

department for  
**children, schools and families**

# Expanding a Maintained Mainstream School or Adding a Sixth Form

## A Guide for Local Authorities and Governing Bodies

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26 March 2009

# **EXPANDING A MAINTAINED MAINSTREAM SCHOOL OR ADDING A SIXTH FORM - A GUIDE FOR LOCAL AUTHORITIES AND GOVERNING BODIES**

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# **EXPANDING A MAINTAINED MAINSTREAM SCHOOL OR ADDING A SIXTH FORM - A GUIDE FOR LOCAL AUTHORITIES AND GOVERNING BODIES (Covering Enlarging a School, Increasing the School's Intake by 27 or more pupils and Adding a Sixth Form)**

## **Introduction**

1. This guide contains both statutory guidance (i.e. guidance that must be followed) and non-statutory guidance on the process for “expanding” a school. Throughout this guide any reference to “expand” (i.e. or “expanding”/ “expansion”) covers the following “prescribed alterations”:

enlarging the physical capacity of a school;

increasing a school's intake by 27 or more pupils; and

changing the school's upper age limit to add a sixth form.

NOTE: for more detailed information on when proposals are required see paragraphs 11 to 17 below

2. 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 (Amendments)(England) Regulations 2007 which came into force on 21 January 2008). It contains both statutory guidance (i.e. guidance to which proposers and decision makers have a statutory duty to have regard) and non-statutory guidance on the process for making changes to school provision. The statutory guidance sections are indicated by shading. The relevant provisions of EIA 2006 came into effect on 25 May 2007.

3. If you have any comments on the content or layout of this guide please send these to the School Organisation Unit (using the SOU website's "Contact Us" facility [ [www.dcsf.gov.uk/schoolorg](http://www.dcsf.gov.uk/schoolorg) ] or by e-mail 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 the Guidance For?**

4. This guidance is for those considering publishing proposals to expand a school under section 19 of EIA 2006, referred to as proposers (i.e. the Local Authority [LA] or the governing body), those deciding proposals, referred to as the “Decision Maker” (i.e. the LA and the schools adjudicator) and also for information for those affected by proposals for the expansion of a school.

5. Separate guidance is available for:

Becoming a Trust school;

Establishing a new school;

Closing a maintained school; and

Making other alterations.

### **School Organisation Planning Requirements**

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 and 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 guidance on this duty is available in "Duty to Respond to Parental Representations about the Provision of Schools" which is on the School Organisation website [www.dcsf.gov.uk/schoolorg](http://www.dcsf.gov.uk/schoolorg).

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

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

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

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 under Section 113A of the Learning and Skills Act 2000 (as inserted by Section 72 of the Education Act 2002), for changes to 16-19 provision in schools. For further information please see guidance available at [www.teachernet.gov.uk/docbank/index.cfm?id=4390](http://www.teachernet.gov.uk/docbank/index.cfm?id=4390) .

### **When are expansion proposals required?**

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

#### **Enlargement**

12. Statutory proposals are required for a proposed enlargement of the premises of the school which would increase the physical capacity of the school by:-

- (a) more than 30 pupils; and
- (b) by 25% or 200 pupils (whichever is the lesser).

13. Proposals may be required for some cumulative expansions and you must therefore look back and take into account any other enlargements that were made without the need for statutory proposals. You should therefore:-

add any enlargements made:-

- in the 5 year period that precedes the proposed expansion date; or
- since the last approved statutory proposal to enlarge the school (within this 5 year period).

exclude any temporary enlargements (i.e. where the enlargement was in place for less than 3 years); and

add the making permanent of any temporary enlargement.

#### **Increase in number of pupils**

14. Statutory proposals are required for a proposed increase in the number of pupils in the school's admission number by 27 or more.

