

department for  
**children, schools and families**

## Decision Makers' Guidance (Local Authorities and Schools Adjudicator) for:

### Expanding a Maintained Mainstream School or Adding a Sixth Form

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**This guidance is extracted, for ease of reference by decision makers, from the full version of the “Expanding a Maintained Mainstream School or Adding a Sixth Form” guide. The statutory guidance sections are indicated by shading.**

## **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of the end of the representation period the LA **must** forward proposals, and any received representations (i.e. not withdrawn in writing), to the schools adjudicator for decision.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. twelve months from the date a school commences operation with vocational specialist school status; or
- b. twelve months 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@dcsc.gov.uk](mailto:school.organisation@dcsc.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@dcsc.gov.uk](mailto:school.organisation@dcsc.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

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(1) S.I. 2007/1288.

the decision **must** be sent to the LA that it is proposed should maintain the school.

### **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.