3 9BG or by email to [school.organisation@education.gsi.gov.uk](mailto:school.organisation@education.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 **must** 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 an 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? (Paragraph 4.67)**

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 & Competitions Unit, DCSF, Mowden Hall, Darlington DL3 9BG or by email to [school.organisation@education.gsi.gov.uk](mailto:school.organisation@education.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.



## STAGE 4 - DECISION

### **Transitional Exemption Order – Role of Decision Maker (Paragraphs 4.68-4.69)**

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

### Stage 5 – Implementation (Paragraphs 5.1-5.28)

5.1 The proposers are under a **statutory duty** to implement any proposals which an LA or schools adjudicator has approved, by the approved implementation date. The proposals **must** be implemented as published, taking into account any modifications made by the Decision Maker. The following bodies are responsible for the implementation of proposals:

Type of School	Body that published proposals	Duty to implement
Community	LA	LA
Foundation	Proposers	LA and the proposers as set out in published proposals
	LA	LA
Voluntary Controlled	Proposers	LA and the proposers as set out in published proposals
Voluntary Aided	Proposers	Proposers but LA to provide playing fields

5.2 The LA **must** provide any additional school site that is required where proposals are approved for a foundation (including Trust) or voluntary controlled school and **must** convey their interest to the governing body or the trustees as appropriate, except where proposals state that the site will be provided by the proposers. Where proposals are approved for a voluntary aided school, the proposers **must** provide any additional school site that is required, although the LA may use its power to assist proposers by providing and conveying its interest in a site.

5.3 If the approval was subject to a condition being met by a specified date, proposers **should** ensure that they meet this. If it looks as though it might not be possible to meet the condition by the specified date, the proposals **must** be considered afresh by the Decision Maker that decided the proposals. The proposer **should** seek a modification to the condition before the date has passed.

### Can Proposals Be Modified? (Paragraphs 5.4-5.6)

5.4 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 **should** be made before the approved implementation date for the proposals is reached.

5.5 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

## STAGE 5 - IMPLEMENTATION

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 5.7-5.13 below) and publish fresh proposals.

5.6 Before modifying proposals the Decision Maker **must** consult the proposers and the LA, if the LA did not publish the proposals. The proposals should 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. The Secretary of State (via the School Organisation & Competitions Unit, DCSF, Mowden Hall, Darlington DL3 9BG or by email to [school.organisation@education.gsi.gov.uk](mailto:school.organisation@education.gsi.gov.uk)) **must** be notified of any modification and the date it was approved, within one week of the proposal being modified.

### Revocation (Paragraphs 5.7-5.13)

5.7 If proposers cannot implement approved proposals they **must** publish fresh proposals to be relieved of the duty to implement. Paragraph 41 of Schedules 3 and 5 of the Regulations 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; and
- a statement as to why it is proposed that the duty to implement proposals should not apply in relation to the original proposals.

The proposals can be published as “related” proposals, if appropriate (following consultation). Templates for revocation notices can be found on the School Organisation website ([www.dcsf.gov.uk/schoolorg](http://www.dcsf.gov.uk/schoolorg)) under ‘Standard Forms’ via the Members’ Area. You need to register to access this area; membership is free.

5.8 The notice **must** be published in a local newspaper circulating in the area served by the school, and also posted at the main entrance to the school (and all 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/governing body 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.

5.9 Revocation proposals **must** be decided by the LA, except where the original proposals were decided by the schools adjudicator (or School Organisation Committee), or if the schools adjudicator is required to decide any “related” proposals, in which case the LA **must** forward the proposals, and any comments and objections received, to the schools adjudicator within 2 weeks

## STAGE 5 - IMPLEMENTATION

from the end of the representation period. If the LA are 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.

5.10 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.

5.11 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 & Competitions Unit, DCSF, Mowden Hall, Darlington DL3 9BG or by email to [school.organisation@education.gsi.gov.uk](mailto:school.organisation@education.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.

5.12 The following bodies have a right of appeal to the schools adjudicator if they disagree with the LA's decision:

- The local Church of England diocese;
- The bishop of the local Roman Catholic diocese;
- The LSC where the school is to provide education for pupils aged 14 and over; and
- The governing body and trustees (if relevant) of the school.

5.13 Appeals **must** be submitted to the LA within 4 weeks of the notification of the LA's decision. On receipt of an appeal the LA **must** then send the proposals and the representations (together with any comments made on these representations by the proposers) 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 **must** also be sent to the schools adjudicator.

## STAGE 5 - IMPLEMENTATION

**CHANGE OF CATEGORY ISSUES** (foundation proposals are dealt with in separate guidance - [www.dcsf.gov.uk/schoolorg/guidance.cfm?id=25](http://www.dcsf.gov.uk/schoolorg/guidance.cfm?id=25))

### **Responsibility for implementation of other unimplemented proposals (Paragraph 5.14)**

5.14 Where, as a result of a 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 (Paragraph 5.15)**

5.15 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 <http://www.dcsf.gov.uk/sacode/>.

### **Reconstitution of the governing body (Paragraphs 5.16-5.18)**

5.16 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 (the implementation date is the date specified in the statutory notice, subject to any subsequent approved modification). During this period, the LA and governing body are required to make a new instrument of government for the school, so enough time **should** be built into the timeframe for this to happen.

5.17 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 LA are required to reconstitute the

## STAGE 5 - IMPLEMENTATION

governing body. Until the governing body is reconstituted, the current governing body continues to exercise its functions in respect of the school.

5.18 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.