15. Admission numbers may fluctuate slightly and in deciding whether proposals are required for the proposed expansion, you must look at the school's admission numbers in the 3 year period that precedes the proposed date for expansion. Proposals are only required where the proposed admission number would exceed the school's highest admission number by 27 or more during the 3

school year period that precedes the proposed expansion date.

16. Proposals are not required for any temporary increases (i.e. which will be in place for no more than a year) or where the proposed increase relates to pupils aged over compulsory school age.

#### Alteration of upper age limit

17. The alteration of the upper age limit by a year or more, to provide a new sixth form except where:

the school is to provide education for pupils over compulsory school age who are repeating a course of education completed before they reach compulsory school age;

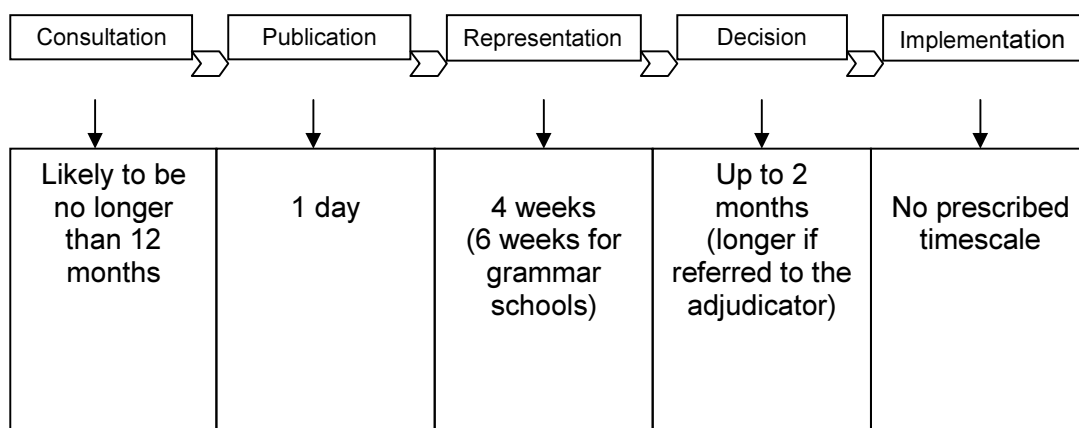
the school is to provide part-time further education for pupils aged over compulsory school age, or full-time further education for persons aged 19 or over i.e. under section 80(1) of SSFA 1998); or

the alteration is a temporary one which will be in place for no more than 2 years.

NOTE: A separate guide is available for making other changes - "Making Changes to a Maintained Mainstream School (Other than Expansion)" - which is available on the School Organisation website [www.dcsf.gov.uk/schoolorg](http://www.dcsf.gov.uk/schoolorg) .

#### **Overview of Process**

18. There are 5 statutory stages for a statutory proposal:



#### **Who Can Make Proposals to Expand a School?**

19. An LA can publish proposals to expand any category of maintained school. The governing body of a community, voluntary, foundation, community special and foundation special school may also publish proposals to expand their school.

## **Where to Start?**

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

## **Capital Funding**

21. Where proposals require capital resources for their implementation the funding for the proposals must be in place when the proposals are decided (see paragraph 4.49). Where proposers require capital funding to implement their proposals, they should secure this before publishing proposals.

### Expansion of Successful and Popular Schools

22. The Government wants to make it easier for successful and popular primary and secondary schools to expand, and in order to support this, the Government providing additional incentive capital funding to encourage local authorities to take forward expansions as part of their strategic commissioning role. Further guidance on this funding is available from <http://www.teachernet.gov.uk/management/resourcesfinanceandbuilding/capitalinvestment/guidanceindex/sdf/> .

23. The Government also wants to encourage successful and popular 11-16 schools to extend their age range to provide sixth form places. Guidance is available at: <http://www.teachernet.gov.uk/educationoverview/briefing/currentstrategy/16-19organisation/> . For further guidance on funding you should refer to the LSC's guidance "School Sixth Forms - Funding Guidance for 2006/07 and 2007/08" on the LSC's website [www.lsc.gov.uk](http://www.lsc.gov.uk) .

24. 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 the capital incentives schemes described above.

### Other expansions

25. 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 project, the funding will be provided through the Building Schools for the

Future programme. Details of capital funding for the project in respect of all schools will be decided in discussions between the LA, the Department and Partnerships for Schools and will be included in the Final Business Case which the Department agrees. This may include the contribution by the LA (or schools or other stakeholders such as dioceses) to Building Schools for the Future funding of receipts from land made available through school reorganisation. For voluntary aided schools, government funding will normally be at 100% of the approved capital costs.

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



## Stage 1 – Consultation

1.1 The School Organisation (Prescribed Alterations to Maintained Schools)(England) Regulations 2007 (as amended) provide that those bringing forward statutory proposals to expand 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 1.6 below.

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

- allow adequate time;
- provide sufficient information for those being consulted to form a considered view on the matters on which they are being consulted;
- make clear how their views can be made known;
- be able to demonstrate how they have taken into account the view expressed during consultation in reaching any subsequent decision as to the publication of proposals.

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

1.4 The School Organisation (Prescribed Alterations to Maintained Schools)(England) Regulations 2007 (as amended) 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 other 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;

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 or proposed school that is the subject of the proposals is situated;

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

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

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

## **Conduct of Consultation**

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

Remember:

<b>Do</b>	<b>Don't</b>
Consult all interested parties	Consult during school holidays
Provide sufficient time and sufficient information	Use language which could be misleading, e.g. We <u>will</u> expand the school
Think about the most appropriate consultation method	
Consider feedback and views	
Consider alternative options	
Explain decision making process	

## Stage 2 – Publication

2.1 LAs can publish expansion proposals for any category of maintained school within the LA. Governing bodies can publish proposals to expand their school.

2.2 Proposals **must** contain the information specified in The School Organisation (Prescribed Alterations to Maintained Schools)(England) Regulations 2007 (as amended) – as set out in Annex A. Part of the information is published in a statutory notice (see paragraphs 2.3-2.4 below), but the complete proposal must be sent to a range of copy recipients (see paragraph 2.9-2.10 below). Proposals should be published within a reasonable timeframe following consultation so that they are informed by up-to-date feedback, preferably within 12 months of consultation being concluded.

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

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

## Related Proposals

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

## **Implementation date**

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

## **Explanatory Note**

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

## **Invalid Notice**

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

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

2.9 The proposers **must** send a copy of the complete proposal, within a week of publication, to:

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

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

any person who requests a copy.

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

(a) a complete copy of the proposal, excluding all documentation relating to the consultation; and

(b) a copy of the statutory notice that appeared in the local newspaper.

### **Stage 3 - Representations**

3.1 Once proposals are published there follows a statutory period during which representations (e.g. objections or comments) can be made. These **must** be sent to the LA. The period for comments and objections **must** be 4 weeks except where the proposals relate to a grammar school when the period **must** be 6 weeks.

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

## Stage 4 – Decision

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

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

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

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

### Who Can Appeal Against an LA Decision?

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

the local Church of England diocese;

the bishop of the local Roman Catholic diocese;

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

the governing body of the community school that is proposed for expansion; and

the governors and trustees of the foundation or voluntary school that is proposed for expansion.

4.6 Appeals **must** be submitted to the LA within 4 weeks of the LA’s decision. On receipt of an appeal the LA **must** then send the proposals, and the comments and objections received, to the schools adjudicator within 1 week of the receipt of the appeal. The LA should also send a copy of the minutes of the LA’s meeting or

other record of the decision and any relevant papers. Where the proposals are “related” to other proposals, all the related proposals should be sent to the schools adjudicator.