### **Staffing (Paragraphs 5.19-5.21)**

5.19 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 Regulations 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.

5.20 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.

5.21 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/people/employment/codes.aspx>

## STAGE 5 - IMPLEMENTATION

### **Variation of voluntary or foundation school trusts (Paragraph 5.22)**

5.22 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 (Paragraphs 5.23-5.24)**

5.23 Schedule 3 to the Regulations has 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.

5.24 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 (Paragraph 5.25)**

5.25 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 (Paragraph 5.26)**

5.26 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 (Paragraph 5.27)**

5.27 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.

## STAGE 5 - IMPLEMENTATION

### **Issues relating to transfer of land (Paragraph 5.28)**

5.28 Further information regarding the transfer of land can be found in “The Transfer and Disposal of School Land in England: A General Guide for Schools, Local Authorities and The Adjudicator”, which can be obtained from <http://www.teachernet.gov.uk/management/resourcesfinanceandbuilding/schoolslandandproperty>.



## ANNEX A

### Annex A

## PROPOSALS FOR PRESCRIBED ALTERATIONS OTHER THAN FOUNDATION PROPOSALS: Information to be included in a complete proposal

*NB. If the School Organisation Notice Builder tool is used to create a draft statutory notice, a template for the complete proposal is provided automatically by the Notice Builder when the draft statutory notice is finalised, alternatively the template can be found in "Standard Forms" in the Members' Area of the website or you can enter the information required in the expandable boxes below.*

### **Extract of Part 1 of Schedule 3 and Part 1 of Schedule 5 to The School Organisation (Prescribed Alterations to Maintained Schools)(England) Regulations 2007 (as amended):**

#### **In respect of a Governing Body Proposal: School and governing body's details**

1. The name, address and category of the school for which the governing body are publishing the proposals.

#### **In respect of an LEA Proposal: School and local education authority details**

1. The name, address and category of the school.

#### **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, and 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 prescribed in accordance with paragraph 29 of Schedule 3 (GB proposals)/Schedule 5 (LA proposals) of The School Organisation (Prescribed

## ANNEX A

- Alterations to Maintained Schools) (England) Regulations 2007 (as amended), by which objections or comments should be sent to the local education authority; and
- (b) the address of the authority 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.—(1) Where the alteration is an alteration falling within any of paragraphs 1 to 4, 8, 9 and 12-14 of Schedule 2 (GB proposals)/paragraphs 1-4, 7, 8, 18, 19 and 21 of Schedule 4 (LA proposals) to The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 (as amended), the proposals 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 current number of pupils admitted to the school in each relevant age group, and where this number is to change, the proposed number of pupils to be admitted 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;

- (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.

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(2) Where the alteration is an alteration falling within any of paragraphs 1, 2, 9, 12 and 13 of Schedule 2 (GB proposals) /paragraphs 1, 2, 8, 18 and 19 of Schedule 4 (LA proposals) to The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 (as amended), 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 local education authority 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.—(1) 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.

(2) 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.—(1) Where the proposals are for the introduction or removal of boarding provision, or the alteration of existing boarding provision such as is mentioned in paragraph 8 or 21 of Schedule 2 (GB proposals)/7 or 14 of Schedule 4 to The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 (as amended) —

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- (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 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 provisions or an alteration to reduce boarding provision such as is mentioned in paragraph 8 or 21 of Schedule 2 (GB proposals)/7 or 14 of Schedule 4 (LA proposals) to The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 (as amended) —

- (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—

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- (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 the school area will be discouraged.

### Objectives

10. The objectives of the proposals.

### Consultation

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

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- (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 local education authority, and any other party.

**13.** A copy of confirmation from the Secretary of State, local education authority 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;

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- (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.** (a) 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—

- (i) improve the educational or training achievements;
- (ii) increase participation in education or training; and
- (iii) expand the range of educational or training opportunities for 16-19 year olds in the area;

- (b) A statement as to how the new places will fit within the 16-19 organisation in an area;

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(c) Evidence —

- (i) of the local collaboration in drawing up the proposals; and
- (ii) that the proposals are likely to lead to higher standards and better progression at the school;

(d) The proposed number of sixth form places to be provided.

**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.

### **Special educational needs**

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

- (a) a description of the proposed types of learning difficulties in respect of which education will be provided and, where provision for special educational needs already exists, the current type of provision;

- (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;



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- (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;

- (h) where the provision will replace existing educational provision for children with special educational needs, a statement as to how the local education authority believes that the new provision is likely to lead to improvement in the standard, quality and range of the educational provision for such children; and

- (i) the number of places reserved for children with special educational needs, and where this number is to change, the proposed number of such places.

**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;

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- (b) details of the number of pupils for whom provision is made that is recognised by the local education authority 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 local education authority 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 proposer believes 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 local education authority'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;

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(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;

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- (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;

- (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.

### **Expansion of successful and popular schools**

**25A.** (1) Proposals must include a statement of whether the proposer considers that the presumption for the expansion of successful and popular schools should apply, and where the governing body consider the presumption applies, evidence to support this.

(2) Sub-paragraph (1) applies to expansion proposals in respect of primary and secondary schools, (except for grammar schools), i.e. falling within:

(a) (for proposals published by the governing body) paragraph 1 of Part 1 to Schedule 2 or paragraph 12 of Part 2 to Schedule 2;

(b) (for proposals published by the LA) paragraph 1 of Part 1 to Schedule 4 or 18 of Part 4 to Schedule 4

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of the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 (as amended).