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

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

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

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

4.8 The Decision Maker should consider whether the notice is valid as soon as a copy is received. Where a published notice does not comply with statutory requirements - as set out in The School Organisation (Prescribed Alterations)(England) Regulations 2007 (SI:2007 - 1289) (as amended) - it may be judged invalid and the Decision Maker should consider whether they can decide the proposals.

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

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

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

4.10 Paragraph 35 of Schedule 3, and Paragraph 35 of Schedule 5, to The



School Organisation (Prescribed Alterations to Maintained Schools)(England) Regulations 2007 (as amended) provides that any proposals that are ‘related to’ particular proposals **must** be considered together. Paragraphs 4.11-4.14 provide statutory guidance on whether proposals should be regarded as “related”.

4.11 Generally, proposals should be regarded as “related” if they are included on the same notice (unless the notice makes it clear that the proposals are not related). Proposals should be regarded as “related” if the notice makes a reference to a link to other proposals. If the statutory notices do not confirm a link, but it is clear that a decision on one of the proposals would be likely to directly affect the outcome or consideration of the other, the proposals should be regarded as “related”.

4.12 Where proposals are “related”, the decisions should be compatible e.g. if one set of proposals is for the removal of provision, and another is for the establishment or enlargement of provision for displaced pupils, both should be approved or rejected.

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

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

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

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

4.15 Regulation 8 of The School Organisation (Prescribed Alterations to Maintained Schools)(England) Regulations 2007 (as amended) provides that both the LA and schools adjudicator **are required** to have regard to guidance issued by the Secretary of State when they take a decision on proposals. Paragraphs 4.16 to 4.64 below contain the statutory guidance.

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

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

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

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

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

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

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

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

### **Standards**

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

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

4.21 Decision Makers should be satisfied that when proposals lead to children being displaced, any alternative provision will meet the statutory SEN improvement test (see paragraphs 4.57-4.63).

## **Diversity**

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

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

## **Every Child Matters**

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

## **SCHOOL CHARACTERISTICS**

### **Boarding Provision**

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

4.26 In making a decision on proposals 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. 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**

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

### **NEED FOR PLACES**

#### **Creating Additional Places**

4.28 In considering proposals, the Decision Maker should consider the supporting evidence presented for the increase, and take into account the existence of spare capacity in neighbouring schools, but also the quality and popularity with parents of the schools in which spare capacity exists and evidence of parents' aspirations for places in 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.

4.29 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 school to be sustainable.

4.30 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.

## **Expansion of Successful and Popular Schools**

4.31 The Government is committed to ensuring that every parent can choose an excellent school for their child. We have made clear that the wishes of parents should be taken into account in planning and managing school estates. Places should be allocated where parents want them, and as such, it should be easier for successful and popular primary and secondary schools to grow to meet parental demand. For the purposes of this guidance, the Secretary of State is not proposing any single definition of a successful and popular school. It is for the Decision Maker to decide whether a school is successful and popular, however, the following indicators should all be taken into account:

- a. the school's performance;
  - i) in terms of absolute results in key stage assessments and public examinations;
  - ii) by comparison with other schools in similar circumstances (both in the same LA and other LAs);
  - iii) in terms of value added;
  - iv) in terms of improvement over time in key stage results and public examinations.
- b. the numbers of applications for places;
  - i) the Decision Maker should also take account of any other relevant evidence put forward by schools.

4.32 The strong presumption is that proposals to expand successful and popular schools should be approved. In line with the Government's long standing policy that there should be no increase in selection by academic ability, this presumption does not apply to grammar schools or to proposals for the expansion of selective places at partially selective schools.

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

4.34 Before approving proposals the Decision Maker should confirm that the admission arrangements of schools proposed for expansion fully meet the provisions of the Schools Admissions Code. Although the Decision Maker may

not modify proposed admission arrangements, the proposer should be informed that proposals with unsatisfactory admission arrangements are unlikely to be approved, and given the opportunity to revise them in line with the Code of Practice. Where the LA, rather than the governing body, is the admissions authority, we will expect the authority to take action to bring the admission arrangements into line with the School Admissions Code.

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

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 ref 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.

### **ADDITION OF SIXTH FORMS BY 'HIGH PERFORMING' SCHOOLS**

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

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

4.38 Where a new sixth form is proposed by a specialist school that has met the 'high performing' criteria and which has opted for a vocational specialism, capital funding will be available from the 16-19 Capital Fund.

4.39 There should also be a strong presumption in favour of proposals for a new sixth form where the school, whether specialist or not, is assessed as meeting the DCSF criteria for 'high performing' and does not require additional capital resources. This presumption will apply to proposals submitted to the Decision Maker within:

a. two years from the date a school commences operation with vocational specialist school status; or

b. two years from the date a school is informed of its Ofsted Section 5 inspection results which would satisfy DCSF criteria for 'high performing' status as set out at

<http://www.standards.dcsf.gov.uk/specialistschools/guidance2007/?version=1>

[NOTE: 'submitted to the Decision Maker' above refers to when proposals and representations are with the Decision Maker, following the end of the representation period]

4.40 The school should ensure that, in forwarding its proposals to the Decision Maker, it provides evidence that it meets one of the criteria at paragraph 4.37 above.

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

### **16-19 Provision 'Competitions'**

4.42 Non statutory competitions for new 16-19 provision were introduced from January 2006. They are being administered by local LSCs, in line with their role as commissioner of 16-19 provision. The establishment of new institutions by competition will involve a 2 stage approval process:

a. the competition selection process;

b. approval of the outcome by existing processes (e.g. Decision Maker approval of school/LA proposals and Secretary of State approval of college/LSC proposals, as required by law).

4.43 Competitors will be eligible to apply to the 16-19 Capital Fund. Where a competition is 'won' by a school, they must then publish statutory proposals and these must be considered by the Decision Maker on their merits.

4.44 Where proposals to establish sixth forms are received, and the local LSC is running a 16-19 competition, the Decision Maker must take account of the competition when considering the proposals.

### **16-19 Provision**

4.45 The Learning and Skills Act 2000 provides an entitlement to further

education and training for young people aged 16-19. Schools and colleges should offer high quality provision that meets the diverse needs of all young people, their communities and employers. 16-19 provision should be organised to ensure that, in every area, young people have access, within reasonable travelling distance, to high quality learning opportunities across schools, colleges and work-based training routes.

4.46 In September 2003 Ministers set out their **five key principles** for the reorganisation of 16-19 provision, following requests from partners (including LSC and LAs) for more clarity on Government expectations. Decision Makers should therefore consider all proposals which affect local 16-19 provision (ie both proposed school expansions and proposals to add a new sixth form) in the context of these principles.

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

Briefly they are:

- a. quality – all provision for all learners should be high quality, whatever their chosen pathway;
- b. distinct 16-19 provision – all young people should be attached to a 16-19 base which will meet the particular pastoral, management and learning needs of this group;
- c. diversity to ensure curriculum breadth – well-managed collaboration between popular and successful small providers will enable them to remain viable and to share and build on their particular areas of expertise;
- d. learner choice – all learners should normally have local access to high quality 16-19 provision in a range of settings and any proposals for change to this provision should take into account the views of all stakeholders;
- e. affordability, value for money and cost effectiveness – proposals for change should include how any capital and recurrent costs and savings will lead to improved educational opportunities.

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

4.48 Where the implementation of reorganisation proposals by the LSC conflict with other published proposals put to the Decision Maker for decision, the Decision Maker is prevented (i.e. by the School Organisation Proposals by the LSC for England Regulations 2003) from making a decision on the “related”



proposals until the Secretary of State has decided the LSC proposals (see paragraphs 4.13 to 4.14 above).

## **FUNDING AND LAND**

### **Capital**

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

4.50 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.

4.51 Proposals should not be approved conditionally upon funding being made available, subject to the following specific exceptions. For proposals being funded under the Private Finance Initiative (PFI) or through the Building Schools for the Future (BSF) programme, the Decision Maker should be satisfied that funding has been agreed 'in principle', but the proposals should be approved conditionally on the entering into of the necessary agreements and the release of funding. A conditional approval will protect proposers so that they are not under a statutory duty to implement the proposals until the relevant contracts have been signed and/or funding is finally released

### **Capital Receipts**

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

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

(i) playing field land – the governing body, foundation body or trustees will require the Secretary of State's consent, under section 77 of the SSFA 1998, to dispose, or change the use of any playing field land that has been acquired and/or enhanced at public expense.

(ii) non-playing field land or school buildings – the governing body, foundation body or trustees will no longer require the Secretary of State's consent to dispose of surplus non-playing field land or school buildings which have been acquired or enhanced in value by public funding. They will be required to notify the LA and seek local agreement of their proposals. Where there is no local agreement, the matter should be referred to the Schools 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&> .

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

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

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

### **Land Tenure Arrangements**

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

school before the termination of the lease. The Decision Maker should also be satisfied that a lease does not contain provisions which would obstruct the governing body or the headteacher in the exercise of their functions under the Education Acts, or place indirect pressures upon the funding bodies.

### **School Playing Fields**

4.56 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.

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

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

### **Initial Considerations**

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

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

- iv. take full account of educational considerations, in particular the need to ensure a broad and balanced curriculum, including the National Curriculum, within a learning environment in which children can be healthy and stay safe;
- v. support the LA's strategy for making schools and settings more accessible to disabled children and young people and their scheme for promoting equality of opportunity for disabled people;
- vi. provide access to appropriately trained staff and access to specialist support and advice, so that individual pupils can have the fullest possible opportunities to make progress in their learning and participate in their school and community;
- vii. ensure appropriate provision for 14-19 year-olds, taking account of the role of local LSC funded institutions and their admissions policies; and
- viii. ensure that appropriate full-time education will be available to all displaced pupils. Their statements of special educational needs will require amendment and all parental rights must be ensured. Other interested partners, such as the Health Authority should be involved.

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

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

4.59 When considering any reorganisation of SEN provision, including that which might lead to some children being displaced through closures or alterations, LAs, and all other proposers for new schools or new provision, will need to demonstrate to parents, the local community and Decision Makers how the proposed alternative arrangements are likely to lead to improvements in the standard, quality and/or range of educational provision for children with special educational needs. All consultation documents and reorganisation plans that LAs publish and all relevant documentation LAs and other proposers submit to Decision Makers should show how the key factors set out in paragraphs 4.60 to 4.63 below have been taken into account. Proposals which do not credibly meet these requirements should not be approved and Decision Makers should take proper account of parental or independent representations which question the LA's own assessment in this regard.

### **Key Factors**

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

should:

- identify the details of the specific educational benefits that will flow from the proposals in terms of:
  - a) improved access to education and associated services including the curriculum, wider school activities, facilities and equipment, with reference to the LA's Accessibility Strategy;
  - b) improved access to specialist staff, both education and other professionals, including any external support and/or outreach services;
  - c) improved access to suitable accommodation; and
  - d) improved supply of suitable places.
- LAs should also:
  - i. obtain a written statement that offers the opportunity for all providers of existing and proposed provision to set out their views on the changing pattern of provision seeking agreement where possible;
  - ii. clearly state arrangements for alternative provision. A 'hope' or 'intention' to find places elsewhere is not acceptable. Wherever possible, the host or alternative schools should confirm in writing that they are willing to receive pupils, and have or will have all the facilities necessary to provide an appropriate curriculum;
  - iii. specify the transport arrangements that will support appropriate access to the premises by reference to the LA's transport policy for SEN and disabled children; and
  - iv. specify how the proposals will be funded and the planned staffing arrangements that will be put in place.

4.61 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.

4.62 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.

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

## **OTHER ISSUES**

### **Views of Interested Parties**

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

### **Types of Decision**

4.65 In considering proposals for the expansion of a school, the Decision Maker can decide to:

reject the proposals;

approve the proposals;

approve the proposals with a modification (e.g. the school opening date); or

approve the proposals subject to them meeting a specific condition (see paragraph 4.66 below).

### **Conditional Approval**

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

- a. the grant of planning permission under Part 3 of the Town and Country Planning Act 1990;

- b. the acquisition of the site required for the implementation of the proposals;
- c. the acquisition of playing fields required for the implementation of the proposals;
- d. the securing of any necessary access to a site referred to in sub-paragraph (b) or playing fields referred to in sub-paragraph (c);
- e. the private finance credit approval given by the Department for Education and Skills following the entering into a private finance contract by an LA;
- f. the entering into an agreement for any necessary building project supported by the Department for Education and Skills in connection with Building Schools for the Future programme;
- g. the agreement to any change to admission arrangements specified in the approval, relating to another school;
- 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 proposed school forming part of a federation;
- j. the Secretary of State giving approval under regulation 5(4) of the Education (Foundation Body) (England) Regulations 2000 that the school should form part of a group for which a foundation body act;
- k. the Secretary of State making a declaration under regulation 22(3) of the Education (Foundation Body) (England) Regulations 2000 that the school should form part of a group for which a foundation body acts;
- l. where the proposals depend upon any of the events specified in paragraphs (a) to (k) occurring by a specified date for any other school or proposed school, the occurrence of such 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(1) the occurrence of such an event.

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

## Decisions

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

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

the LA or governing body who published the proposals;

the trustees of the school (if any);

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

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

the local CofE diocese;

the bishop of the RC diocese;

each objector except where a petition has been received. Where a petition is received a decision letter should be sent to the person who submitted the petition, or where this is unknown, the signatory whose name appears first on the petition; and

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

4.70 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.

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(1) S.I. 2007/1288.



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

4.71 Proposals can be withdrawn at any point before a decision is taken. Written notice must be given to the LA, or governing body, if the proposals were published by the LA. Written notice must also be sent to the schools adjudicator (if proposals have been sent to him) and the Secretary of State – i.e. via the School Organisation Unit, DCSF, Mowden Hall, Darlington DL3 9BG or by e-mail to [school.organisation@dcsf.gsi.gov.uk](mailto:school.organisation@dcsf.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 5 – Implementation

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

### Can Proposals Be Modified?

5.4 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 may be made at any time before the implementation date for the proposals.

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 significant change to proposals after they have been approved, they must publish

“revocation” proposals to be relieved of the duty to implement the proposals (see paragraphs 5.5 to 5.9 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 must not be modified in a way that would in effect substitute new proposals – this would run the risk of successful legal challenge in the courts. The Secretary of State (via the School Organisation Unit, DCSF, Mowden Hall, Darlington DL3 9BG or by e-mail to [school.organisation@dcsg.gov.uk](mailto:school.organisation@dcsg.gov.uk) ) must be notified of any modification within one week of the proposal being modified.

## Revocation

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

a description of the original proposals as published;

the date of the publication of the original proposals;

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

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

5.8 The proposals **must** be published in a local newspaper, 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 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 are decided by the LA, except where the original proposals were decided by the schools adjudicator. Where the proposals were originally decided by the schools adjudicator the LA **must** forward the proposals, and any comments and objections received, to the schools adjudicator within 2 weeks from the end of the representation period. If the LA is to decide proposals they **must** do so within 2 months of 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 Unit, DCSF, Mowden Hall, Darlington DL3 9BG or by e-mail to [school.organisation@dcsf.gsi.gov.uk](mailto:school.organisation@dcsf.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.